



# REPORT TO THE CONGRESS

## More Competition In Emergency Defense Procurements Found Possible B-171561

Department of Defense

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BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-171561

To the President of the Senate and the  
Speaker of the House of Representatives

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This is our report on more competition in emergency defense procurements found possible, Department of Defense.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent today to the Director, Office of Management and Budget; the Secretary of Defense; the Secretaries of the Army, Navy, and Air Force; and the Director, Defense Supply Agency.

*James B. Stacks*

Comptroller General  
of the United States

*33 p., 2 app., 16 p.*

D I G E S T

WHY THE REVIEW WAS MADE

The Armed Services Procurement Act requires that in all negotiated procurements in excess of \$2,500 proposals be solicited from the largest possible number of qualified suppliers provided (1) that prices are not fixed by law or regulation and (2) that time for delivery will permit. (See p. 5.)

Defense regulations under the act provide that, when urgently needed supplies or services are procured by negotiation, competition to the greatest extent practicable, within the time allowed, be obtained.

During fiscal year 1968 the Department of Defense (DOD) negotiated emergency procurements amounting to \$5.4 billion, of which 72 percent were made without obtaining competition. Although the dollar amount of emergency procurements declined from \$6 billion in fiscal year 1967 to \$2.5 billion in fiscal year 1970, the percentage of noncompetitive procurements remained at about the fiscal year 1968 level.

At the request of (Representative Fred B. Rooney)<sup>R</sup> the General Accounting Office (GAO) made a DOD-wide review of emergency procurements to determine whether it was possible to increase competition in these procurements.

FINDINGS AND CONCLUSIONS

Many items designated as urgently needed that were procured noncompetitively might have been procured competitively, at lower costs, and with acceptable time for deliveries.

GAO selected for detailed review 54 procurements, valued at about \$33 million, which had been awarded on a noncompetitive basis due to the urgency of the requirements. GAO believes that 36 of these procurements, amounting to about \$31.5 million, could have been made on a competitive basis, apparently without adversely affecting the missions of the military services. (See p. 7.)

Information available at the time of the awards indicated that there were other suppliers who could have delivered at lower prices and within similar times. (See p. 10.)

The military services could have reduced costs by \$3.1 million on 14 noncompetitive procurements amounting to about \$10 million, GAO estimates, had competition been obtained. Cost reductions were not readily determinable on the remaining 22 procurements. (See p. 7.)

In a typical emergency procurement, the military activity indicated its urgent need for an item on a purchase requisition. Sometimes it indicated the supplier from whom it would prefer the item to be purchased. The requesting organization might have known little about the capabilities of other suppliers to produce the item or about the ability of the supplier it had designated to furnish the item sooner than others. The requester might have been unaware of differences in the price at which each supplier was willing to offer the item. The procuring activity, however, is responsible for obtaining this information. (See p. 7.)

In awarding noncompetitive procurements, agency officials relied heavily on the "urgency" designation and did not consider sufficiently the capabilities of other sources to meet delivery requirements nor question restrictions specified as to source by the requisitioning parties. Additional costs that would result from noncompetitive awards were not considered in determining whether competition should be obtained on emergency procurements. (See pp. 7 and 8.)

For example, the Army awarded contracts for multiplexers to two suppliers. In making an emergency procurement of the item, the Army eliminated from consideration supplier A, because it determined that supplier A could not begin deliveries until July 1968, 1 month later than requested. However, supplier B, who was awarded the contract, was given until August 1968 to begin deliveries. GAO estimated that if competition had been obtained the Army might have reduced costs by as much as \$1.65 million, on the basis of a competitive award for multiplexers made about 5 weeks earlier. (See pp. 10 to 14.)

GAO believes that there is a need for establishing guidance for procurement officials in determining whether competition should be obtained for urgent procurements. Noncompetitive solicitations for the procurement of urgently needed supplies and services should be made only when it is clear that the Government's interest will be served by the solicitation of a single source.

#### RECOMMENDATIONS OR SUGGESTIONS

In view of its findings, GAO is recommending that the Secretary of Defense provide additional guidance to procurement officials for use in determining when noncompetitive solicitation for urgently needed items could be justified. (See p. 30.)

Specifically, the following actions should be taken prior to the approval of noncompetitive solicitations for urgent procurements. (See pp. 30 and 31.)

- A determination should be made from current information (production capability, financial capability, experience, etc.), that the selected source can deliver the requirements a specified number of days, weeks, or months ahead of the other potential source or sources.
- An estimate should be made of the additional unit cost which could be expected as a result of the proposed noncompetitive procurement.
- A statement should be obtained from the commander of the using activity that the estimated time to be saved by procuring from the selected source is essential to the successful completion of the assigned mission and that, in his opinion, the additional cost involved is justified.

Information needed to make these determinations generally is readily available and should not materially delay contracting for urgently needed supplies and services. GAO is recommending also that the Secretary of Defense require that internal audit groups, during their regularly scheduled procurement reviews, evaluate and report to appropriate higher levels on the effectiveness of procurement officials in obtaining competition for urgently needed supplies and services. Audits of such procurements have not been made in recent years at the installations reviewed by GAO. (See p. 31.)

#### AGENCY ACTIONS AND UNRESOLVED ISSUES

The Deputy Assistant Secretary of Defense (Installations and Logistics) advised GAO that there was no need for the Secretary of Defense to implement GAO's proposals. He stated that procurement officials gave great weight in their decisions to the urgency of need cited by the using or requesting activity and that these officials generally consider the capability of other sources, price factors, and other relevant matters in making the decisions to solicit and award sole source. (See pp. 26 and 27.)

GAO believes that too much weight may have been given by procurement personnel to an undefined urgency. The degree of urgency generally was indicated only by reference to a high priority number on the purchase request and was not supported by information on the urgency of mission, date material was required, or effect of a delay in receipt of the requested material. Because of the indicated urgency, procurement personnel did not require the using or requesting activity to furnish such information. (See p. 27.)

Although procurement personnel generally believed that the selected source could deliver sooner than any other source, GAO found little factual support for such determinations. Little attempt was made to determine whether the projected expedited delivery was worth the additional costs which might result from a noncompetitive procurement. It is essential, GAO believes, that the additional costs involved in a noncompetitive procurement and the delay in receipt of the item if it were procured competitively be determined and made available for review and evaluation by the using activity. (See p. 27.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

Congress has a continuing interest in the manner in which Government procurement is being accomplished. The findings of this report show the need for improvement in awarding emergency procurements. The specific recommendations are set forth under the "Recommendations or Suggestions" above. GAO believes that these improvements should be made by DOD.

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ABBREVIATIONS

DOD	Department of Defense
GAO	General Accounting Office
I&L	Installations and Logistics

D I G E S T

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- A statement should be obtained from the commander of the using activity that the estimated time to be saved by procuring from the selected source is essential to the successful completion of the assigned mission and that, in his opinion, the additional cost involved is justified.

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Although procurement personnel generally believed that the selected source could deliver sooner than any other source, GAO found little factual support for such determinations. Little attempt was made to determine whether the projected expedited delivery was worth the additional costs which might result from a noncompetitive procurement. It is essential, GAO believes, that the additional costs involved in a noncompetitive procurement and the delay in receipt of the item if it were procured competitively be determined and made available for review and evaluation by the using activity. (See p. 27.)

