



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation

A Lawyer's View of ITMRA

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The Information Technology Management Reform Act of 1996 by

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On February 10, 1996, the President signed the National Defense Authorization Act for Fiscal Year 1996. (Pub. L. No. 104-106). This legislation included the Information Technology Management Reform Act of 1996 (ITMRA) which changes significantly acquisitions of and protests of awards concerning automatic data processing equipment. The statute is effective August 8, 1996. The salient features of this statute are discussed below.

Elimination of GSA authority over "information technology" equipment, including the GSBCA bid protest forum

The most important development in this legislation is that the Brooks ADP Act (40 USC 759) (§ 111 of the FPASA), which governed acquisitions of automatic data processing (information technology) equipment and conferred jurisdiction on the General Services Board of Contract Appeals (GSBCA) to decide protests for procurements of ADP equipment has been repealed. Under the new statute, authority to administer the statute is granted to the Office of Management and Budget. All GSBCA cases pending on the effective date of the statute will continue to be handled by GSBCA, and GSBCA orders issued before that date will continue to be valid. On the effective date, GAO will be the only forum for ADP protests.

In fulfilling responsibilities already set forth in 44 U.S.C. § 3501 et seq., the Office of Management and Budget (OMB) shall promote and be responsible for improving the acquisition, use, and disposal of information technology by the Federal Government to improve the productivi-

ty, efficiency, and effectiveness of Federal programs. OMB is directed to issue guidance to agencies concerning major investments in information systems. This will include encouraging agencies to use performance-based and results-based management of major investments in IT.

OMB is also directed to develop, as part of the budget process, a system for tracking achievements of agencies' major capital investments in information technology equipment. Results must be submitted to Congress with the President's budget each year. The Director, OMB also has authority to control an agency's IT acquisition activities by recommending reductions or increases in the agency's budget, adjusting apportionments and reapportionments of funds, and otherwise limiting an agency's availability of funds for information resources.

While OMB has been given authority over planning and investment in IT equipment, agencies are also expected to institute management reforms including establishing a "process" for maximizing the value of IT reforms. This includes establishing independent technical review committees to provide insight and support for computer acquisitions.

ADP is out, IT is in

The vocabulary has changed. References to "automatic data processing" (ADP) in the Brooks Act and other statutes have been replaced by "information technology" (IT), which is defined in substantially the same terms as ADP in the old Brooks Act.

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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 JerryW@FinLit@OGC or jwalz@doc.gov.



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Responsibilities of NIST remain the same

The Secretary of Commerce, through the National Institute of Standards and Technology, shall continue to develop and implement standards and guidelines pertaining to Federal computer systems under 15 USC 278g-3. However, in the new statute, the President has authority to override the Secretary's standards. If this occurs, the Secretary will be notified, and the standards will be changed to reflect the President's amendments to the standards.

FTS 2000 unaffected

GSA still has control over the telephone systems we purchase.

Designation of an SES-IV-level Chief Information Officer

The statute directs agencies to create a new SES-IV-level position of Chief Information Officer. This individual's primary responsibility will be to manage information resources and monitor and evaluate the agency's IT programs. The official will also make recommendations to the agency head concerning whether to continue, modify, or terminate a program or project

Cost Decrease /Performance Increase

Beginning 1996, agencies are expected to realize a 5% decrease in the cost of IT equipment, and a 5% increase in efficiency of agency operations by reason of improvements in information resources management by the agency. This is consistent with the statute's overall theme of measuring IT planning, acquisition, use, and benefits in quantifiable terms.

Procedures for Acquisition of IT

The statute sets forth new procedures for acquisition of IT equipment, including incremental acquisition, modular contracting, pilot programs to be conducted by the Administrator, OFPP, and Automated Multiple Award Schedule contracting using FACNET architecture. Such FACNET architecture shall have expanded capabilities, including providing (1) basic information on prices, features, and performance on goods

and services available through multiple award schedules, (2) capability to update information to reflect changes in prices, features, and performance, and (3) enable users to make on-line computer comparisons of prices, features, and performance. Agencies may use the FACNET to place orders under multiple award schedules for an amount equal to 60% of the total amount spent for all orders under the multiple award schedules in a particular fiscal year.

Identify excess equipment

Not later than August 10, 1996, executive agencies shall prepare and maintain an inventory of all excess computer equipment.

Time deadlines for Comptroller General protests shortened

To speed protest times in general, the deadline for contracting agencies to issue reports to GAO has been reduced from 35 days after the notice of protest to 30, and GAO must issue a decision within 100 days, rather than 125.

Effective Dates

The changes brought about by this legislation become effective 180 days after enactment, or August 8, 1996. However, there is a savings clause whereby all GSBCA protests underway on the effective date will continue to be handled by GSBCA. Although there is no express direction that the FAR be amended, the statute does instruct the FAR Council to ensure that the process for acquisition of IT is simplified, clear, and understandable. This may or may not result in amendments to the FAR.

Summary

The highlights of the statute are: (1) elimination of GSBCA jurisdiction over IT procurement protests, (2) shift of authority for IT planning and acquisition from GSA to OMB, (3) increased authority of OMB to control agencies' IT planning and acquisition through control exerted through the budget process, and (4) increased responsibility of agencies to institute management reforms to improve IT planning and acquisition, and a requirement to document improvements in quantifiable terms.

