

GAO

Testimony



140000

For Release  
on Delivery  
Expected at  
9:30 a.m.  
Wednesday,  
November 15, 1989

Navy Competition Advocate General and ADP  
Vendor Complaint Handling

Statement of  
Michael E. Motley  
Associate Director, Research, Development, Acquisition  
and Procurement Issues  
National Security and International  
Affairs Division

Before the  
Subcommittee on Legislation and National Security  
Committee on Government Operations  
House of Representatives



04-1078 / 140000

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to participate in the Committee's hearings on the Navy's automated data processing (ADP) procurement practices. My testimony will focus on four topics related to the Navy's handling of contractor complaints about competition:

- The legislative requirement for competition advocates and the functions performed by the Navy's Office of the Competition Advocate General, which I will refer to as the Advocate Office.
- The Advocate Office's process for handling contractor complaints and, for comparative purposes, the processes used by ombudsmen (complaint-handlers) at two Army commands.
- The Navy ADP Acquisition Assessment Panel's efforts to improve the competitiveness of the Navy's ADP procurement practices.
- The competition advocates' involvement in a few specific Navy ADP procurements that your office asked us to review.

These issues and other information about the Advocate Office are discussed more fully in the report we are issuing today.<sup>1</sup>

### COMPETITION ADVOCATE FUNCTIONS

The Congress passed the Competition in Contracting Act of 1984 (CICA), Public Law 98-369, to enhance competition and to limit unnecessary sole-source contracting. Among other things, CICA requires each executive agency to appoint an advocate for competition for the agency and for each procuring activity within the agency. The basic role of competition advocates is to challenge barriers to and promote full and open competition.<sup>2</sup>

In the Navy, the Secretary appoints the Competition Advocate General (hereafter referred to as the Advocate General) who reports directly to the Assistant Secretary for Shipbuilding and Logistics. The Advocate General has six professional staff members, all with acquisition backgrounds, to assist him. One staff member has extensive ADP work experience.

The Advocate Office staff members' five basic functions are to:  
(1) serve as ombudsman for private sector complaints relating to

---

<sup>1</sup>PROCUREMENT: Navy Competition Advocate General and ADP Vendor Complaint Handling (GAO/NSIAD-90-39BR, Nov. 15, 1989).

<sup>2</sup>Under CICA, full and open competition means, basically, allowing all sources capable of satisfying the government's needs to compete for a contract award.

the Navy's competitive process, (2) review all Navy justifications and approvals for contract actions over \$10 million based on other than full and open competition, as well as selected acquisition plans, (3) formulate Navy competition policy and goals, (4) educate and train the Navy's acquisition workforce, and (5) coordinate communication efforts to inform Navy personnel, other government agencies, and industry about competition issues.

I would like to elaborate on the first function I mentioned, ombudsman to industry. In the Navy's 1988 Procurement Competition Report to Congress, the Advocate General referred to his ombudsman role as "perhaps the most important to the success of the competition advocacy program."

CICA does not specifically require competition advocates to be ombudsmen. However, Navy Instruction 4210.10, which outlines Navy's competition advocacy program, assigns the Advocate General responsibility as ombudsman.

As ombudsman for the Navy acquisition process, the Advocate General is responsible for (1) assisting the private sector regarding complaints about competition and (2) taking appropriate action to resolve valid complaints in a fair and timely manner. The Advocate General said that he has implicit authority to delay, change, or stop procurements. In an effort to be

responsive, the Advocate Office recently established a 24-hour, toll-free telephone hotline for competition-related concerns.

#### COMPLAINT-HANDLING, RECORDKEEPING, AND ANALYSIS

We found that the Advocate Office has no written complaint-handling procedures. Advocate Office staff members told us that they receive complaints primarily by letter and by telephone. The Advocate General described the Advocate Office's general process for handling complaints as follows.

- Advocate Office staff members first ask complainants if they have sought help or resolution at the contracting activity level. If not, the complainants are asked to do so and contact the Advocate Office again if they are not satisfied with the resolution.
  
- Typically, all complaints are routed to the Deputy Advocate General for review, who then recommends to the Advocate General that the complaint be (1) closed out with a phone call or a letter without an in-depth review, (2) investigated by the Advocate Office, or (3) referred to another Navy activity for action. If the Advocate General approves the recommendation to investigate, the Deputy assigns staff to contact the parties involved and discuss the complaint.

-- If corrective action is necessary, the Advocate Office staff will take action and then notify the complainant of the action taken and the Navy's rationale for the decisions and actions. The Advocate General signs final correspondence sent to a complainant; in his absence, the Deputy signs.

-- Any complaint correspondence is filed under the complainant's name. The complaint case is considered closed unless the Advocate Office hears from the complainant again.