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## CHAPTER 1

### INTRODUCTION

The General Accounting Office has reviewed procurements by the Department of Defense of urgently needed items--commonly called emergency procurements. Such procurements are frequently made by the military services without obtaining competition. We examined into selected emergency procurements made during fiscal year 1968 by nine procurement offices. We wanted to find out whether, for each procurement, there had been enough time to get competition without adversely affecting the missions of the military services and whether such competition could have resulted in reduced prices. The review was made at the request of Representative Fred B. Rooney.

The Armed Services Procurement Act, as amended September 10, 1962, requires that, in all negotiated procurements in excess of \$2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals be solicited from the maximum number of qualified sources consistent with the nature and requirement of the supplies or services to be procured. The Armed Services Procurement Regulation, which implements the act, provides that urgently needed supplies or services may be procured by negotiation in lieu of formal advertising. Section 3-202 of the regulation, which is entitled "Public Exigency," provides the following guidance for such procurement actions.

"In order for the authority of this paragraph 3-202 to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. When negotiating under this authority, competition to the maximum extent practicable, within the time allowed, shall be obtained." (Emphasis supplied.)

About \$6 billion worth of emergency procurements were negotiated in fiscal year 1967. Of this amount, 62 percent had been awarded without competition. In fiscal year 1968

this percentage rose to 72 percent on procurements of about \$5.4 billion. Although procurements under the public exigency exception declined to about \$4.4 billion in fiscal year 1969 and to about \$2.5 billion in fiscal year 1970, the percentage of noncompetitive procurements remained at about the fiscal year 1968 level.

At the nine locations we visited (see p. 8), noncompetitive emergency procurements during fiscal year 1968 amounted to over \$860 million. From these procurements we selected and reviewed in detail 54, valued at about \$33 million, that had been justified on the basis of urgent need. The scope of our review, including the basis for the selection of locations visited and transactions reviewed, is discussed on page 32.

Internal audits of noncompetitive emergency procurements had not been made at these installations in recent years.

The principal officials of DOD responsible for administration of the activities discussed in this report are listed in appendix II.

## CHAPTER 2

### LACK OF COMPETITION FOR EMERGENCY PROCUREMENTS

#### MIGHT HAVE RESULTED IN INCREASED COSTS

We believe that, of the 54 noncompetitive procurements we reviewed, which had been justified on the basis of urgent need, 36 could have been awarded competitively without adversely affecting the missions of the military services. The 36 procurements had a value of about \$31.5 million. On the basis of competitive prices obtained earlier or subsequently for the same items, we estimate that, if competition had been obtained, the agencies might have saved about \$3.1 million on 14 of the procurements valued at about \$10 million. Savings were not readily determinable on the remaining 22 procurements.

In a typical emergency procurement, a military activity requesting a purchase indicated its urgent need for an item on a purchase requisition and usually indicated its desired delivery date or schedule. Sometimes it designated the supplier from whom it would prefer the item to be purchased. This designation was usually based on a user's past satisfaction with the supplier's products or the belief that only one supplier could deliver the item in time to suit its purposes.

In fact, the requesting organization might have known little or nothing about the capabilities of other suppliers to produce the item or about the ability of the supplier it had designated to furnish the item sooner than others. The requester might have been unaware of differences in the price at which each supplier was willing to offer the item. The procuring activity is responsible for obtaining this information.

Procurement personnel, however, seldom asked the requisitioning organizations to justify their designations of specific sources or to explain why an early delivery was required. Further, in many cases they did not adequately consider the capability of other suppliers to meet the urgent requirements at lower prices.

Had the purchase requests been carefully considered from the standpoint of available sources of supply, procurement lead time, and the time the item would be put into service, we believe that it would have been evident that opportunities for competitive procurement were present.

These opportunities were severely reduced when an item carried an "urgency" designation and a tight delivery schedule. We recognize that the procurement activities gave considerable weight to these conditions. In some instances, however, they decided to forego obtaining competition, although competing suppliers had requested that they be considered for an award.

Although the Armed Services Procurement Regulation indicates that in some instances noncompetitive awards may be made for urgently needed items, it does not describe the circumstances that might justify such awards. As prescribed by the regulation, officials at a level higher than that of the contracting officer were responsible for review and approval of noncompetitive awards over \$10,000. These officials did not challenge the validity of the justification for the designated source nor question whether competition could have been obtained and the effect it would have on price and delivery.

The following schedule summarizes, by location, the number and value of contract awards we reviewed and those for which we believe competition could have been obtained.

<u>Installation</u>	<u>Noncompetitive awards for urgent requirements</u>		<u>Awards on which competition could have been obtained</u>	
	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>
Department of the Army:				
Army Mobility Equipment Command	10	\$ 2,836,000	10	\$ 2,836,000
Army Electronics Command	11	4,883,000	5	4,552,000
Army Weapons Command	5	19,141,000	4	18,471,000
Department of the Navy:				
Navy Purchasing Office, Los Angeles	-	-	-	-
Naval Supply Depot, Bremerton	3	50,000	-	-
Ships Parts Control Center	9	1,441,000	8	1,119,000
Department of the Air Force:				
Warner Robins Air Materiel Area	9	280,000	3	156,000
Aeronautical Systems Division	5	4,424,000	4	4,342,000
Defense Supply Agency:				
Defense General Supply Center	<u>2</u>	<u>58,000</u>	<u>2</u>	<u>58,000</u>
Total	<u>54</u>	<u>\$33,113,000</u>	<u>36</u>	<u>\$31,534,000</u>

The Deputy Assistant Secretary of Defense, Installations and Logistics (I&L), commented on a draft of this report by letter dated October 21, 1970. (See app. I.) His comments and our evaluation thereof are included in the applicable sections which follow.



## ADDITIONAL SOURCES NOT SOLICITED

For 36 of the contracts awarded without competition, other potential suppliers that were not solicited could have produced the items. It appeared that the contracts could have been awarded on a competitive basis without adverse effect on the military services' missions. Information available at the time of the awards indicated that the other potential suppliers could have delivered at lower prices and within a time frame similar to that of the selected source. Examples of such competitive procurements follow.

### Multiplexers

In January 1968 the Army Electronics Command purchased noncompetitively 812 multiplexers, components of a radio relay system, at a cost of about \$3.24 million. The contracting officer justified the award on the basis that the multiplexers were urgently needed and that only one of two known suppliers could meet the Army's specified delivery schedule. On the basis of prices paid for other multiplexers under a competitive contract awarded about 5 weeks earlier, we estimate that savings of as much as \$1.65 million might have resulted if negotiations had been conducted with the competitor. We did not find any demonstration by the command that the need for early delivery of the item had been so compelling as to warrant this additional cost.

In July 1967, purchase requisitions were prepared for 2,225 urgently required multiplexers. The Electronics Command considered June 1968 to be the earliest realistic date for the start of delivery. At the time the requests were prepared, two contractors were producing or were in the process of producing multiplexers for the Army under prior contracts. One had received a competitive award in May 1967 following the solicitation of several potential suppliers. The second contractor had been awarded a contract noncompetitively.

The Electronics Command first considered obtaining the additional quantities under the contract which had been awarded competitively. The command requested this contractor to submit a proposal for the additional quantities and for accelerated delivery.

The contractor did this in August 1967. Under the existing contract, deliveries of the original quantities were to have begun in November 1968. The contractor then proposed to start deliveries in March 1968, 8 months ahead of schedule. In addition to providing for accelerated deliveries of 2,395 multiplexers already under contract, at an increased price of \$1.6 million, the contractor's proposal provided for an additional 1,775 units of the new requirement of 2,225 units.

