

DOCUMENT RESUME

03585 - [A2653840]

Competition for Negotiated Government Procurement Can and Should Be Improved. PSAD-77-152; B-160725. September 15, 1977. 17 pp. + 9 appendices (25 pp.).

Report to the Congress; by Elmer B. Staats, Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Procurement and Systems Acquisition Div.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of Commerce; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Department of Labor; Department of Transportation.

Congressional Relevance: Congress.

Authority: Federal Property and Administrative Services Act of 1949. 41 U.S.C. 252(c).

As part of its oversight activities, the Congress should require all Federal agencies to provide annual statistics on supplies and services procured through noncompetitive contract and information on actions taken to increase competitive procurements. The Department of Defense currently discloses such information. By law, all agencies should formally advertise for bids whenever possible. If a procurement office determines that competition is not feasible, purchases may be noncompetitively negotiated. An investigation of recent noncompetitively negotiated procurements showed that many were unjustified. Recommendations: The Secretaries of Transportation, Commerce, Housing and Urban Development, Labor, and Health, Education, and Welfare should reduce noncompetitive procurements by: eliminating conditions which discourage competitive procurement; requiring that procurement offices be notified as soon as requirements become known to maximize the time available to obtain solicitations; permitting only authorized contracting officials to solicit proposals; and requiring the procurement offices to publicize all proposed procurements of \$5,000 or more in the "Commerce Business Daily," prepare written justifications for all noncompetitive procurements over \$10,000, and prepare and submit to top management annual reports of all noncompetitive procurements over \$10,000. The Administrator, Office of Federal Procurement Policy, should take steps to insure that adequate and uniform regulations are developed to enable all Federal agencies to comply with the national policy to obtain competition whenever possible. (Author/SC)

2-46

REPORT TO THE CONGRESS

03585



BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

Competition For Negotiated Government Procurement Can And Should Be Improved

GAO examined contracts negotiated by five civilian agencies and found many unjustified noncompetitive awards. Procurement weaknesses identified during this review may exist in other civilian agencies.

As part of its oversight activities, the Congress should require agencies to keep it informed on the extent of competition in procurement. The agencies involved generally agreed with GAO's recommendations to take actions to increase competitive procurements.



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

B-160725

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

This review was prompted by the excessive use of noncompetitive or sole-source procurements after agencies determined that formal, public advertising was impracticable.

We surveyed a procurement office in each of five major agencies and concluded that competition in awarding Government contracts can and should be increased.

We made this review 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 to the Director, Office of Management and Budget; the Administrators of the Office of Federal Procurement Policy and General Services; and the Secretaries of Commerce; Transportation; Labor; Housing and Urban Development; and Health, Education, and Welfare.

A handwritten signature in black ink, appearing to read "Thomas A. Bass".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

COMPETITION FOR NEGOTIATED
GOVERNMENT PROCUREMENT CAN
AND SHOULD BE IMPROVED
Departments of Transportation;
Commerce; Housing and Urban
Development; Labor; and Health,
Education, and Welfare

D I G E S T

As part of its oversight activities and for reasons discussed in this report, the Congress should require all Federal agencies to provide annual statistics on supplies and services procured through noncompetitive contract and information on actions taken to increase competitive procurements. The Department of Defense currently discloses such information.

Formal advertising and negotiation are the basic methods by which the Government procures supplies and services. By law, agencies should formally advertise for bids whenever possible.

The Congress has historically required that Government purchases of goods and services be accomplished using full and free competition to the maximum extent practicable. Offering all qualified firms the opportunity to compete helps to minimize favoritism and collusion and provides assurance that acceptable products and services are obtained at the lowest prices.

If a procurement office determines that competition is infeasible, purchases may be noncompetitively negotiated. GAO found that many recent noncompetitively negotiated procurements were unjustified.

Excluding the Federal supply schedule and other General Services Administration contracts, civilian agency procurements in 1975 totaled \$16.4 billion; \$4.7 billion or 29 percent was formally advertised and \$11.7 billion or 71 percent was negotiated. (See apps. I and II.) Such a high percentage of negotiated contracts warrants additional safeguards to accomplish the full and free competition the Congress desires and the law stipulates.

Statistics on noncompetitive negotiated procurements were not available; however, GAO developed this information at individual procurement offices. (See p. 2 and app. II.)

GAO surveyed a sample of contracts five major civilian agencies noncompetitively awarded in 1975 to identify the reasons for that method of procurement. The agencies reported that of \$248 million in negotiated procurements, \$158 million or 64 percent was noncompetitively awarded. (See app. II.)

GAO examined 36 noncompetitive contract awards totaling \$10.6 million at the selected procurement offices of the Departments of Commerce; Housing and Urban Development; Transportation; Labor; and Health, Education, and Welfare.

GAO wanted to determine

- the extent of and justification for awarded noncompetitive contracts,
- managerial controls to minimize noncompetitive procurements, and
- improvements needed to increase competition in Government procurement.

Program offices' reasons for noncompetitive procurements generally fell into two cate-

- Contractors' unique capabilities and experience.
- Time constraints mandating that only one contractor be solicited.

Specifically, agencies

- concluded, without seeking other firms, that only one had the sufficient capability or experience to do the job,
- placed unjustified time constraints on procurement offices to award contracts without competition,

- awarded noncompetitive contracts to spend funds available at the end of the fiscal year because if not spent quickly, the funds would be returned to the Department of the Treasury,
- solicited contractors before notifying the procurement offices of their requirements, and
- failed to publish their requirements in the Government's "Commerce Business Daily" before awarding contracts.

