



# CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation

## A Lawyer's View of FASA—Simplified Acquisition

May 26, 1995



### Simplified Acquisition Procedures FASA §§ 4201-4203

By Cecilia Carson

#### Introduction

Simplified acquisition procedures are part of the Government's first steps toward electronic commerce. It is the sequel to small purchase procedures with a new name and a new twist—FACNET (more on this shortly). The marriage of simplified acquisition procedures to FACNET is by far the most significant development in the area of simplified procurements. This edition of *Lawyer's View* will explore the differences between the new procedures and its forerunner.

#### FACNET and its relationship to Simplified Acquisition Procedures

FACNET (yes, yet another government acronym) means: Federal Acquisition Computer Network. It is not a single electronic system that will be used by all executive agencies. It is, however, a universal electronic capability that will permit potential contractors to, at a minimum, obtain information on proposed procurements, submit questions, and receive awards on a government-wide basis.

Certification of FACNET capability is the key to a procuring activity's authority to utilize simplified acquisition procedures; hence, although the simplified acquisition threshold is \$100,000, a procuring activity must assess where they are in the implementation of FACNET in order to determine whether it may properly employ simplified acquisition procedures.

There are two stages of FACNET certification—"interim FACNET capability" and "full FACNET capability." Interim capability requires the ability to provide widespread public notice of and issue, solicitations and receive responses to solicitations and associated requests for information through FACNET. Full capability, refers to the agency as a whole and requires that at least 75% of all eligible contract actions between \$2,500 and \$100,000 were entered into by the

agency during the preceding fiscal year using FACNET.

Initially, FASA provides that civilian agencies may use simplified acquisition procedures for procuring goods and services with an anticipated value not greater than \$50,000: however, once an agency has certified at least interim FACNET capability, the agency's authority to utilize simplified acquisition procedures expands from the \$50,000 limitation to \$100,000, the full amount of the simplified acquisition threshold. Furthermore, FASA gently nudges agencies toward eventual full FACNET capability, requiring full FACNET capability by 1999 or risk seeing the agency's authority revert back to \$50,000 even if the agency had previously certified interim FACNET capability.

Clearly, the presumption is that agencies will want to use the procedures and thus will take necessary steps to ensure their availability. However, FASA stops short of requiring agencies to implement FACNET capability. Nonetheless, by tying FACNET to simplified acquisition procedures designed to make procuring low-dollar items much easier, the administration expects an easy transition to an electronic marketplace for buyers and sellers desiring to do business with the government.

#### What are Simplified Acquisition Procedures—Have they really simplified things?

FASA coined the term, "simplified acquisition procedures," apparently, to convey its two-fold purpose: (1) to alleviate administrative burden and (2) to provide a forum for agencies and contractors to readily access and exchange information. In this regard, simplified acquisition procedures embodies a broader concept than



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**A Lawyer's View** is a periodic publication of the Contract Law Division designed to give practical advice to the Department's procurement officers. Comments, criticisms, and suggestions for future topics are welcome.—Call Jerry Walz at 202-482-1122, or via e-mail to Jerry Walz@FinLit@OGC or jwalz@doc.gov.



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that of its predecessor, small purchase procedures which did not address this second facet. The new procedures aims to promote the exchange of information via FACNET. Broader too, are the scope of the new procedures which will generally cover all procurements of goods and services of \$100,000 and less. (The small purchase threshold was merely \$25,000.)

Still, in light of FASA's apparent invitation to groundbreaking innovations in the area of simplified acquisitions, the proposed FAR rule which recently surfaced (60 Fed. Reg. 12366 (1995)) surprisingly revealed that not much has changed. It would not be a stretch to say that the proposed procedures are new in name only. Contracting Officers (CO) continue to have authority to use imprest funds, purchase orders, blanket purchasing agreements and the like. The only noteworthy change in the procedures themselves is the provision that explicitly authorizes COs to use any procurement method authorized by the FAR when conducting simplified purchases.

### Inapplicability of Some Procurement Laws

Although not exactly novel either, simplified acquisition procurements are exempt from certain procurement statutes and regulations. FASA requires the FAR council to provide a list of such laws, which will include laws with record-keeping requirements, bonding requirements and laws imposing criminal and civil penalties, and to periodically review the list of inapplicable statutes and regulations as new legislation that impacts these small-dollar purchases is enacted. Among those currently slated for the do-not-apply list are: Miller Act bonding requirements, the Prohibition on Limiting Subcontractor Direct Sales to the U.S., Authority to Examine Books and Records of a contractor or subcontractor, anti-kick back provisions, Contract Work Hours & Safety Standards Act and the Drug Free Work Place Act.