The Electronics Command concluded that this contractor would be unable to meet its proposed schedule. Among the reasons cited by the command for rejecting the proposal were:

- Additional engineering changes were anticipated in the contractor's item, which would delay first-article approval.
- The contractor had no firm commitments from subcontractors for accelerated deliveries.
- The contractor's production cycle would not permit acceptable units to be ready for delivery before July 1968 (1 month after the desired delivery date).
- The contractor's proposal to accelerate was felt to be optimistic.
- The contractor's plan to manufacture concurrent with and prior to pre-production-sample approval was not acceptable.

Subsequent to this determination, the competitive contractor in September 1967 submitted additional data to demonstrate its ability to meet the accelerated delivery schedule, including firm commitments from all of its vendors. The contractor stated that its proposal had taken into account the time required to make engineering changes identified during testing. The contracting officer advised us that the additional information had not been considered, because the engineers had already concluded that the contractor could not accelerate delivery as proposed. Subsequently, it was determined that only 812 units were needed to meet urgent requirements. Negotiations were conducted solely

with the second contractor. We found no evidence that the competitive contractor had been asked to quote on the revised requirement. The contract for the 812 units called for the first deliveries to begin in August 1968.

In our opinion, the Army had no firm basis for excluding the competitive contractor from competing for this procurement. Additional information furnished by the contractor in support of its accelerated schedule was not considered and the capability of the contractor was evaluated on the basis of accelerated deliveries of 2,395 units rather than the required quantity of 812 units. Although industrial specialists of the Electronics Command concluded that the earliest this contractor could begin making deliveries was in July 1968, 1 month after the desired delivery date, this was still 1 month earlier than the date the contractor awarded the contract for the 812 multiplexers was required to make its first delivery.

A comparison of the prices paid for the multiplexers under the noncompetitive contract awarded in January 1968 with the prices paid under a competitive contract awarded in November 1967 indicated that the Army might have realized savings of about \$1.65 million on this procurement had competition been obtained.

We believe that the substantially lower prices which apparently could have been obtained through competition warranted careful reconsideration by Army officials as to whether there would be any harmful effect of a few weeks' delay in delivery.

The Deputy Assistant Secretary of Defense (I&L), in commenting on this procurement by the Army, advised us that, at the time this procurement was being considered, sufficient data were not available to determine whether the new competitive contractor could produce within an "accelerated time frame." Further, this contractor had requested an increase in cost of \$1.6 million for providing accelerated delivery, whereas GAO estimated a saving of only \$1.65 million if competition had been obtained. Considering the risks involved in starting up a production line under an accelerated schedule and considering the higher unit prices

requested by this contractor for acceleration, the Army project manager had recommended that a sole-source contract be awarded to the contractor currently in production. The Deputy Assistant Secretary also pointed out that this sole-source procurement of multiplexers had been approved by the Assistant Secretary of the Army (I&L).

As discussed on page 12, we found that the Army had not considered all the information furnished by the competitive contractor in support of the proposed accelerated delivery schedule. In addition, the contractor's proposal, which included a request for an increase in price of about \$1.6 million, provided for the accelerated delivery of 2,395 units under a prior contract, including delivery of the initial units under that contract 8 months ahead of schedule.

Thus the contractor was proposing substantially greater acceleration than was actually required by the Army; that is, delivery starting in March instead of June 1968 and acceleration of 2,395 units instead of 812 units. We found no evidence that the Army had attempted to resolve the difference between the terms of the proposal offered by the competitive contractor and the Army's actual needs. Therefore the contractor's request for a \$1.6 million increase to a prior contract bears no relationship to the production and delivery of the Army's requirement of 812 multiplexers.

We noted that the sole-source procurement of multiplexers was approved by the Assistant Secretary of the Army (I&L). This approval was based on the Army Materiel Command's request which indicated that the noncompetitive contractor could start delivery in June 1968, but that a competitive contractor would not be able to begin delivery until approximately August 1969. We found no factual support for the August 1969 date. In fact, as discussed on page 12, the Electronics Command estimated that the competitive contractor could begin accelerated deliveries in July 1968. Also we noted that the sole-source contractor was not required to begin delivery until August 1968.

We found no evidence during our review, nor did the Deputy Assistant Secretary furnish such evidence, that the Army's evaluation included a detailed analysis of the effect

on the mission of a few weeks' delay in delivery of the multiplexers versus the known substantial increase in cost as a result of the noncompetitive buy.

## Rejectors

Air Force officials at Warner Robins Air Materiel Area awarded a contract in May 1967 for 303 quadrature rejectors, a part applicable to the B-52 aircraft, on a noncompetitive basis even though another supplier was in the process of producing the item under a competitively awarded contract. The noncompetitive award was authorized on the basis that the rejectors were urgently needed and that the selected contractor had previously supplied the item, whereas the other supplier whose reliability was unproven, was still to make the initial delivery.

In February 1967, when the item manager computed the quantity urgently needed, 295 rejectors due from the competitive supplier were excluded from the computation. The item manager stated that he did not believe that this contractor could produce an acceptable item and indicated that, because of the urgent need, this quantity could not be considered for the requirements determination. The sole-source justification approved by the Director, Production and Planning Division, stated that the sole-source procurement was necessary since the competitive contractor had yet to produce a proven product and still required first-article testing.

We could find no factual support for this negative opinion of the competitive supplier's production or delivery capability. In fact, Warner Robins' engineering personnel informed us that the only problem this supplier had in producing an acceptable first article was that a piece of Government-furnished test equipment was received 3 months after it had been requested.

Even with this delayed delivery of test equipment, the rejectors produced by the competitive supplier were approved by the Air Force and first delivery was made in November 1967, or about 1 month prior to that obtained under the noncompetitive contract awarded in May 1967. Further, this supplier received a subsequent competitive award for 400 additional rejectors. The unit price under the competitive procurement was approximately \$81 less than that paid under the noncompetitive procurement.

It appears to us that competition could have been obtained for the procurement of the 303 quadrature rejectors. Considering the lower prices obtained through competition, the Air Force may have been able to save about \$25,000 on the procurement without adversely affecting the mission.

The Deputy Assistant Secretary advised us that the subject contract for rejectors was awarded on a sole-source basis because the item manager did not believe that another supplier, currently in production under a prior contract, could furnish an acceptable product.

We could find no support for this determination. Engineering personnel advised us that they were not aware of any problems that this contractor had had in producing an acceptable product; in fact, this competitive producer delivered initial quantities ahead of the sole-source supplier.

#### Grenade launchers

In April 1968 the Army Weapons Command purchased non-competitively 12,239 M79 grenade launchers at a unit price of \$173 for a total cost of about \$2.1 million. The award was approved on the basis that (1) the contractor, who was currently producing the item under a prior contract and who had Government tooling and equipment valued at \$600,000, was the only manufacturer capable of meeting the required delivery schedule and (2) the performance record of other producers was poor.

Two other contractors, who had previously requested that they be invited to submit proposals on future procurements of the launchers, were not contacted. One such supplier advised the Weapons Command that it was presently manufacturing eight components of the launcher on subcontract and had assurances from most, if not all, major subcontractors that arrangements could be made to purchase all necessary parts. This supplier asked the command on February 19, 1968, for information on planned procurement of the launcher. The command did not provide the information, apparently because a decision had previously been made to restrict solicitation to the current prime contractor.