Also, GAO found that officials responsible for approving noncompetitive procurements frequently were ineffective in questioning the justification for such procurements. Although this review was limited to five procurement offices in five agencies, GAO believes that the weaknesses identified may exist in other civilian agencies. The Office of Federal Procurement Policy agreed to bring GAO's findings to the attention of other agencies.

RECOMMENDATIONS

The Secretaries of Transportation; Commerce; Housing and Urban Development; Labor; and Health, Education, and Welfare should reduce noncompetitive procurements by (1) eliminating the conditions cited in this report if they are applicable to their procurement offices, (2) requiring that procurement offices be notified as soon as requirements become known to maximize the time available to obtain solicitations, (3) permitting only authorized contracting officials to solicit proposals, and (4) requiring the procurement offices to:

- Publicize all proposed procurements of \$5,000 or more in the "Commerce Business Daily" as soon as requirements are known and before sole-source approval. The public announcement should state the capabilities and experience required for the job.
- Prepare written justifications for all non-competitive procurements over \$10,000 and include, if applicable (a) a description

of efforts to find other firms and the circumstances making competition infeasible, (b) reasons why only one contractor has the capability and experience required, (c) delivery deadlines that only the recommended contractor can meet and an explanation of the urgency, (d) a description of the work and costs for another contractor to provide the agency's requirements, and (e) provisions made or planned to insure competition in the future.

--Prepare and submit to top management annual reports of all noncompetitive procurements over \$10,000. Reports should include reasons for noncompetitive awards and identify procurements that place time constraints on awarding contracts.

GAO recommends also that the Administrator, Office of Federal Procurement Policy, take steps to insure that adequate and uniform regulations are developed to enable all Federal agencies to comply with the national policy to obtain competition whenever possible.

AGENCY COMMENTS

For the most part, the agencies agreed that the conditions cited pertain to Government procurement and with GAO's recommendations. Specifically, the Department of Health, Education, and Welfare observed that the findings are common to Government procurement. The Department established a management review program through which it hopes to achieve needed improvements in procurement practices.

The Department of Housing and Urban Development stated that regulations should allow for exceptions to publishing all procurements over \$5,000 in the "Commerce Business Daily." The Department of Transportation expressed concern that the report did not show its large amount of formally advertised awards. The Office of Federal Procurement Policy considered the procurement regulations essentially uniform and adequate and if properly implemented, would minimize noncompetitive procurements.

That Office has begun actions to rectify an inconsistency between a regulation used by the Department of Defense and one used by civilian agencies. Several Departments, however, questioned the need to report non-competitive procurement statistics to top management.

GAO agrees that regulations or statistics alone will not correct the conditions described. However, an informed top management, aware of the need to limit noncompetitive procurements, would be more likely to make that method the exception rather than the rule.

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ABBREVIATIONS

FPR	Federal Procurement Regulations
GAO	General Accounting Office
GSA	General Services Administration

CHAPTER 1

INTRODUCTION

To initiate procurements for supplies or services, an agency's program office prepares a requisition which states the supplies or services to be procured, proposed date, and designated funds. Also, the supplies or services required are described and potential contractors may be noted. After approval by the organization head, the requisition is submitted to the procurement office.

The procurement office solicits contractors capable of filling requirements for supplies or services to be acquired outside the Government. Requirements are published in the "Commerce Business Daily," a Government publication, and posted in public places. The office may also contact by mail contractors on the potential bidders lists it maintains.

The Congress has historically required that Government purchases of goods and services be accomplished using full and free competition to the maximum extent practicable. Offering all qualified contractors the opportunity to compete helps to minimize favoritism and collusion and provides greater assurance that acceptable supplies and services are obtained at the lowest prices.

The Federal Property and Administration Services Act of 1949 authorized the Administrator of the General Services Administration (GSA) to issue procurement regulations applicable to civilian executive agencies. In 1959 GSA established the Federal Procurement Regulations (FPR) which set forth detailed rules for civilian agencies to follow when purchasing supplies and services directly from commercial sources.

Formal advertising and negotiation are the basic methods by which the Government procures supplies and services. The law provides that purchases by Government agencies be made by formal advertising for bids whenever feasible and practicable. Contractors are invited to submit firm bid prices for specified supplies or services and a contract is awarded to the lowest responsive and responsible bidder.

Fifteen exceptions to the use of formal advertising are set forth in the law permitting contracting officers to negotiate contracts (41 U.S.C. 252(c)). When a procurement office decides to use negotiated procurement, a determination and

findings statement is required to justify its use under certain exceptions. This supporting document should give a detailed description of the circumstances requiring use of the statutory authority. It is the responsibility of the agency head or his designee to determine that the circumstances of the proposed procurement are under certain of the exceptions.

Even when a procurement cannot be awarded by formal advertising, agencies are expected to make maximum practicable use of competition in negotiating contracts. Contractors are given requests for proposals which state the Government's requirements and criteria for evaluating offers. After interested firms are allowed sufficient time to prepare and submit offers, negotiation with those in the competitive range follows. The firm with the offer most advantageous to the Government, price and other factors considered, is awarded the contract. Thus, negotiated procurement, as opposed to formal advertising, allows the Government to question and discuss with the firm the conditions and features of an offer.

If a procurement office determines that competition is infeasible, contracts may be noncompetitively negotiated. For the contracts we reviewed, the exception to formal advertising used most often to justify negotiation stated that purchases may be negotiated "for property or services for which it is impracticable to secure competition."

Some agencies require written justifications in addition to the determination and findings statement for all proposed noncompetitive procurements. The requesting program office prepares the justification and submits it to a contract review board or a designated procurement official for approval.