### Easy Access

The single most significant development besides increasing the threshold, is the marriage of simplified procedures to FACNET. FASA makes it clear that agency's should follow the letter and

the spirit of the statute's requirement to make procurement easier by decreasing burdens on contractors and by facilitating efficient exchange of information. Ideally, COs should be able to locate and evaluate potential sources more readily, enabling them to fill the needs of the program offices they serve more efficiently while obtaining more competitive prices in the process.

Potential offerors should find the sometimes onerous burden of dealing with the government significantly diminished for applicable purchases, as well, because with the institution of the electronic marketplace, contractors will have access to information about Government programs and upcoming procurements on computer networks accessible by personal computer and modem. They will be able to locate requests for quotations and the like via the network, respond to a request, receive a purchase order, purchase order acknowledgment, invoice, notice of award, make and receive payment, all without leaving their desks.

### When Should Simplified Acquisition Procedures Be Employed?

The proposed FAR rule touts simplified acquisition procedures as the "preferred method," for procurement of supplies or services not exceeding the simplified acquisition threshold (60 Fed. Reg. 12371 (1995)). It directs agencies to use the procedures to the maximum extent practicable for applicable purchases. This requires COs to consider, among other things, the FACNET provisions.

What this means in practical terms is that COs should ordinarily use simplified acquisition procedures in all purchases between \$2,500 (for procurements at or below this amount, use micro-purchase procedures, discussed in a previous article) and \$50,000. However, for procurements greater than \$50,000, the CO should use simplified acquisition procedures only if the procuring activity has certified Interim FACNET.

COs are authorized to use FACNET for all procurements authorized by the FAR if proper safeguards are in place even where the CO cannot use simplified acquisition procedures.

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### Does the Small Business Limitation Still Apply?

Like its predecessor, simplified acquisition procedures limits procurements that fall within the simplified acquisition threshold to small businesses (FASA §4004). The impact of this provision here is, of course, much broader. The provisions are expected to apply to some 45,550 procurements with a value of \$2.5 billion in addition to those covered under the previous \$25,000 small-purchase threshold.

FASA's small business set-aside provisions go beyond the parameters of FACNET. All purchases of goods and services with an anticipated value between \$2,500 (the micro-purchase threshold) and \$100,000 must be reserved exclusively for small businesses, without regard to whether the agency has FACNET capability. Further, FASA requires this small business limitation without regard to whether the CO uses simplified acquisition procedures to procure applicable goods and services. Thus, if a CO issues a solicitation for services valued at \$75,000 using conventional procurement procedures because the agency in which the CO works has not implemented FACNET, the CO must, nonetheless, limit the solicitation to small businesses.

Where an agency procurement shop cannot obtain adequate competition from small businesses, however, FASA provides an out. As was the case with small purchases, if the agency is unable to obtain offers from two or more small business concerns that are competitive with regard to market prices and with regard to quality and delivery of the goods or services being purchased, then the small business limitation will not apply. At a minimum, however, FASA would appear to require COs to do some sort of market research in advance of solicitation (which is the only way to do business anyway) in order to have a basis for assessing whether prospective quality and prices are competitive.

GSA Federal Supply Schedules, which have been considerably revamped, may also be a viable alternative to using simplified acquisition procedures when limiting the competition to small businesses is not desirable. Federal Sup-

ply Schedules have no such limitation and do not require FACNET capability or CBD publication.

**A Final Word** • Will the net result of FACNET and the simplified acquisition procedures really reduce paperwork (whether in hard copy or electronic form)? We're not sure, but it may very well speed up the painstaking procurement process and perhaps increase competition thus producing better prices for the Government. Ultimately, the success of the streamlining process lies with the people who will implement it. OMB has been tasked with establishing policies and procedures for the heads of departments and agencies to designate acquisition positions and manage employees in the designated positions including accession, education, training and career development (P.L. 103-355, §5051(c)(1)). One thing is for sure, the Government's first step toward paperless procurement, simplified procurement procedures, firmly establishes the Government's commitment to creating an electronic marketplace. Prepare.

**FASA**

#### SEC. 4201. SIMPLIFIED ACQUISITION PROCEDURES.

(a) REQUIREMENT FOR SIMPLIFIED PROCEDURES IN FAR.--The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is further amended by inserting before section 33, as added by section 4101, the following new section:

#### "SEC. 31. SIMPLIFIED ACQUISITION PROCEDURES.

"(a) REQUIREMENT.--In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not greater than the simplified acquisition threshold.

"(b) PROHIBITION ON DIVIDING PURCHASES.--A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a).