In making its determination to limit competition, the Weapons Command estimated that a new supplier would require at least 12 months' production lead time to begin deliveries, which were desired in 7 months. Although one of the suppliers who had asked to be considered for the award offered to begin deliveries 4 months after receiving a contract, we found no evidence that procurement officials had attempted to confirm the soundness of the offer. Further, the command granted the selected contractor 9 months in which to begin delivery, apparently with no expectation of incurring any ill effects as a result of the 2-month delay.

Less than 1 year later, the Army contracted for 10,000 urgently required launchers on a competitive basis (six bids received) at a unit price of \$139. The contractor who received the prior noncompetitive award at \$173 a unit was the fourth lowest bidder. On the basis of the price paid on this competitive award, we estimate that the Army might have saved as much as \$400,000 had it obtained competition on the earlier award for 12,239 units.

It appears that factors such as the capability of other suppliers to meet the required delivery schedule, the additional costs associated with a noncompetitive procurement, and the delivery requirements of the users, were not adequately considered before the decision was made to forego competition.

The Deputy Assistant Secretary, in commenting on this procurement by the Army, stated that the reliability of the contractor was a factor of critical importance in making the decision to procure grenade launchers noncompetitively in April 1968. The Army had advised us that its decision to procure the launchers noncompetitively had been properly based on the following considerations:

1. Of the four firms which had previously been awarded contracts for the launcher, one had never produced a weapon and two had been forced to obtain "relief from the Army Contract Adjustment Board." Thus only one of the four contractors was considered reliable.



2. Another firm which expressed an interest in this procurement offered to begin deliveries within 4 months. This offer could not be considered realistic since one of the major components, otherwise unavailable, had a minimum production lead time of 5 months.

This firm also said it was a subcontractor for eight major components of the launcher but had actually supplied only eight components of the sight assembly. Further, the firm had been cited by one of the prime contractors as a cause for its failure to meet delivery.

The Army had further stated that the soundness of the decision to procure noncompetitively had been reaffirmed by the fact that the subsequent contract awarded competitively to a new contractor had permitted a production lead time of 13 months, and yet the contractor had encountered major production problems and had failed to meet the delivery schedule.

Although previous producers of the launchers might have encountered difficulties in producing the launcher, we do not agree that there were no other contractors to choose from. The Army reply indicates that one supplier who expressed interest in the procurement appeared to be unreliable. This supplier, who offered a 4-month delivery schedule, had been disregarded because the Army estimated that one component part had a production lead time of at least 5 months. We found no indication that the Army had attempted to resolve this discrepancy with the supplier, or determined whether it could deliver within the required 7-month lead-time period.

The Army also stated that this supplier had not been producing any major components of the launcher and had caused the prime contractor to not meet delivery schedules. The record showed, however, that this supplier had been producing eight components of the critical sight assembly and that it had encountered production difficulties primarily because of a fire at the production facilities. We believe that further investigation was warranted to determine

whether this offeror was capable of producing the launchers and meeting the delivery schedules.

No comment was made as to why another firm which had expressed interest in the procurement had not been asked to bid.

As discussed on p. 17, six replies were received to a competitive procurement of the launchers less than a year after the noncompetitive award. Although, as the Army stated, the successful contractor has experienced some production problems, it is currently producing satisfactory launchers and is only about 2 months behind in deliveries.

In view of the availability of detailed specifications and a number of potential suppliers, we believe that the Army should have held discussions with those suppliers indicating interest in an attempt to obtain the most favorable procurement.

## Battery assemblies

In 1968 the Navy Ships Parts Control Center awarded a contract noncompetitively for 34 battery assemblies, a missile component, at a total cost of \$15,266 even though other suppliers were known to be capable of providing the assemblies. The determination and findings statement signed by the contracting officer stated that, since the requisition cited a high priority number, the use of formal advertising would be impracticable. The contracting officer also included in the determination and findings the statement that the use of a negotiated contract, without formal advertising, was justified because the public exigency would not permit the delay incident to formal advertising. The purchase request, however, did not cite a required delivery date nor describe the urgency of the request. We found no evidence that the contracting officer or other procurement officials had questioned the absence of the information.

We found that the Navy had drawings and specifications needed to solicit competition. On three of four previous procurements of this item, two or more bids were received. These procurements were awarded to three different suppliers on the basis of the lowest bid submitted. Under a competitive solicitation issued 9 months after the award of the noncompetitive contract, three bids were received and the award price (quoted by a previous supplier of the item) was \$49 a unit less than the price quoted by the contractor who received the May 1968 noncompetitive award. This bidding pattern also occurred when both suppliers bid on a previous solicitation.

We believe that the information available at the time the purchase request for 34 battery assemblies was received did not justify excluding other known sources from competing for the procurement. On the basis of the results of previous and follow-on procurement of this item, we believe that a lower price could have been obtained through competitive procurement.

The Deputy Assistant Secretary agreed that this procurement should have been made on a competitive basis. The award was made on a noncompetitive basis, because

information indicating that there were competitive and capable suppliers available had been erroneously omitted from the purchase request.

Regardless of what information is given on the purchase request regarding source identification or restriction, procurement personnel are charged with the responsibility for obtaining competition to the maximum extent practicable. It appears that in this case procurement personnel overreacted to the high priority of the purchase request and gave little consideration to locating other potential sources. We found that information regarding other suppliers was readily available at the procurement office.

### Tractors

In March 1968 officials of the Army Mobility Equipment Command purchased noncompetitively 10 commercial tractors for a total cost of about \$34,000. This contract price was subsequently increased to about \$42,000 by purchasing spare parts and two additional tractors. The contracting officer, in requesting approval for a noncompetitive procurement, stated that other sources could not be solicited because the specified manufacturer was the only known source of supply.

In approving this request for a noncompetitive procurement, the chairman of the Mobility Equipment Command's Solicitation Review Board, made the following statements.

"The Board is of the opinion that documents in the file support the need for procurement from \*\*\* [note 1] because it is indicated that the tractors are required to drive (propel, power take-off, hydraulic controls) and operate existing \*\*\* [note 1] mowers \*\*\* [note 2]. The urgent required delivery will not permit the delay which would be necessary for engineers to determine if the \*\*\* [note 1] mower could be used on a tractor produced by another company or what

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<sup>1</sup>Specified manufacturer's name omitted.

<sup>2</sup>Specified manufacturer's model number omitted.

modifications or additional accessories, if any, would be required to make a compatible marriage between the \*\*\* [note 1] mower and a tractor produced by a company other than \*\*\* [note 1]. These facts were not included in the Contracting Officer's sole-source justification, otherwise, the Board considers that the file is adequately documented and that the proposed approach to accomplish the procurement is sound."

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<sup>1</sup>Specified manufacturer's name omitted.

Even though the Review Board's comments indicate that this noncompetitive procurement was approved primarily because of uncertainty as to whether tractors manufactured by other sources could operate the mowers currently in use, no engineering personnel were members of the Review Board conducting the review. Neither did we find any evidence that technical personnel were otherwise contacted in an attempt to clarify this uncertainty.

The Review Board's comments indicate also that such a determination would have required considerable time. At our request, however, Army personnel telephoned a local dealer for the tractor purchased and was informed that other tractor manufacturers could have furnished a commercial product which would operate the mowers in question.

It appears that, if responsible officials had been diligent in attempting to obtain competition, possibly a lower price could have been achieved. In commenting on this case, a procurement official stated that the decision to procure noncompetitively was a matter of judgment.