Excluding the Federal supply schedule and other GSA contracts, civilian agency procurements in 1975 totaled \$16.4 billion; \$4.7 billion or 29 percent was formally advertised and \$11.7 billion or 71 percent was negotiated. (See apps. I and II.) Statistics on noncompetitive negotiated procurements were not available; however, we developed this information at individual procurement offices.

We selected one procurement office in each of the five agencies reviewed: the Office of Administrative Services, Department of Commerce; the Federal Aviation Administration, Department of Transportation; the Office of Administrative Programs and Services, Department of Labor; the Office of Education, Department of Health, Education, and Welfare; and the Office of Procurement, Department of Housing and Urban Development.

These five procurement offices were selected because of the large amount of money spent on negotiated procurements. In 1975 all procurements for these offices totaled \$306 million.

CHAPTER 2

CIRCUMSTANCES DO NOT JUSTIFY NONCOMPETITIVE

PROCUREMENT

We found that many justifications for noncompetitive procurements were questionable and in most cases adequate planning would have allowed competition.

Competition involves receiving offers from at least two independent firms capable of providing Government requirements. Of the \$248 million in negotiated contracts reported by the five procurement offices, \$158 million or 64 percent was noncompetitively awarded. (See app. II.)

We examined justification documents for 36 noncompetitive contracts totaling \$10.6 million. The program offices' reasons for noncompetitive procurements generally fell into two categories: (1) contractors' unique capabilities and experience and (2) time constraints mandating that only one firm be solicited. We found that a desire to spend funds available at the end of the fiscal year was a factor contributing to noncompetitive procurements. Examples of what we found follow.

UNIQUE CONTRACTOR CAPABILITIES AND EXPERIENCE

Noncompetitive justifications stated in 30 cases that the recommended contractor was uniquely or most qualified or the only firm with the necessary experience to complete the job. The document failed to state if or what other contractors were considered. Program office personnel determined that only one particular contractor could fill their needs. Procurement office personnel ineffectively questioned these justifications.

A management consulting firm was, for example, awarded a noncompetitive contract for \$468,210 to develop an economic planning and analysis model for State and local governments. The justification stated that the contractor possessed unique qualifications and experience to complete the project. Program office personnel recommended a noncompetitive award after informally soliciting and evaluating only one other contractor's proposal.

The justification stated unique qualifications as the reason for a noncompetitive award but did not explain these qualifications or why they were needed. Although the document stated that the contractor had experience in economic research development, survey, and communication skills, we found that other management consulting firms had equivalent experience in these areas.

We contacted four management consulting firms and asked if they would have submitted a proposal for this contract. After reading the statement of requirements, three firms responded that they would have submitted a proposal if they had known about the agency's needs. All the firms stated also that they had the necessary capabilities and cited examples of previous, similar work.

In another case a noncompetitive contract for \$726,980 was justified because of one firm's unique and unmatched experience. An agency official said that he recommended awarding this firm a noncompetitive contract because of the experience of two of its employees. This official said that he knew both persons, having worked with them at another agency. Their experience, according to this official, was an important consideration in selecting the firm for this contract.

In this case the procurement office published the requirement in the "Commerce Business Daily" and two firms inquired --one firm stated that it had performed work in this area. The agency told the firms that an "internal sole-source determination had been made for the requirement and requests for proposals were not available." Thus, firms interested in this procurement were not given the opportunity to compete.

Sole-source determinations are frequently based on program office personnel preference for a particular firm or company rather than the assurance that only one firm can satisfy the agency's needs. However, we believe that generally the market should be tested with a public announcement of requirements and all responding firms considered before making a determination that a particular firm is uniquely qualified.

TIME CONSTRAINTS LIMIT SOLICITATION TO ONE FIRM

For 11 contracts, insufficient time was part of the reasons given for noncompetitive procurements. We believe that many of these procurements could have been awarded competitively without detriment to the project.

For example, responding to legislation enacted on September 2, 1974, an agency head asked that a study be completed by September 2, 1976. Program office personnel contacted two

firms for this procurement and asked if they would be interested in performing the study. One firm responded that it would not be available at the requested time. The program office received a proposal from the second contractor on June 10, 1975. The procurement office received the procurement request from the program office on June 16, 1975--more than 9 months after the law was enacted--with a recommendation for a noncompetitive award. The program office's noncompetitive justification was the time constraint created by the agency head. On September 29, 1975, the procurement office awarded the recommended firm a noncompetitive contract for \$132,630.

In this case there was adequate time to obtain competition because the procurement office chief told us that usually a contract can be awarded competitively 3 months after a request is received. The contract in this example was awarded over 1 year after the law was passed and the requirement established.

In another case an agency needed a communications plan. An agency official said that he had a basic idea of what the project required but needed help in formalizing the plan. He said that he did not want a competitive contract because the work would have to begin by January 1975 and that method would take too long and involve the extra work required in contractor selection procedures.

In November 1974 a program office staff member asked a firm to obtain information from State and local governments and develop a comprehensive plan. The firm submitted the plan in an unsolicited proposal dated January 7, 1975, and stated that work had begun on December 2, 1974. The staff member said that the proposal was good; on January 10, 1975, the procurement office was sent a memorandum requesting a noncompetitive award. The contract was awarded noncompetitively, and its justification stated that a time constraint imposed by a July 1, 1975, statutory mandate required immediate action. A procurement official said that the late request precluded him from seeking other contractors.

Time, in this case, was an invalid reason for a noncompetitive award because the program office staff member was aware of this requirement early enough to have attempted to obtain competition through publication of the requirement in the "Commerce Business Daily," thus providing all interested companies an opportunity to compete.