"(c) PROMOTION OF COMPETITION REQUIRED.--In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.



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"(d) CONSIDERATION OF OFFERS TIMELY RECEIVED.--The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

"(e) SPECIAL RULES FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES.--

"(1) EFFECT OF INTERIM FACNET CAPABILITY.--The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by a procuring activity of an agency for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 30A(a)(1) that the procuring activity has implemented an interim FACNET capability.

"(2) EFFECT OF FULL FACNET CAPABILITY.--(A)(i) In the case of a procuring activity described in clause (ii), the simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may be used by the activity for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold.

"(ii) Clause (i) applies to any procuring activity--

"(I) that has not certified, pursuant to section 30A(a)(1), that it has implemented interim FACNET capability; and

"(II) that is in an agency that has excluded the procuring activity from the agency's full FACNET certification under section 30A(a)(2) on the basis that implementation of full FACNET capability would not be cost effective or practicable in that activity.

"(B) The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by an agency after December 31, 1999, for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 30A(a)(2) that the agency has implemented a full FACNET capability.

"(f) INTERIM REPORTING RULE.--Until October 1, 1999, procuring activities shall continue to report under section 19(d) procurement awards with a dollar value of at least \$25,000, but less than \$100,000, in conformity with the procedures for the reporting of a contract award greater than \$25,000 that were in effect on October 1, 1992."

(b) OPPORTUNITY FOR ALL RESPONSIBLE POTENTIAL OFFERORS.--Subsection (a) of section 18 of such Act is amended by adding at the end the following:

"(4) An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under paragraph (1)(B) shall ensure that contracting officers consider each responsive offer timely received from an offeror."

(c) ESTABLISHMENT OF DEADLINE FOR SUBMISSION OF OFFERS.--Subsection (a) of section 18 of such Act

is further amended by adding after paragraph (4), as added by subsection (b), the following new paragraph:

"(5) An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation with respect to which no such deadline is provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond."

SEC. 4202. PROCUREMENT NOTICE.

(a) CONTINUATION OF EXISTING NOTICE THRESHOLDS.--Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended--

(1) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "\$25,000"; and

(2) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order expected to be greater than the simplified acquisition threshold,".

(b) CONTENT OF NOTICE.--Subsection (b) of such section is amended--

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold--

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions."

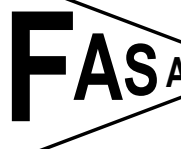
(c) NOTICE NOT REQUIRED FOR PROCUREMENT MADE THROUGH FACNET.--Subsection (c)(1) of such section, as amended by section 1055(b), is further amended--

(1) by redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (C), (D), (E), (F), (G), and (H), respectively; and

(2) by inserting before subparagraph (C), as so redesignated, the following new subparagraphs:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 30A(a)(1) or with full FACNET capability certified pursuant to section 30A(a)(2);

"(B)(i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 30A(a)(2); and





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"(ii) a certification has been made pursuant to section 30A(b) that Government-wide FACNET capability has been implemented;"

(d) NOTICE UNDER THE SMALL BUSINESS ACT.--

(1) CONTINUATION OF EXISTING NOTICE THRESHOLDS.--Subsection (e) of section 8 of the Small Business Act (15 U.S.C. 637) is amended--

(A) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "\$25,000"; and

(B) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order estimated to be greater than the simplified acquisition threshold,"

(2) CONTENT OF NOTICE.--Subsection (f) of such section is amended--

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold--

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions."

(3) NOTICE NOT REQUIRED FOR PROCUREMENT MADE THROUGH FACNET.--Subsection (g)(1) of such section is amended--

(A) by redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (C), (D), (E), (F), (G), and (H), respectively; and

(B) by inserting before subparagraph (C), as so redesignated, the following new subparagraphs:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 30A(a)(1) of the Office of Federal Procurement Policy Act or with full FACNET capability certified pursuant to section 30A(a)(2) of such Act;

"(B)(i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 30A(a)(2) of the Office of Federal Procurement Policy Act; and

"(ii) a certification has been made pursuant to section 30A(b) of such Act that Government-wide FACNET capability has been implemented;"

SEC. 4203. IMPLEMENTATION OF SIMPLIFIED AC-

QUISITION PROCEDURES.

(b) IMPLEMENTATION IN CIVILIAN AGENCIES.-- Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 302A, as added by section 4003 and amended by section 4103, the following new section:

"SEC. 302B. IMPLEMENTATION OF SIMPLIFIED ACQUISITION PROCEDURES.

"The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply in executive agencies as provided in such section."