The Deputy Assistant Secretary advised us that consideration of other contractors would have required coordination for a substitute or modified purchase description with the requesting activity which would have caused a substantial delay in a high-priority procurement.

Apparently little if any delay would have been encountered if a competitive procurement of a commercial

tractor had been attempted. Procurement officials, however, did not find out from the requesting activity whether a competitive-type item would meet requirements or whether the delay caused by modifying the purchase description would seriously affect the mission for which the tractors were being procured. Had they done so, all factors, including savings, could have been considered.

## COMPETITION OBTAINED ON EMERGENCY PROCUREMENTS

Our review indicated that procurement officials did not always accept recommendations that awards be made non-competitively. The following example shows how one contracting official obtained competition and realized savings despite such recommendations.

A request was received by the Army Weapons Command during the latter part of 1968 for 378 XM129 grenade launchers. The purchase request cited a high priority number, indicating an urgent or exigent need.

The launchers had been previously procured on a non-competitive basis because of the lack of adequate drawings and specifications. The last purchase in December 1967 was for 744 launchers at a basic unit price of \$6,032. Drawings and specifications suitable for competitive procurement, however, have since been acquired by the Army.

In response to the request for 378 launchers, the Chief of the Production Planning Division of the Weapons Command recommended in October 1968 that the procurement be made on a noncompetitive basis to the then-current producer for the following reasons.

- The present producer had \$450,000 invested in special tools to manufacture nine components of the launcher and these tools were considered a minimum for any producer.
- The quantity of 378 launchers was considered an uneconomical production run.
- Delivery requirements did not indicate the need for a second source.
- For a new producer to quote a sufficiently low price, an unusual and perhaps undesirable set of circumstances would be required to offset tooling costs of \$1,200 a unit and a learning curve estimated cost of \$1,000 a unit.

--Additional costs for start-up and requirements for a test range would be involved if other sources were considered.

--Lead time available for production was rapidly decreasing.

Although agreeing that formal advertising procedures should not be used, because the urgent need of the launchers required a material reduction of procurement, administrative, and production lead time, procurement officials determined that sufficient time was available to obtain competition.

In November 1968 price proposals were requested from eight suppliers. As a result of publicizing the proposed procurement, 19 additional suppliers requested and were furnished with data packages. The Army received seven proposals and awarded the contract to the lowest offeror at a price of \$2,050 a unit. The previous sole-source producer proposed a price of \$3,045 a unit compared with its earlier noncompetitive price of \$6,032. We estimate that the Army, by obtaining competition, may have saved as much as \$1.5 million on this procurement.

In this example statements similar to those used in the preceding examples were presented to justify the use of noncompetitive procurement procedures. When properly evaluated, however, the noncompetitive procurement could not be sustained.



## CHAPTER 3

### AGENCY COMMENTS AND OUR EVALUATION

We proposed, in our draft report dated August 18, 1970, that, in order that competition might be obtained to the maximum extent practicable, the Secretary of Defense take action to ensure that noncompetitive solicitations for the procurement of urgently needed supplies and services be made only when it is clear that the Government's interests will be served by the solicitation of a single source. Specifically, we proposed that, as a minimum, the following actions be taken by agency officials prior to their approving a non-competitive solicitation under the public exigency provision of the Armed Services Procurement Act.

- A determination should be made from current information (production capability, financial capability, experience, etc.), that the selected source can deliver the requirements a specified number of days, weeks, or months ahead of the other potential source or sources.
- An estimate should be made of the additional costs which could be expected as a result of the proposed noncompetitive procurement.
- A statement should be obtained from the commander of the using activity that the estimated time to be saved by procuring from the selected source is essential to the successful completion of the assigned mission and that, in his opinion, the additional cost involved is justified.

As discussed in previous sections of the report, we believe that the information needed to make these determinations generally is readily available and should not materially delay contracting for urgently needed supplies and services.

In a letter dated October 21, 1970 (see app. I), the Deputy Assistant Secretary commented on the conclusions and

proposals presented in the draft report. The following discussion relates to the pertinent portion of those comments.

The Deputy Assistant Secretary stated that there was no need for the Secretary of Defense to implement GAO's proposals; that procurement officials give great weight in their decisions to the urgency of need as cited by the using or requesting activity; and that procurement officials generally consider the capability of other sources, price factors, and other relevant matters, in making the decisions to solicit and award sole source.

We recognize that procurement officials generally give great weight to the urgency of need cited by the using activity--so much so, in fact, that many opportunities for achieving competition may be overlooked. Further, the urgency of need is generally indicated only by reference to a high priority number in the purchase request and not by such detailed support as the type of mission involved, dates required, and effect of delayed delivery. Because of the indicated urgency, procurement personnel did not request that this information be furnished.

Also procurement personnel generally based their decision to procure sole source on the assumption that the selected source could deliver quicker than any other source. We found that little or no effort had been made to estimate the time period that the selected source could have delivered ahead of other potential sources or to evaluate whether the expedited delivery was worth the additional costs which might have resulted from a noncompetitive procurement. Although the item in question may be urgently required, it seems essential that information as to the additional cost involved in a noncompetitive procurement and the delay in receipt of the item, if it were procured competitively, be made available for consideration by the responsible using activity.

The Deputy Assistant Secretary questioned the relative significance of the dollar value of awards under the public exigency exception and the number of such awards examined by GAO.

We recognize that, although the number and value of public exigency procurements have been decreasing since 1968, the percentage of noncompetitive procurements has remained

at about the 1968 level of 72 percent. The number and value of public exigency procurements, however, could increase, as they did during the period 1962 through 1967; the value of public exigency procurements in 1967 was approximately 14 times that in 1962.

The number of procurements we reviewed was limited by the amount of time required to research the events leading to the decision to limit competition. We believe that the conditions we discovered are representative of the emergency procurements at the nine locations we visited. We have made no attempt to project the dollar value of savings on a DOD-wide basis. Inasmuch as these conditions indicate a need for more definitive guidance for determining when to limit competition, however, we believe that all DOD procurement offices are likely to benefit from such guidance.

The Deputy Assistant Secretary of Defense also indicated that GAO was not accurately reporting the number of transactions reviewed. For instance, on page 4 of the comments (see app. I) it is stated that the Defense Supply Agency also advised that your auditors examined 15 contracts at the Defense General Supply Center and found the Center using correct procedures and conducting emergency procurements properly. The report states, however, that only two contracts were selected for review at this Center.

We believe that a misunderstanding exists concerning the number of contracts we initially listed and those which we actually reviewed. For example, at the Defense General Supply Center, we initially listed 12 contracts to be reviewed. According to agency records, however, only two of these contracts were awarded on a noncompetitive basis because of urgency of need. Upon detailed analysis of these two contracts, we concluded that the agency should have attempted to obtain competition prior to making the awards. (See p. 8.)

## CHAPTER 4

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

The Congress has directed that, in all negotiated procurements in excess of \$2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals be solicited from the maximum number of qualified sources.

The Armed Services Procurement Regulation directs that competition be obtained in emergency procurements where practicable. The regulation, however, does not provide the necessary guidance to procurement officials describing the circumstances that might justify noncompetitive procurements. The designation of an item as urgently needed often deters procurement officials from seeking out suppliers other than the one who has been supplying the item in the past, particularly where that supplier has been identified as the directed source by the organization preparing the purchase requisition.