We found that the Advocate Office is not required to and does not have a comprehensive recordkeeping system for complaints. The Advocate Office maintains only a limited system; that is, an automated spreadsheet of outstanding letter complaints it has received, containing subject, source, action officer, date assigned to action officer, and expected completion date. Cases are deleted from the automated system when Advocate Office action has been completed. Printed copies of the spreadsheet data for the closed cases are maintained but seldom used for any purpose. Currently, the Advocate Office cannot report the total number and types of complaints it has received, actions taken to investigate or otherwise resolve specific complaints, timeliness of responses to non-letter complaints, the number of complaints referred to other organizations, or the complainants' satisfaction with Advocate Office actions. In addition, without a more comprehensive recordkeeping system, adequate information is not

available to be systematically analyzed to identify systemic acquisition problems.

The Advocate Office is currently developing written complaint-handling procedures and more comprehensive recordkeeping systems. The data expected to be included in these systems should provide a better basis than the existing system for identifying systemic problems. The Advocate General stated that, in the past, the staff identified some recurring concerns through informal means, such as discussions at staff meetings. The Advocate Office occasionally included items relating to these concerns in its monthly newsletter, which all Navy field activities receive.

We identified 108 complaints covering a 2-year period in the Advocate Office's contractor correspondence files. Advocate Office officials estimated that correspondence accounted for approximately half of all complaints received. Information was generally not maintained on the remaining complaints. Most of the 108 complaints alleged that either specifications were unduly restrictive or specific sole-source procurements were unjustified. The Advocate Office received 17 complaints from ADP vendors, of which 8 specifically addressed concerns about restrictive specifications.

We found Advocate General correspondence that notified contractors of (1) Navy decisions and actions for 68 (63 percent)

of the complaints and (2) transfer of complaints to another Navy activity for action for another 24 (22 percent) complaints. Most of the remaining complaints were either still open and unresolved or their status was unknown. Advocate Office staff did not monitor other activities' actions in handling referred complaints. Advocate Office staff assumes that a dissatisfied complainant will contact the Advocate Office again.

For comparative purposes, we discussed complaint-handling, recordkeeping, and analysis with the Army Materiel Command (AMC) and Communications and Electronics Command (CECOM) ombudsmen. Like the Advocate Office, neither the AMC nor the CECOM ombudsmen had written complaint-handling procedures. However, in contrast to the Advocate Office, recordkeeping and analysis is an integral part of the complaint-handling processes at both Army commands. Moreover, AMC officials said they are developing a policy document for all AMC ombudsmen programs that will require complaint recordkeeping and analysis. AMC and CECOM ombudsmen stated that analysis of their records over time has assisted them in identifying recurring or systemic problems for management attention. As examples of specific benefits resulting from their complaint recordkeeping and analysis efforts, these officials cited (1) changes in command practices for debriefing unsuccessful contractors after contract awards, (2) speedier approval of value engineering proposals, and (3) development of new or refocused contracting officer training programs.



## NAVY'S ADP ACQUISITION ASSESSMENT PANEL

On April 10, 1989, in response to industry and congressional concerns, the Secretary of the Navy established the ADP Acquisition Assessment Panel. The Panel, co-chaired by the Advocate General and the Director, Information Resources Management, is responsible for identifying weaknesses in and recommending changes to Navy ADP procurement practices. The Panel requested documentation on IBM-compatible requirements exceeding \$50,000 for all contract actions since October 1, 1988, and planned procurements for which there were purchase requests. Panel members said they received detailed documentation for 22 planned procurements of this kind and are awaiting documentation on 8 others. Of the 22, the Panel approved 13 (5 with changes), 6 are still under Panel review, and the Panel did not complete its review for the remaining 3. That is, 2 were cancelled before Panel review, and 1 was inappropriately awarded without the Panel's knowledge and approval. Panel members said they also reviewed documentation for 23 procurement awards to identify restrictions to competition and used the results of these reviews to develop initiatives to enhance competition in future ADP acquisition.

As a result of the Panel's work, Navy ADP acquisition procedures have been revised to require (1) development of acquisition plans

or competition briefing papers for procurement of commercial ADP equipment, (2) Advocate General review of ADP competition planning for such procurements, (3) independent reviews of technical specifications, and (4) increased dialogue with ADP industry representatives. Additionally, the Undersecretary of the Navy has encouraged the Advocate General to make the ADP community more aware of his role and responsibilities as the Navy's acquisition ombudsman.

#### COMPLAINT-HANDLING IN SPECIFIC ADP PROCUREMENTS

Regarding the specific procurement complaints your office asked us to review, the Advocate Office played a limited role in complaint resolution, with one exception. When it was involved, it generally acted as a facilitator in bringing together complainants and appropriate Navy officials in attempts to resolve the complaints. However, since the complaint cases reviewed were not randomly selected, our findings are not necessarily representative of any larger group of procurements. The procurements I will discuss are: the Data Processing Installation Equipment Transition (DPI Phase III) project, the Marine Corps Central Processing Unit Upgrade project, and Office of Naval Research (ONR) procurements.