TITLE IX--FEDERAL ACQUISITION COMPUTER NETWORK

SEC. 9001. FEDERAL ACQUISITION COMPUTER NETWORK ARCHITECTURE AND IMPLEMENTATION.

(a) FEDERAL ACQUISITION COMPUTER NETWORK ARCHITECTURE.--The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding after section 29, as added by section 1093, the following new sections:

"SEC. 30. FEDERAL ACQUISITION COMPUTER NETWORK (FACNET) ARCHITECTURE.

"(a) IN GENERAL.--(1) The Administrator shall establish a program for the development and implementation of a Federal acquisition computer network architecture (hereinafter in this section referred to as 'FACNET') that will be Government-wide and provide interoperability among users. The Administrator shall assign a program manager for FACNET and shall provide for overall direction of policy and leadership in the development, coordination, installation, operation, and completion of implementation of FACNET by executive agencies.

"(2) In carrying out paragraph (1), the Administrator shall consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

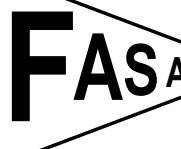
"(3) Government-wide FACNET capability (as defined in section 30A(b)) shall be implemented not later than January 1, 2000.

"(b) FUNCTIONS OF FACNET.--The FACNET architecture shall provide for the following functions:

"(1) GOVERNMENT FUNCTIONS.--Allow executive agencies to do the following electronically:

"(A) Provide widespread public notice of solicitations for contract opportunities issued by an executive agency.

"(B) Receive responses to solicitations and associated requests for information through such system.





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"(C) Provide public notice of contract awards (including price) through such system.

"(D) In cases in which it is practicable, receive questions regarding solicitations through such system.

"(E) In cases in which it is practicable, issue orders to be made through such system.

"(F) In cases in which it is practicable, make payments to contractors by bank card, electronic funds transfer, or other automated methods.

"(G) Archive data relating to each procurement action made using such system.

"(2) PRIVATE SECTOR USER FUNCTIONS.--Allow private sector users to do the following electronically:

"(A) Access notice of solicitations for contract opportunities issued by an executive agency.

"(B) Access and review solicitations issued by an executive agency.

"(C) Respond to solicitations issued by the executive agency.

"(D) In cases in which it is practicable, receive orders from the executive agency.

"(E) Access information on contract awards (including price) made by the executive agency.

"(F) In cases in which it is practicable, receive payment by bank card, electronic funds transfer, or other automated means.

"(3) GENERAL FUNCTIONS.--

"(A) Allow the electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies.

"(B) Employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data.

"(C) Allow convenient and universal user access through any point of entry.

"(c) NOTICE AND SOLICITATION REGULATIONS.--In connection with implementation of the architecture referred to in subsection (a), the Federal Acquisition Regulatory Council shall ensure that the Federal Acquisition Regulation contains appropriate notice and solicitation provisions applicable to acquisitions conducted through a FACNET capability. The provisions shall specify the required form and content of notices of acquisitions and the minimum periods for notifications of solicitations and for deadlines for the submission of offers under solicitations. Each minimum period specified for a notification of solicitation and each deadline for the submission of offers under a solicitation shall afford potential offerors a reasonable opportunity to respond.

"(d) ARCHITECTURE DEFINED.--For purposes of this section, the term 'architecture' means the conceptual framework that--

"(1) uses a combination of commercial hardware and commercial software to enable contractors to conduct business with the Federal Government by electronic means; and

"(2) includes a description of the functions to be performed to achieve the mission of streamlining procurement through electronic commerce, the system elements and interfaces needed to perform the functions, and the designation of performance levels of those system elements.

"SEC. 30A. FEDERAL ACQUISITION COMPUTER NETWORK IMPLEMENTATION.

"(a) CERTIFICATION OF FACNET CAPABILITY IN PROCURING ACTIVITIES AND AGENCIES.--(1) When the senior procurement executive of an executive agency or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition and Technology, determines that a procuring activity of the executive agency has implemented an interim FACNET capability (as defined in subsection (c)), the executive or the Under Secretary shall certify to the Administrator that such activity has implemented an interim FACNET capability.

"(2) When the head of an executive agency, with the concurrence of the Administrator for Federal Procurement Policy, determines that the executive agency has implemented a full FACNET capability (as defined in subsection (d)), the head of the executive agency shall certify to Congress that the executive agency has implemented a full FACNET capability.

"(3) The head of each executive agency shall provide for implementation of both interim FACNET capability and full FACNET capability, with priority on providing convenient and universal user access as required by section 30(b)(3)(C), in that executive agency as soon as practicable after the date of the enactment of the Federal Acquisition Streamlining Act of 1994.