In many instances emergency procurements are awarded noncompetitively when other suppliers are available who could produce the item. We believe that substantial savings could accrue to the Government if additional suppliers were given an opportunity to compete for emergency procurements. We believe also that 36 of the 54 emergency procurements we examined into could have been made on a competitive basis. We considered five of these procurements to be representative of the 36. These five cases, and the Deputy Assistant Secretary's comments, were discussed in detail above.

The Deputy Assistant Secretary also commented on 15 of the remaining 31 cases.<sup>1</sup> In general, the comments on these 15 cases emphasized that procurement personnel had exercised proper judgment in making the individual decisions to

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<sup>1</sup>Because of their volume these additional comments were not made a part of this report.

procure on a noncompetitive basis and that these judgments had been based on an evaluation of all pertinent factors. It was again emphasized that, in making these decisions, procurement personnel gave considerable weight to the urgency of need.

We found no indication in any of the procurements that we examined into that procurement personnel had determined that the selected supplier could deliver the required quantities a specific time period ahead of other suppliers or that any projected savings in delivery time were so important that the cost savings generally associated with competitive procurements should be disregarded. We found no instances where the procuring personnel had requested the using activity to consider whether potential additional costs associated with a sole-source procurement were justified by possible savings in delivery time.

We believe that valid procurement decisions cannot be made solely by reliance on an "urgency" designation. It seems reasonable that, when procurement officials become aware that urgency has restricted competition and additional costs will be incurred thereby, they should find out from the requesting activity whether the indicated time savings justifies the additional costs.

We believe that competitive procurements would increase if the additional costs of noncompetitive procurements were given greater consideration. In some cases it may be possible to relax the specified delivery requirements to attract competition without impairing the mission. In many cases this may not be necessary.

## RECOMMENDATIONS

In view of our findings that many of the noncompetitive procurements of items designated as urgently needed might have been procured competitively at lower cost and within acceptable time limits, we recommend that the Secretary of Defense provide additional guidance to procurement officials for use in determining when noncompetitive solicitation for urgently needed items could be justified. Specifically, the following actions should be taken prior to the approval of noncompetitive solicitations for urgent procurements.

- A determination should be made from current information (production capability, financial capability, experience, etc.), that the selected source can deliver the requirements a specified number of days, weeks, or months ahead of the other potential source or sources.
- An estimate should be made of the additional unit cost which could be expected as a result of the proposed noncompetitive procurement.
- A statement should be obtained from the commander of the using activity that the estimated time to be saved by procuring from the selected source is essential to the successful completion of the assigned mission and that, in his opinion, the additional cost involved is justified.

Information needed to make these determinations generally is readily available and should not materially delay contracting for urgently needed supplies and services.

Further, we recommend that the Secretary of Defense require that internal audit groups, during their regularly scheduled procurement reviews, evaluate and report to appropriate higher levels on the effectiveness of procurement officials in obtaining competition for urgently needed supplies and services. Audits of such procurements have not been made in recent years at the installations we reviewed.

## CHAPTER 5

### SCOPE OF REVIEW

Our review was directed to an examination of the policies, procedures and practices of DOD related to the justification and approval of noncompetitive solicitations for emergency procurements made during fiscal year 1968. Our review was limited to those procurements negotiated pursuant to the public exigency exception to formal advertising. We conducted our review at the installations listed below.

Department of the Army:

Army Weapons Command, Rock Island, Illinois  
Army Mobility Equipment Command, St. Louis, Missouri  
Army Electronics Command, Philadelphia, Pennsylvania

Department of the Air Force:

Warner Robins Air Materiel Area, Robins Air Force Base, Georgia  
Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio

Department of the Navy:

Navy Purchasing Office, Los Angeles, California  
Naval Supply Depot, Bremerton, Washington  
Ships Parts Control Center, Mechanicsburg, Pennsylvania

Defense Supply Agency:

Defense General Supply Center, Richmond, Virginia

In general the locations we visited were selected on the basis of the greatest volume and value of emergency procurements. One location having only a small number of such transactions, however, was also selected. Transactions to be reviewed were selected by means of sampling techniques (statistical, random, etc.).

Our review included an examination of the supporting documentation for selected procurement actions. We interviewed responsible officials at the locations visited and reviewed pertinent regulations and instructions. We also discussed our findings with appropriate agency officials.

In addition we contacted installation internal review and audit groups to determine the extent of their reviews of procurements for urgently needed supplies and services negotiated without obtaining competition.





**APPENDIXES**





ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301

INSTALLATIONS AND LOGISTICS

21 OCT 1970

Mr. C. M. Bailey  
Director, Defense Division  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Bailey:

This is in response to your request of August 18, 1970 for comments on draft report titled "Opportunities for More Competition in Emergency Procurements" (OSD Case #3161).

The draft report provides the results of the GAO examination of procurements made by the Department of Defense for urgently needed items during Fiscal Year 1968. These procurements were negotiated pursuant to 10 U.S.C. 2304(a)2 Public Exigency.

Selected contracts at nine procurement offices were examined. The purpose of this examination was to find out whether there was enough time to obtain competition, "...without adversely affecting the mission of the military services, and to ascertain whether such competition could have resulted in reduced prices." At the nine locations, procurements awarded under this negotiation authority during Fiscal Year 1968 amounted to over \$860 million. GAO auditors selected 54 procurements valued at about \$33 million that had been justified on the basis of urgent need, for further review. Of these you believe that 36 procurements amounting to \$31.5 million could have been made on a competitive basis, "...apparently without adversely affecting the mission of the military service." It was estimated that the military services could have saved \$3.1 million on 14 of these 36 awards if competition had been obtained. It is your recommendation that the Secretary of Defense take action to assure that the non-competitive solicitation for urgently needed items be made only when it can be "clearly and convincingly" demonstrated that the Government's interest will be served by the solicitation of a single source. You suggest, in addition, certain corollary actions to complement this recommendation.

DoD Position

The GAO report concludes that procurement officials relied heavily on the "urgency" designation of the procurements and did not sufficiently consider the capability of other potential sources or the additional costs that would result from non-competitive awards. In our review of this matter we agree that procurement officials did give great weight in their decisions to the urgency of need as cited by the using or requesting activity. Since procurement activities are charged with procuring "urgent" material on an expedited basis, we would expect them to give this factor great weight. However, we also conclude that these same officials generally considered the capability of other sources, price factors, and other relevant matters in making their procurement decision to solicit and award sole source. Therefore, we do not concur that the findings in the report support the GAO conclusion or that there is a need for DoD to issue further guidance as is recommended.

History and Current Application of the "Public Exigency" Negotiation Authority

The genesis of this negotiation authority lies in an 1860 "landmark" statute. The substance of this statute was later incorporated in Section 3709 of the Revised Statutes and in part provided:

"All purchases and contracts for supplies or services in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require immediate delivery of the articles or performance of the service. When immediate delivery or performance is required by the public exigency, the article or service required may be procured by open purchase or contract...." (underlining added)

This authority has continued through to the present day as a recognized exception when there is a compelling need and unusual urgency as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. The

Armed Services Procurement Regulation (ASPR) Section III, Part 1, paragraph 3-202 provides guidance to the contracting officer on the use of this negotiation authority. The ASPR specifically states: "When negotiating under this authority, competition to the maximum extent practical, within the time allowed, shall be obtained." The ASPR further provides illustrative circumstances where this authority may be used, such as:

- . Supplies needed at once because of disaster,
- . Essential equipment or repair needed at once for the performance of operational missions, and
- . Purchase requests citing an issue priority designator 1-6 inclusive under the Uniform Material Movement and Issue Priority System (UMMIPS).