NONCOMPETITIVE CONTRACTS AWARDED TO SPEND
END-OF-THE-YEAR FUNDS

Funds not obligated by the last day of the fiscal year are returned to the Department of the Treasury. One procurement office awarded on June 30, 1975, six noncompetitive contracts totaling \$965,143. An agency official said that this was done to spend funds available at the end of the fiscal year. This official added that the contracts were not reviewed by the sole-source board because of the time limitation.

In another agency \$4.5 million or 83 percent of the non-competitive contract dollars was awarded in June. The pressure caused by this increased activity during the last quarter of the fiscal year hinders effective performance by the procurement section. Consequently, procurement office personnel often neglect documentation required by Federal and agency procurement regulations. Documents usually missing were determination and findings statements, memorandums of negotiations, and sole-source award justifications.

CHAPTER 3

INFORMAL AGENCY/SUPPLIER RELATIONSHIPS CONTRIBUTE TO NONCOMPETITIVE PROCUREMENTS

Program personnel informal advance discussions with selected firms are conducive to noncompetitive procurements.

Program personnel often need help in developing plans to meet requirements; this assistance comes frequently from an outside firm. They may informally brief a firm on the problem and ask that ideas be submitted in the form of an unsolicited proposal. If a staff member likes the proposal, the procurement office is given a requisition, as well as a justification for a noncompetitive award to that firm. This practice is commonly called wiring a proposal or contract.

In early 1974, for example, an agency head expressed an interest in the nature and extent of economic planning and analysis by State and local governments. During a chance meeting in June, the Deputy Assistant Secretary of the program office discussed the requirement with the president of a management consulting firm. (This firm was considered uniquely qualified as stated on p. 4.) The agency's program office received an unsolicited proposal from the consulting firm on July 15, 1974. In mid-August the program office informed procurement personnel of the requirement and invited them to participate in a discussion of the proposal with the contractor. On the basis of the mid-August meeting, an amended proposal was received on September 15, 1974.

The opportunity for competition was present (see pp. 4 and 5) but only the one firm informally contacted was considered. After evaluating the proposal, agency reviewing officials determined that the contractor was uniquely qualified. The consulting firm was awarded a noncompetitive contract on October 21, 1974, for \$468,210.

On January 31, 1975, the contractor requested and received a \$6,150 payment for work performed before the contract was awarded. The early expenditure indicates that the contractor was reasonably confident of a contract award.

In another case the Bicentennial Executive Director of an agency decided to have a film produced for the Bicentennial, and on June 20, 1974, he submitted a request for a noncompe-

titive award to the agency's contract review board. In addition to the formal request, the Director sent a memo to the board stating that the Under Secretary had already given his approval for the noncompetitive award. The board approved the request the next day. The Director told us that he selected the contractor because of its background in certain films, and he believed it to be most qualified to produce the film.

Subsequently, on February 21, 1975, the procurement office published the requirement in the "Commerce Business Daily," and six firms indicated an interest in submitting a proposal. The procurement office responded by letter that "it was determined to negotiate the contract on a sole-source basis." On March 15, 1975, a firm-fixed-price contract for \$175,000 was awarded to the firm the Director recommended.

"COMMERCE BUSINESS DAILY" NOT USED TO NOTIFY
THE PUBLIC OF PLANNED PROCUREMENT

Federal Procurement Regulations generally require that proposed civilian agency procurements over \$5,000^{1/} be publicized in the "Commerce Business Daily" to give industry information on current Government contracting and subcontracting opportunities and increase competition.

FPR requires agencies to publicize proposed procurements 10 calendar days before making a request for proposals. If this is infeasible, the synopsis should arrive at the offices of the "Commerce Business Daily" not later than the issue date of the request for proposals.

We found that 20 of the 36 selected procurements were not publicized in the "Commerce Business Daily" before contract award. Since a procurement office normally initiates publication action after receiving a requisition, there would be little reason, except for subcontracting purposes, to notify the public when the requisition includes a justification for noncompetitive procurement. Thus, under current procedures, a noncompetitive procurement planned by an agency program office has little chance of being challenged by anyone outside the agency. Moreover, when the procurement office does publicize the proposed procurement, such action is wasted if informal negotiations have already been conducted and a decision has been made to award a particular firm the contract.

We believe that civilian agencies should be required to publish all proposed procurements of \$5,000 or more in the "Commerce Business Daily" when the program offices become aware of them and before sole-source approval.

^{1/}The Congress is considering legislation to increase this amount to \$10,000.

CHAPTER 4

PRESENT CONTROLS OVER NONCOMPETITIVE AWARDS

ARE INEFFECTIVE

The high percentage of negotiated procurement dollars awarded noncompetitively and the high incidence of questionable justifications for the awards identified in 1975 suggests that agency review boards or other officials responsible for minimizing such procurements are performing ineffectively.

Civilian agencies have issued various regulations requiring prior approval of noncompetitive procurements. Certain agency officials are authorized to approve noncompetitive procurements, and depending on the agency, these officials may be assisted by a contract review board.

Three of the five agencies we selected had contract review boards. In these agencies the program office submits procurement requests to the contract review board with justifications for sole-source determinations. The board, composed of three to five senior level members, reviews the justifications and makes a decision on the requests for sole-source procurements.

The board must review all noncompetitive requests over a specified amount. One agency's regulations state that noncompetitive requests over \$10,000 are subject to review by the contract review board, while in another agency only noncompetitive procurements over \$100,000 are reviewed. Noncompetitive requests below the amount specified for board review are approved by designated officials.

