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*Procurement Authorities of the CIA*

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Abstract by Janet C. Goldberg

When Congress created the Central Intelligence Agency (CIA or Agency) in 1947, it granted exceptionally broad procurement authority to the Agency because the Congress recognized the distinct nature of the Agency and its mission. In addition, Congress realized the potential for the generally-applicable federal government procurement rules to interfere with the Agency's mission, inhibit the Agency from obtaining vital information, and endanger intelligence sources and methods. Although the CIA has the authority to take any procurement actions that other federal agencies can take, the Agency may also take certain procurement actions that would be prohibited or unauthorized if undertaken by a different agency.

The Federal Property and Administrative Services Act of 1949 (FPASA) provides procurement authority to federal civilian agencies. The FPASA contains a provision, codified at section 474 of Title 40 of the United States Code, which states that "[n]othing in [the FPASA] shall impair or affect any authority of" certain federal entities, including military agencies. Procurement by the Department of Defense, Coast Guard, and National Aeronautics and Space Administration (NASA) is governed by the Armed Services Procurement Act of 1947 (ASPA). Section 3 of the CIA Act grants the Agency many of the procurement authorities that Congress had granted to military entities under the ASPA. For example, section 3 permits the Agency to conduct negotiated procurements without advertising (*i.e.*, without public openings of proposals). Section 474 of Title 40 does not provide an explicit exemption from the FPASA and, therefore, the CIA must use the authorities of the FPASA, to the maximum extent reasonably possible, consistent with the Agency's mission requirements. However, the FPASA does not apply when it is made inapplicable "pursuant to . . . any other law." Section 8 of the CIA Act permits the Agency to spend funds on procurement notwithstanding a general prohibition or limitation imposed by statute.

Federal courts have varied in the amount of breadth they attach to the "notwithstanding" language of section 8 of the CIA Act. Moreover, there are several statutorily imposed limitations on the CIA's broad procurement authority, including: (1) a requirement that the Agency head authorize payments and that this task not be delegated; (2) limits on allowances and benefits that the Agency provides for domestic relocations; and (3) restrictions imposed on the acquisition of printing and personal services.

The Agency has several unique procurement practices, due to its unique mission. For instance, the Agency cannot have full and open competition when acquiring goods/services because this would require publicizing its confidential needs. In addition, the Agency limits contractors' publication of their past performance record with the Agency because publication might threaten intelligence sources and methods.