The ASPR implementation of this authority requires a determination and findings justifying its use signed by the contracting officer. In addition, ASPR 3-102(c) provides that contracts in excess of \$10,000 shall not be negotiated on a non-competitive basis without prior approval at a level higher than the contracting officer. This is to assure that negotiated procurements shall be on a competitive basis to the maximum possible extent.

#### Current Usage of the "Public Exigency" Negotiation Authority

A significant reduction in the dollars of awards made under this authority has occurred in the past several years. For Fiscal Year 1968, the period of the GAO review, the dollars of awards under this authority totaled \$5.4 billion of which about 24% or \$1.3 billion were awarded on the basis of price competition. In comparison for Fiscal Year 1970, \$2.5 billion of contracts were awarded under this authority with about 22%, \$556 million awarded on the basis of price competition. As is evident, we have halved the contract awards citing this negotiation authority since Fiscal Year 1968.

Specific Comments on Report Findings

On page 7 of the draft report there is summarized by procurement installation the contracts selected for review as well as those the GAO believes could have been awarded competitively. It is observed that the review sample of contracts valued at \$33 million appears quite narrow when related to total awards in Fiscal Year 1968 citing this authority. Of interest, the Air Force advises that GAO auditors actually reviewed 30 contracts for \$35.6 million at the Aeronautical Systems Division and found 26 to be justified for reasons other than urgency. The report on the other hand refers to only five contracts valued at \$4.4 million selected for review at this installation. The Defense Supply Agency also advised that your auditors examined 15 contracts at the Defense General Supply Center and found the Center using correct procedures and conducting emergency procurements properly. However, the report states that only two contracts were selected for review at this Center.

The report cites several examples of contract awards wherein it appeared to GAO that the awards could have been made on a competitive basis. We will discuss each briefly. We have enclosed further detail comments on these contracts as well as other contracts referenced in the report.

Multiplexers

The report states that \$3.1 million could have been saved on 14 awards if competition had been obtained. Over 50% of this alleged savings pertains to one case -- the procurement of Multiplexers by the Army Electronics Command cited on page 8 of the draft report. The report states that a new supplier for this item, who had received an award based on competition, could accelerate its delivery schedule and produce the item within the desired delivery time. Based on lower prices of the competitive award made a few weeks earlier, it is estimated by GAO a savings of \$1.65 million could have resulted if competition had been obtained.

The Army has advised that among other matters, sufficient data was not available to determine whether the contractor could produce within

the accelerated time frame and the contractor requested a substantial cost increase for the acceleration along with a request to relax several contract provisions. The project manager considering these factors recommended that a sole source award be made to the contractor currently in production. This procurement was approved by the Assistant Secretary of the Army (I&L). It should also be noted that this requirement was a part of a high priority program for urgent communication needs in Southeast Asia initiated by the Army Chief of Staff.

### Rejectors

On page 11 of the report you refer to a contract let by the Air Force Warner Robins Materiel Area for quadrature rejectors for B-52 aircraft. The item manager did not believe the competitive supplier could produce an acceptable item and therefore went sole source to one that had previously supplied the item. The Air Force advises that in May 1967 when the decision to award sole source to the prior producer was made, the new competitive supplier had not proven its capability. On the other hand, the prior source had proven its capability and support of the B-52 aircraft was deemed essential. This procurement was approved by the Air Force Logistics Command.

### Grenade Launchers

On page 12 of the report you cite an April 1968 procurement of grenade launchers by the Army Weapons Command awarded on a sole source basis. It is your view that had other sources been considered, a savings of \$400,000 would have been obtained. The Army advises that the record of the past producers of this weapon clearly indicate that the reliability of the contractor was a factor of critical importance. This item was part of an urgent program for upgrading equipment for the RVN Army. Of the four firms which had been awarded contracts previously, one never produced a weapon and two had been forced to obtain relief from the Army Contract Adjustment Board. Offers of other firms to produce the item were just not realistic. In view of the past experience and the urgency, the only appropriate course was to procure from a source whose reliability was known. This procurement was approved by the Assistant Secretary of the Army (I&L).



Battery Assemblies

On page 14 of the report you cite a contract for 34 battery assemblies at a total cost of \$15,266 awarded on a non-competitive basis by the Navy Ships Parts Control Center. It is acknowledged that there were other suppliers capable of providing this item. Information indicating that there were competitive and capable suppliers available was erroneously omitted from the purchase request. This was an oversight.

Tractors

On page 15 of the report you cite a sole-source award by the Army Mobility Equipment Command for 10 commercial tractors. You concluded that other tractor manufacturers could supply the requirement. According to the Army consideration of other tractors -- non-standard equipment -- would have required coordination of a substitute or modified purchase description with the requesting activity causing a substantial delay in a high priority procurement.

General Conclusion

It is the basic responsibility of the procurement function to procure for operational forces those equipments and services as are needed when needed. The cases cited in the GAO report, to the best of our knowledge, were all of high priority. All were categorized as urgent requirements. Procurement officials react promptly to urgent requirements; but at the same time they attempt to obtain competition whenever possible. The primary report recommendation is that single sources be solicited only when it is in the best interests of the Government. This is our published policy guidance and in total context the cases cited in the report were adequately justified for sole source procurement.

In summary, it is the DoD view that the procurement officials acted in accordance with the need and urgency of requirements and to the extent feasible they considered and attempted to gain competition. As

is often the case, each transaction required the exercise of judgment and experience. We find no basis to conclude that the judgments overall were other than reasonable.

We appreciate this opportunity to comment upon your report.

Sincerely,

A handwritten signature in cursive script that reads "Glenn V. Gibson". The signature is written in dark ink and is positioned below the word "Sincerely,".

Glenn V. Gibson

Deputy Assistant Secretary of Defense

Enclosures

a/s

ATTACHMENT A

ADDITIONAL COMMENTS  
ON CASES CITED  
IN THE GAO DRAFT REPORT

"OPPORTUNITIES FOR  
MORE COMPETITION IN  
EMERGENCY PROCUREMENT"

OSD Case #3161

Multiplexers - Page 8 of the GAO Draft Report

The Army nonconcur with the findings of the GAO with respect to the multiplexers. There were two active contractors for these items at the time the urgent requisitions were received in July 1967. One was in production at that time and the other had been awarded a contract in March 1967 with a production lead time of eighteen months. The Army solicited a proposal from the latter contractor for an accelerated production schedule, and in September 1967, an Army team visited the contractor to evaluate his capability to meet the accelerated schedule. These efforts revealed that (1) the contractor was in the initial phase of ordering hardware for the pre-production equipments and performing general production planning, with the First Article Test Report still eight months away, (2) sufficient data was not available to determine if the contractor could produce within the accelerated time frame, and (3) the contractor's proposal required the relaxation of several contractual provisions and included an increase in cost of \$1.6 million (for the total initial requirement) for the acceleration. Considering the risks involved in starting up a production line under an accelerated schedule, and considering the higher unit prices of the new contractor for acceleration, the Project Manager recommended that a sole source contract be awarded to the contractor currently in production. The procurement was subsequently approved by ASA(I&L) and resulted in awarding a sole source contract to the current producer for the urgent quantities with the balance of the Army requirement procured competitively.