Other agencies without established contract review boards require that all requests for noncompetitive actions be reviewed by designated officials. These officials can approve noncompetitive procurements usually up to a specified amount decided by the agency head.

In 1975, 53 percent of all negotiated procurement dollars for three of the five selected agencies was noncompetitive. These agencies had contract review boards. The other two agencies awarded 68 percent of their 1975 negotiated procurement dollars noncompetitively. These figures indicate that boards are helpful, but they are not as effective as they could be.

Procurement officials responsible for approving sole-source requests are not verifying whether competition was possible. One procurement official said that he was aware of his responsibility to seek more than one contractor but considered it a waste of time. Another procurement official said that his office was usually given very little time to award contracts.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The Congress has historically required that Government purchases of goods and services be accomplished using full and free competition to the maximum extent practicable. Offering all qualified contractors the opportunity to compete helps to minimize favoritism and collusion and provides greater assurance that acceptable supplies and services are obtained at the lowest prices.

We found that many noncompetitive procurements were unjustified because agency personnel

- concluded, without seeking other firms, that only one had sufficient capability and experience to do the job;
- placed unjustified time constraints on procurement offices to award contracts without competition;
- awarded noncompetitive contracts to spend funds available at the end of the fiscal year because if not spent quickly, the funds would be returned to the Department of the Treasury;
- solicited contractors before notifying the procurement offices of their requirements; and
- failed to publish their requirements in the "Commerce Business Daily" before awarding contracts.

We found also that agency officials responsible for approving noncompetitive procurements were frequently ineffective in questioning the justifications for such procurements.

Although this review was restricted to five procurement offices in five agencies, we believe that the procurement weaknesses identified in this report may exist in other civilian agencies. In 1975 all procurements for civilian agencies as reported to the General Services Administration (excluding the Federal supply schedule and other GSA contracts) was \$16.4 billion; \$11.7 billion or 71 percent was negotiated. (Statistics on civilian agencies' noncompetitive negotiated procurements were not available.) We believe that the high percentage of negotiated contracts being awarded warrants ad-

ditional safeguards to insure full and free competition. The Office of Federal Procurement Policy agreed to bring our findings to the attention of other agencies.

RECOMMENDATIONS

We recommend that the Secretaries of Transportation; Commerce; Housing and Urban Development; Labor; and Health, Education, and Welfare take actions to minimize noncompetitive procurements. They should (1) eliminate the conditions cited in this report if they are applicable to their procurement offices, (2) require that procurement offices be notified as soon as requirements become known to maximize the time available to obtain solicitations, (3) permit only authorized contracting officials to solicit proposals, and (4) require each procurement office to:

- Publicize all proposed procurements of \$5,000 or more in the "Commerce Business Daily" as soon as program offices know of requirements and before sole-source approvals. The public announcement should state the capabilities and experience required for the job.
- Prepare written justifications for all noncompetitive procurements over \$10,000 and include, if applicable (a) a description of efforts to find other firms and the circumstances making competition infeasible, (b) reasons why only one contractor has the capability and experience required, (c) delivery deadlines that only the recommended contractor can meet and an explanation of the urgency, (d) a description of the work and costs for another contractor to complete the agency's requirements, and (e) provisions made or planned to insure competition in the future.
- Prepare and submit to top management annual reports on all noncompetitive procurements over \$10,000. Reports should include reasons for noncompetitive awards and identify procurements that place time constraints on awarding contracts.

We recommend also that the Administrator, Office of Federal Procurement Policy, take steps to insure that adequate and uniform regulations are developed to enable all Federal agencies to comply with the national policy to obtain competition whenever possible.

MATTER FOR THE CONSIDERATION OF THE CONGRESS

We suggest also that the congressional appropriations and oversight committees require all Federal agencies to provide annual statistics on noncompetitive procurements and information on actions taken to increase competitive procurements. The Department of Defense currently discloses such information.

AGENCIES' COMMENTS AND OUR EVALUATION

We provided copies of the draft report to the agencies reviewed, GSA, and the Office of Federal Procurement Policy. (See apps. III to IX.) With some exceptions or comments, all agencies generally agreed with our report. Excerpts from agency responses and our evaluation follow.

Department of Commerce

The Department indicated that it was aware of excessive noncompetitive procurements. The Department reported that in 1976 noncompetitive procurements decreased to 27 percent of procurement dollars.

Department of Health, Education, and Welfare

The Department acknowledged that the conditions described are common and stated that its regulations cover virtually all issues raised in our report. The Department believes that its internal procurement management review program, which is supported by top management, will be most useful in reducing noncompetitive procurements.

The Department did not agree fully with our recommendation to give top management annual data on noncompetitive procurements over \$10,000 and said that statistics alone are not a true measure of effective competition.

We agree that regulations or statistics alone will not necessarily correct the conditions described. However, we believe that an informed top management, aware of the need to limit noncompetitive procurements, would be more likely to make that method the exception rather than the rule. Such a commitment was expressed in the Department's response and recently, publicly endorsed by the Secretary.

Department of Housing and Urban Development

The Department agreed with our description of conditions in the agencies reviewed and has taken actions to improve its

regulations. Concern was expressed about publishing all proposed procurements over \$5,000 in the "Commerce Business Daily." The Department believes that sometimes urgent procurements will occur and preempt such a requirement.

There may be times when it is impracticable to obtain competition. In many cases, however, we found that the conditions on which noncompetitive procurements were justified did not exist or resulted from poor planning.

Department of Transportation

The Department of Transportation generally concurred with the concepts of our report. The Department, however, took exception to the specifics discussed below.