"(b) CERTIFICATION OF GOVERNMENT-WIDE FACNET CAPABILITY.--When the Administrator for Federal Procurement Policy determines that the Federal Government is making at least 75 percent of eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the Government during the preceding fiscal year through a system with full FACNET capability, the Administrator shall certify to Congress that the Government has implemented a Government-wide FACNET capability.

"(c) IMPLEMENTATION OF INTERIM FACNET CAPABILITY.--A procuring activity shall be considered to have implemented an interim FACNET capability if--

"(1) with respect to each procurement expected to be in an amount greater than the micro-purchase threshold and not greater than the simplified acquisition threshold, the procuring activity has implemented the FACNET functions described in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (2)(C) of section 30(b); and

"(2) for each such procurement (other than a procure-





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ment for which notice is not required under section 18(c) or with respect to which the head of the procuring activity determines that it is not cost effective or practicable), the procuring activity issues notices of solicitations and receives responses to solicitations through a system having those functions.

"(d) IMPLEMENTATION OF FULL FACNET CAPABILITY.--An executive agency shall be considered to have implemented a full FACNET capability if (except in the case of procuring activities (or portions thereof) of the executive agency for which the head of the executive agency determines that implementation is not cost effective or practicable)--

"(1) the executive agency has implemented all of the FACNET functions described in section 30(b); and

"(2) more than 75 percent of the eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the executive agency during the preceding fiscal year have been made through a system with those functions.

"(e) ELIGIBLE CONTRACTS.--For purposes of subsections (b) and (d), a contract is eligible if it is not in any class of contracts \*3402 determined by the Federal Acquisition Regulatory Council (pursuant to section 9004 of the Federal Acquisition Streamlining Act of 1994) to be unsuitable for acquisition through a system with full FACNET capability."

(b) TECHNICAL AMENDMENTS.--Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended--

(1) in subsection (a)(1)(A), by striking out "notice" in the matter following clause (ii) and inserting in lieu thereof "notice of solicitation"; and

(2) in subsection (d), by striking out "a notice under subsection (e)" in the first sentence and inserting in lieu thereof "a notice of solicitation under subsection (a)".

### SEC. 9003. IMPLEMENTATION OF FACNET CAPABILITY IN CIVILIAN AGENCIES.

Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 302B, as added by section 4203, the following new section:

#### "SEC. 302C. IMPLEMENTATION OF FACNET CAPABILITY.

"(a) IMPLEMENTATION OF FACNET CAPABILITY.--(1) The head of each executive agency shall implement the Federal acquisition computer network ("FACNET") capability required by section 30 of the Office of Federal Procurement Policy Act.

"(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an executive agency shall consult with the Administrator for Federal Procurement Policy.

"(b) DESIGNATION OF AGENCY OFFICIAL.--The

head of each executive agency shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the executive agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))."

### SEC. 9004. GAO DETERMINATION OF ELIGIBLE AGENCY CONTRACTS.

(a) REPORT ON CONTRACTS NOT SUITABLE FOR ACQUISITION THROUGH FULL FACNET CAPABILITY.--Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall submit to the Administrator for Federal Procurement Policy and the congressional committees referred to in subsection (d) a report on the classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold that are not suitable for acquisition through a system with full FACNET capability.

(b) FAR COUNCIL DETERMINATIONS.--Not earlier than 3 years after the date of the enactment of this Act, and after consideration of the report of the Comptroller General required by subsection (a), the Federal Acquisition Regulatory Council (established by section 25 of the Office of Federal Procurement Policy Act) may make a determination that a class or classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold are not suitable for acquisition through a system with full FACNET capability. Any such determination shall be submitted to the congressional committees referred to in subsection (d). Each determination under this subsection shall take effect 60 days after the date on which it is submitted to those committees.

(c) APPLICABILITY OF DETERMINATIONS.--Each determination under subsection (b) shall apply for purposes of determining eligible contracts under section 30A(e) of the Office of Federal Procurement Policy Act, as added by section 9001.

(d) COMMITTEES.--The report required by subsection (a), and any determination made under subsection (b), shall be submitted to the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate and the Committees on Government Operations, on Armed Services, and on Small Business of the House of Representatives.

(e) DEFINITIONS.--In this section:

(1) The term "simplified acquisition threshold" has the meaning provided by section 4(11) of the Office of Federal Procurement Policy Act, as amended by section 4001.

(2) The term "micro-purchase thrm "full FACNET capability" has the meaning described in section 30A(d) of the Office of Federal Procurement Policy Act, as added by section 9001(a).