## APPENDIX I

Page 10

### Rejectors - Page 11 of the GAO Draft Report

The procurement of rejectors, PSN 1280-398-1077, cited on pages 11 and 12 of the report is not a valid example of improper sole-source emergency procurement due to following circumstances:

- . During production of the B52 aircraft and in the early sixties, the sole producer of quadrature in question was Mechatrol Div, Servo-Mechanism, Inc., which was acquired by Teledyne Industries, Inc. in 1965.

- . On 3 September 1965, action was initiated by WRAMA to procure 295 each of subject item to satisfy USAF requirements. Two firms, Teledyne and Eastern Air Devices, Inc. submitted bids. Neither firm received favorable Facility Capability Report (FCR) by Defense Contract Administration Service. Due to numerous bidder protests, a contract was not awarded until 27 September 1966, almost 13 months later, to Eastern Air Devices. The award required overriding an unfavorable FCR and necessitated stringent reproduction and first article testing.

- . Due to the 13 month procurement delay and extensive use of B52 aircraft in SEA, this quadrature rejector became critically short. The rejector is mission essential to the B52.

- . First article testing on Eastern Air Devices contract was scheduled for April 1967 but slipped to July 1967 due to contractor failure to requisition Government furnished equipment. The production which was not scheduled until 180 days after test, consequently slipped to January 1968 under the terms of the contract. In view of Teledyne acquisition of Mechatrol Division of Servo-Mechanism, emergency sole-source procurement of 227 rejectors from Teledyne was made on 9 December 1966 with first receipt (15 ea) under contract of 7 April 1967.

- . In April 1967, not operationally ready supply (NORS) hours of USAF B52 fleet reached over 1540 hours for the month due to lack of replacement rejectors. During the three month period (February 1967 - May 1967), 65 B52 aircraft (10 percent of SAC fleet) were NORS due to lack of rejectors.

- . In this critical support situation, WRAMA management determined an additional procurement of quadrature rejectors was necessary. In

May 1967, a decision to award a sole-source emergency procurement to Teledyne was made, based on the following factors: (1) Eastern Air Devices had not proven capability with first item acceptance and production was not anticipated to begin until 180 days after acceptance. (2) Teledyne had proven production ability with April 1967 receipt and had shown ability to deliver in short time from contract award. (3) Immediate improvement in B52 support was essential. At time of award, zero assets were on hand with total AF requirements of 1473 each and only 472 each due in from contracts other than that cited in GAO report. Therefore, the decision was made to award to the only source already producing a qualified item thereby minimizing any risk of production delay.

Grenade Launches - Page 12 of the GAO Draft Report

The Army nonconcur with the findings of the GAO with respect to the grenade launcher. The record of past producers of this weapon clearly indicates that the reliability of the contractor was properly considered a factor of critical importance in the award of a contract for an urgently needed OUX requirement. Of the four firms who had been awarded contracts previously, one never produced a weapon and two of the others had been forced to obtain relief from the Army Contract Adjustment Board. Of the three firms who have produced an acceptable weapon, all have slipped in their delivery schedules. There were no other contractors from which to choose. The firm alleged to produce "eight major components" actually produces eight components of the sight assembly, none of which are classified as major components. Furthermore, the delivery record of this firm as a subcontractor had been cited by one of the prime contractors as a major reason for the failure of the prime contractor to meet his delivery schedule. The offer by another firm to begin deliveries within four months could not be considered realistic since one of the major components, otherwise unavailable, had a minimum production lead time of 5 months. In view of this past experience and the urgency of the requirement, the only rational course for the command to have taken was to procure from a source whose reliability was known. The soundness of this decision has been reaffirmed by the fact that the subsequent contract awarded competitively to a new contractor at a unit price of \$139 - the price cited by the GAO as an indication of the savings which could have been realized on the accelerated contract - permitted a production lead time of thirteen months, and yet the contractor encountered major production problems and failed to meet the delivery schedule.

Battery Assemblies - Page 14 of the GAO Draft Report

The Priority 03 purchase request did not cite a "Required Delivery Date." This is not in itself an unusual situation for an Issue Group I requisition as many are received without a Required Delivery Date assigned or with a Required Delivery Date which is already past due. The urgency of the request is described by the priority designator 03. The Ships Parts Control Center does not routinely take exception to or require written narrative justification from supported activities on Issue Group I requisitions as this is contrary to the purpose of the priority coding system. In these cases, the buyer must process the procurement in a minimum of time and exert every effort to get the best possible delivery. Thus, the determination and findings issued in this case was proper in that the use of formal advertising would have delayed the delivery of a high priority requirement.

This procurement was a non-competitive award. At the time of the award no procurement history was available to the buyer and Sonotone was apparently the only known source. When this spot buy was processed through the pricing code, the system then in effect was EAM and the applicable card was apparently out of file for posting purposes thus depriving the buyer of source and pricing information. Therefore, the buyer considered that the high priority requirement could be met most quickly by negotiating with the only known source, Sonotone. Had the source and price information been available to the buyer, competitive negotiations and a more accurate determination of the fairness and reasonableness of the final price would have resulted.



Tractors - Page 15 of the GAO Draft Report

The Army nonconcurrs with the findings of the GAO with respect to the tractors. A requirement for 10 tractors to be delivered 3 April 1968 was received on 5 February 1968 with a priority of 02. Procurement of non-standard equipment, such as these tractors, necessitates coordination of any deviations from the requirement with the customer. Since preparation and coordination of a substitute or modified purchase description with the requesting agency would have substantially delayed meeting the customers need, the decision was made to solicit only the specified source. As a result, a contract was awarded on 12 March 1968 at a unit price which is 10% lower than the price charged dealers on the commercial market. Delivery was made on 12 June 1968, two months after the required delivery date. Had competition been held, delivery would have been further delayed with no assurance that cost savings would result or that the tractor purchased would meet all the performance characteristics required by the customer.

PRINCIPAL OFFICIALS OF  
THE DEPARTMENT OF DEFENSE  
RESPONSIBLE FOR ADMINISTRATION OF ACTIVITIES  
DISCUSSED IN THIS REPORT

Tenure of office

From                      To

DEPARTMENT OF DEFENSE

SECRETARY OF DEFENSE:

Melvin R. Laird	Jan. 1969	Present
Clark M. Clifford	Mar. 1968	Jan. 1969
Robert S. McNamara	Jan. 1961	Feb. 1968

ASSISTANT SECRETARY OF DEFENSE  
(INSTALLATIONS AND LOGISTICS):

Barry J. Shillito	Feb. 1969	Present
Thomas D. Morris	Sept. 1967	Jan. 1969
Paul R. Ignatius	Dec. 1964	Aug. 1967

DEPARTMENT OF THE ARMY

SECRETARY OF THE ARMY:

Stanley R. Resor	July 1965	Present
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DEPARTMENT OF THE NAVY

SECRETARY OF THE NAVY:

John H. Chafee	Jan. 1969	Present
Paul R. Ignatius	Sept. 1967	Jan. 1969
John R. McNaughton	July 1967	Aug. 1967

Tenure of office  
From                      To

DEPARTMENT OF THE AIR FORCE

SECRETARY OF THE AIR FORCE:

Dr. Robert C. Seamans, Jr.	Jan. 1969	Present
Dr. Harold Brown	Oct. 1965	Jan. 1969

DEFENSE SUPPLY AGENCY

DIRECTOR:

Lt. Gen. E. C. Hedlund, USAF	July 1967	Present
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