--The terms "negotiated procurement" and "noncompetitive procurement" were freely interchanged implying all negotiated procurement is noncompetitive, and GAO incorrectly interpreted the Federal Procurement Regulation as requiring solicitations from the maximum number of contractors.

We were very careful to properly use the terms "negotiated" with "noncompetitive" procurement. Also, we fully endorse the use of negotiated competitive procurement as an alternative to achieve competition when formal advertising is not possible.

We agree that the regulations are proper and realistic in stating competition should be obtained "to the maximum practicable extent."

--The statistics unfairly compare noncompetitive procurements to total negotiated procurements without showing an appropriate number of awards the Department formally advertised and are also competitive.

We agree that the Department has an exceptionally high percentage of formally advertised procurements; this is commendable. However, we restricted this review to noncompetitive procurements--a form of negotiated procurement. We were concerned with the question: If formal advertising is infeasible and negotiated procurements can be justified by statutory exception, how much is competitive and what can be done to increase it?

--The report does not acknowledge the advantage of achieving more favorable prices and terms by negotiating with a sole-source.

The Department apparently believes that more favorable prices can be obtained by sole-source procurement. We disagree, and the statutes clearly require that noncompetitive or sole-source procurement be the exception. All studies of which we are aware and which deal with the effect of introducing effective price competition into a procurement situation conclude that prices are lowered by such competition.

--GAO's rationale for excluding small business set-asides is questionable since these procurements should be considered competitive.

As mentioned previously, our review was concerned with noncompetitive negotiated procurements, and we believe that the best measure of their frequency is to compare them to total negotiated noncompetitive and competitive procurements. Although the FPR indicates that the authority to conduct set-asides comes from the statute authorizing the use of negotiation, they may be conducted in the same manner as formal advertising. Thus, we believe that the classification of these awards as negotiated procurements could result in misleading conclusions on how well agencies seek to reduce noncompetitive procurements.

Department of Labor

The Department of Labor agreed with this report. By examining Department procurement offices we did not review, it found that \$65.9 million in contracts or 30 percent was noncompetitively awarded. It is taking actions to revise and strengthen its regulations.

GSA

GSA agreed with our findings but did not offer further comments or suggestions for reducing noncompetitive procurements.

Office of Federal Procurement Policy

The Office of Federal Procurement Policy believes that adequate and uniform regulations exist. However, FPR does not provide for prior higher level review of noncompetitive procurements as does the Armed Services Procurement Regulation. The Office added that improved agency management is needed, and it plans to bring this to the agencies' attention.

We believe that the Office's intention to pursue this matter with agency management is constructive.

CHAPTER 6

SCOPE OF REVIEW

We examined a sample of contracts awarded noncompetitively in 1975 to determine the reasons for that method of procurement. We reviewed also supporting documentation and discussed each procurement with the requesting office. We selected 36 contracts totaling \$10,615,809 from five procurement offices in five civilian agencies for a detailed review. Procurement offices selected were the Office of Administrative Services, Department of Commerce; the Office of Procurement, Department of Housing and Urban Development; the Federal Aviation Administration, Department of Transportation; the Office of Administrative Programs and Services, Department of Labor; and the Office of Education, Department of Health, Education, and Welfare. These agencies were selected because they are major agencies and required to use the Federal Procurement Regulations.

We sought to determine

- the extent of and justification for noncompetitive awards,
- managerial controls to minimize noncompetitive procurements, and
- improvements needed to increase competition in Government procurement.

To determine if managerial controls over noncompetitive procurements were adequate, we reviewed agency procurement procedures and practices and regulations regarding sole-source procurements. We reviewed also the minutes of the contract review boards.

CIVILIAN AGENCIES' PROCUREMENTS IN 1975 (note a)

<u>Agency</u>	<u>Total</u>
	(000 omitted)
Executive Office of the President:	
Office of Management and Budget	\$ 3,238
Office of Telecommunications Policy	1,057
Department of:	
Agriculture	318,910
Commerce	272,516
Health, Education, and Welfare	2,054,666
Housing and Urban Development	264,931
The Interior	1,115,979
Justice	173,810
Labor	117,959
State	26,075
Transportation	751,324
The Treasury	278,649
Administrations:	
Community Services	6,409
Energy Research and Development	2,486,787
Farm Credit	398
General Services	1,402,590
National Aeronautics and Space	2,845,458
National Credit Union	1,034
Small Business	12,189
Veterans	990,405

a/Data taken from GSA fiscal year 1975 procurement reports.

<u>Agency</u>	<u>Total</u>
	(000 omitted)
Agencies:	
Action	\$ 9,209
Agency for International Development	244,106
Environmental Protection Agency	199,501
United States Information Agency	22,632
U.S. Arms Control and Disarmament Agency	1,119
Boards:	
Civil Aeronautics	1,404
Federal Home Loan Bank	2,609
National Labor Relations	5,588
National Mediation	4
U.S. Railroad Retirement	1,979
Commissions:	
American Battle Monuments	54
Federal Communications	4,091
Federal Power	1,599
Federal Trade	3,180
Indian Claims	46
International Boundary and Water	11,583
Interstate Commerce	3,265
National Capital Planning	154
Securities and Exchange	3,555
United States Civil Service	12,268
United States International Trade	461
Other independent establishments:	
Export-Import Bank of Washington	733
Federal Mediation and Conciliation Service	517,095
National Science Foundation	90,844

<u>Agency</u>	<u>Total</u>
	(000 omitted)
Panama Canal Company	\$ 56,244
Selective Service System	654
Smithsonian Institution	44,495
Tennessee Valley Authority	4,115,024
National Gallery of Art	<u>441</u>
Total	18,479,158
Less interagency procurement	2,140,137
Total procurement from outside sources	<u>\$16,339,021</u>