### DPI Phase III Project

The November 1987 solicitation for the DPI Phase III project specified a fixed price award to one vendor for six types of IBM-compatible computer configurations. In March 1988, in response to vendor complaints, the Advocate General discussed the procurement with officials from the requiring and procuring activities, and directed the procuring activity Commanding Officer (and competition advocate) to meet with complaining vendors. In May 1988, the procuring activity Commanding Officer advised the Director of Information Resources Management (IRM)<sup>3</sup> that only IBM could supply one of the computer configurations and, therefore, a sole-source justification was required for that part of the procurement. However, the requiring activity General Counsel (and competition advocate) did not agree, and in a June 1988 memorandum, said that the procurement was fully competitive and did not need to be changed. The Director of IRM concluded that the procurement, as structured, met the requiring activity's minimum needs and, therefore, should not require any changes. The Advocate General supported the requiring activity's position until August 1988 when a vendor complained that it could not buy the IBM equipment needed to meet part of the requirement.

---

<sup>3</sup>The Director of IRM is responsible to the Assistant Secretary for Financial Management for IRM planning and policy for the Navy. Both the requiring and procuring activities involved in this procurement support and report to the Director of IRM.

At a September meeting with officials from the requiring and procuring activities, the Deputy Advocate General said that the Advocate Office could no longer support the procurement as structured. Shortly thereafter, PacifiCorp Capital, Inc., protested this proposed procurement to the General Services Board of Contract Appeals.<sup>4</sup> In its December 7, 1988, opinion, the Board found the Navy's justification for a single award inadequate and stated that the solicitation had provided for less than full and open competition. The Board directed the Navy to amend the solicitation. In an August 1989 letter to the Navy, the General Services Administration (GSA) suspended the Navy's delegation of authority<sup>5</sup> for DPI Phase III, pending the project's restructuring.

We agree with the Board that the need for one award, which in this case apparently would have restricted competition, was not adequately justified by the Navy. We also believe that previous Advocate General should have challenged the proposed procurement approach earlier, for example, in May 1988.

---

<sup>4</sup>The Board is statutorily authorized to hear and decide protests of ADP procurements and proposed procurements.

<sup>5</sup>Public Law 89-306 authorizes GSA to procure ADP resources for federal agencies. GSA may delegate this authority to agencies as they had done for this procurement.

## The Marine Corps Central Processing

### Unit Upgrade Project

In the Marine Corps Central Processing Unit Upgrade project, the Advocate Office was instrumental in getting the Marine Corps to add a benchmark test to the evaluation criteria for this procurement. This approach was recommended by both the complaining vendor and a GSA expert on government information resources management, with whom the Advocate Office staff consulted on technical questions. This addition has allowed competitors to offer alternative equipment. Vendor proposals are due in mid-November 1989.

### ONR Procurements

In the case of ONR, a vendor complained to both ONR and the Advocate General about the lack of competitiveness in several ONR procurements from GSA ADP schedule contracts with IBM.<sup>6</sup> ONR's summary of its ADP hardware procurements from GSA schedule contracts showed that, between 1986 and 1989, 29 of 30 awards went to IBM.

---

<sup>6</sup>A large number of ADP items are available under nonmandatory federal supply schedule contracts awarded by GSA. These schedule contracts provide a simplified process for government agencies to directly order commonly-used items from commercial vendors based on previously negotiated contracts.

The ONR Headquarters CA initially told us that the existing ONR computer system is comprised of a majority of IBM equipment because the previous ONR Management Information Systems Division Director favored IBM. Subsequently, ONR's Headquarters CA explained he did not mean that the Director improperly favored IBM; instead, he meant that (1) the IBM equipment best meeting ONR's needs at that time was available at virtually no cost from DOD's ADP excess property list and (2) ONR had very limited ADP funds. The Director agreed with these last two points and told us (1) he did not favor IBM, (2) he was very careful to follow the proper procedures, including obtaining General Counsel approval, (3) ONR's physical space had problems, such as limited electrical capacity, which precluded use of some non-IBM equipment that was available, and (4) he also obtained non-IBM equipment from the list. The Director estimated that from 1981 through 1987 he obtained almost \$3 million worth of equipment from excess and 90 percent of it was IBM equipment.

Advocate Office staff arranged and attended meetings with ONR staff and this vendor to discuss its concerns. ONR's overall agency Competition Advocate (who is Director of Acquisition) and its Headquarters Competition Advocate (who is ONR's Headquarters Director of Contracts) acknowledged that ONR did not perform advance procurement planning to facilitate acquisition strategies that achieve full and open competition and ensure that the government's needs are met in the most effective, economical, and

timely manner. These officials said, as a result, ONR has purchased its ADP equipment on a piecemeal basis. A consulting firm is now completing work on a contract that will result in ONR's preparation of a long-range ADP acquisition plan.

We believe that the Secretary of the Navy should take steps to ensure that ONR develops and implements a long-range ADP acquisition plan.

This concludes my statement, Mr. Chairman. I will be happy to respond to any questions you or other members of the Committee may have.