BREAKDOWN OF PROCUREMENT DOLLARS SPENT IN 1975

Agency and procurement office	Total procurement	Formally advertised	Total negotiated	Competitive	Noncompetitive	Percent of noncompetitive to total negotiated
Commerce: Office of Administrative Services	b/\$99,941	\$4,276	b/\$5,665	\$17,500	\$78,165	82
Transportation: Federal Aviation Administration	a/87,078	47,518	a/39,560	10,705	28,855	73
Labor: Office of Administrative Programs and Services	a/18,358	6,292	a/12,066	6,706	5,360	44
Health, Education, and Welfare: Office of Education	a/77,324	180	a/77,144	43,719	33,425	43
Housing and Urban Development: Office of Procurement	24,045	88	23,957	10,997	12,960	54
	\$306,746	\$58,354	\$248,392	\$89,627	\$158,766	64

a/Figures exclude minority awards, small business set-asides, and interagency agreements.
 b/Figures include minority awards and small business set-asides but exclude small purchases and interagency agreements.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
 Washington, D.C. 20230

MAY 2 1977

Mr. Henry Eschwege, Director
 Community and Economic Development Division
 United States General Accounting Office
 Washington, D.C. 20548

Dear Mr. Eschwege:

The Department of Commerce agrees with the intent of your February 1977 Draft Report to the Congress of the United States entitled "Competition for Negotiated Government Procurement Can, and Should, Be Improved (B-160725)."

The Department's Office of Administrative Services and Procurement (OAS&P) became acutely aware of its own excessive non-competitive procurement early in 1974, and has been working vigorously to increase competition in procurement ever since. Your report shows that non-competitive actions represented 82% of negotiated OAS&P procurement in calendar year 1975. However, diligent efforts of our procurement staff together with strengthened Departmental policy helped to reduce the non-competitive proportion of negotiated procurement to 27% for calendar year 1976 (see enclosure). Of course, we expect the competitive ratio to continue to improve. You may wish to reflect this more current data in your proposed report.

The recommendations in your report have provided us additional ideas for further improvements, and we are already beginning to develop these ideas for implementation. In fact, we concur with all of your proposed recommendations notwithstanding the following comment:

You recommend that procuring offices be required to publicize all proposed procurements over \$5,000 "at the time the requirement is known by the Program Office." While immediate publicity should be an optimum goal, there are often factors involved in particular requirements which would make this impracticable. It would probably be a more workable policy to require program and/or project officials to coordinate their requirements with the procuring office immediately upon reaching that stage in

planning when a general "scope" or description of work can be developed. The procurement office could then be required to publicize all procurements over \$5,000 at the time the requirement description is received from the program or project office.

Questions may be referred to Mr. Donald B. Moore, Director, Office of Administrative Services and Procurement at 377-4501.

We appreciate the opportunity to comment on this proposed report.

Sincerely,



Elsa A. Porter
Assistant Secretary-designate for
Administration

Enclosure

BREAKDOWN OF PROCUREMENT DOLLARS SPENT DURING CALENDAR
YEAR 1976
 (000 Omitted)

<u>AGENCY AND PROCUREMENT OFFICE</u>	<u>1/</u> <u>TOTAL</u> <u>PROCUREMENT</u>	<u>FORMALLY</u> <u>ADVERTISED</u>	<u>1/</u> <u>TOTAL</u> <u>NEGOTIATED</u>	<u>NON-</u> <u>COMPETITIVE</u>	<u>PERCENT</u> <u>NON-</u> <u>COMPETITIVE</u>
<u>Commerce</u>					
Office of Administrative Services	151,032	5,045	145,987	40,114	27

1/ Figures include minority awards and small business set-asides and exclude small purchases and interagency agreements.

Enclosure



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

APR 19 1977

Mr. Gregory Ahart
Director, Human Resources Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Competition for Negotiated Government Procurement Can, and Should, Be Improved." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Thomas D. Morris
Inspector General

Enclosure

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE COMMENTS ON THE GENERAL ACCOUNTING OFFICE'S DRAFT REPORT, "COMPETITION FOR NEGOTIATED GOVERNMENT PROCUREMENT CAN, AND SHOULD, BE IMPROVED."

General Comments

The report does not include agency by agency identification of the locale of the procurement deficiencies described. Nevertheless, the deficiencies are, we believe, rather common in Government procurement, and we are committed to the objective of improving competition within this Department in particular. However, we do not believe that the recommendations in themselves will remedy the situation. The problem is not, for instance, one of inadequate regulations. HEW has regulations covering virtually all issues raised in the report and we consider our Noncompetitive Procurement Regulation to be more stringent than the recommendations contained in the report. Nor is it one of providing statistics - our own reviews have shown that statistics on noncompetitive procurements, as recommended by your draft report, are not accurate indicators of the true extent of competition. We have found that some units use "competitive procurement methods" for the purpose of complying with the policy of maximizing competition without creating effective competition.

This Department has an active procurement management review program conducted by the Office of Grants and Procurement Management and we have identified the matters discussed in the ~~GAO report within various other~~ components of HEW as well as in the Office of Education. It is through this review program, supported by top management, that we hope to achieve improved procurement practices in this Department, including full and free competition to the maximum extent feasible.

GAO Recommendation

That the Secretary of Health, Education, and Welfare determine whether conditions cited in this report exist in the Department's other procurement offices in addition to the Office of Education.

Department Comment

We have determined that the conditions cited exist within various other components of HEW.

GAO Recommendation

That program personnel notify the procurement office when requirements become known to provide adequate time in obtaining competition.

Department Comment

We concur. HEWPR 3-3.5002 states in part that "for each project, as soon as it appears likely there will be a procurement, the program office will notify the appropriate procurement office of the anticipated procurement." The purpose of this requirement is to enable timely and comprehensive planning and timely initiation of the request for contract. Sole source awards based on last minute decisions can be avoided with proper coordination and cooperation between program and contract offices. HEWPR 3-1.452-1(b) prescribes that personnel responsible for making decisions to buy should inform procurement staff of contemplated actions as soon as they are known. This will result in better planning and more timely, efficient and economical procurement.

GAO Recommendation

That the Department permit only authorized contracting officials to solicit proposals.

Department Comment

We concur. HEWPR 3-1.452-1 (c) prescribes that "personnel not delegated contracting authority may not commit the Government, formally or informally to any type of contractual obligation." Paragraph (a) of the same regulation indicates that the "responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the procurement activity, the contracting officer in particular."

GAO Recommendation

That the Department require each of its procuring offices to publicize all proposed procurement, \$5,000 and over in the "Commerce Business Daily" at the time the requirement is known by the program office and prior to sole-source approval (the publication should state the capabilities and experience required for the contract effort).

Department Comment

Prior to receipt of the draft GAO report, the Department revised HEWPR 3-3.802-50 (Noncompetitive Procurements), because it was felt that procedures to test the market were inherently uncondusive to transforming noncompetitive procurements into competitive ones in doubtful cases. The present amended regulation requires that, where testing of the market is appropriate, a synopsis be published for this

purpose before any determination is made that sole-source procurement is necessary. The synopsis to be used is a sources sought or field of interest synopsis, which informs potential offerors of the Department's need and invites them to notify the Department of their interest by providing information about their ability to furnish the required services or supplies. With the aid of such information the Department will, it is expected, be able to judge more accurately whether more than one source is in fact available.

GAO Recommendation

That the Department require each of its procuring offices to prepare a written justification for noncompetitive procurements over \$10,000 and include if applicable:

- (a) a description of actions taken to find other sources and the circumstances which make competition not feasible,
- (b) reasons why the capability and experience possessed by only one source is required,
- (c) delivery deadlines that only the recommended source is able to meet and an explanation of the urgency,
- (d) a description of the additional work and cost needed by another contractor to complete the Agency's current requirements, and
- (e) provisions to ensure competition in the future.

Department Comment

The revisions to HEWPR 3-3.802-50 published in January 1977 as regulation, strengthen the criteria for noncompetitive procurements, require a testing of the market place as described previously under certain conditions, establish approved levels for noncompetitive procurements and introduce the total package buy concept. Basically, this policy goes beyond the recommendations covered in the GAO report, especially as it relates to the total project buy concept, which enables procurement personnel and reviewing officials to know at the outset what actions are contemplated for the life of the project. For small purchases over \$500, but not over \$10,000 the justification must nonetheless address the criteria and appear within the requisition or request for contract.

GAO Recommendation

That the Department prepare and submit to top management an annual procurement report of all noncompetitive procurements over \$10,000. Reports should include reasons for noncompetitive awards and identify procurements that put time constraints on the award of contracts.

Department Comment

All procurements of over \$10,000 in amount are reported periodically, generally approximately monthly, to the Office of Grants and Procurement Management, which serves as the Secretary's manager for procurement. The reports identify noncompetitive procurements, i.e., those that are made on a sole-source basis or on unsolicited proposals. They also cite the negotiation authority section of the Federal Procurement Regulations. Reviews by OGPM of procuring activities include examination of the use of sole-source procurement in the offices involved including appropriate examination of selected action. In addition, sole-source procurements may be protested to the General Accounting Office or the Secretary by organizations that believe that they should have been invited to submit proposals. We believe that actions by HEW to limit sole-source procurement to cases of necessity represent sound method. The GAO draft report does not indicate what purpose would be served by requiring annual reports of all noncompetitive procurements over \$10,000 including reasons and identification of those involving time constraints. Therefore, while not negating the possible utility of such reports as part of an overall procurement management program, we do not agree with the particular recommendation as stated.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION

May 9, 1977

IN REPLY REFER TO:

Mr. Henry Eschwege
Director, Community and Economic
Development Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

The Secretary has referred your draft report entitled "Competition for Negotiated Government Procurement Can, and Should, Be Improved" to this office for reply.

At the outset, let me say that this office is in full agreement with the intent of this report. We support any endeavor to reduce the volume of noncompetitive procurement within the Department. We have vigorously addressed this issue with the publication of the HUD Procurement Regulations in December 1976. These regulations are excerpted, in pertinent part below, where the recommendations contained in the report are discussed.

First, the general conditions outlined in the report do exist in the Department since HUD was one of the agencies reviewed.

The second recommendation speaks of the procurement planning process. We agree with the concept of advance identification of requirements to the procurement office. However, there are situations where needs arise in response to unplanned or immediate program demands. Documentation justifying these short leadtime requirements is required by the HUD Procurement Regulations as stated at Section 24-3.101-50(c), Justification.

- "(ii) If time is of the essence, the experience, capabilities, or facilities the proposed Contractor possesses which would enable him to complete the requirement within the time frame while others would fail."

The third recommendation concerns authority to solicit proposals. This authority clearly rests with the procurement officials. There have been instances in the past when program officials have solicited proposals. We plan to minimize these situations in the future by educating program officials on the limits of their duties and responsibilities.

The remaining recommendations place specific duties and responsibilities on the procuring activity. We support the basic concept of publishing all proposed sole source procurements over \$5,000 in the Commerce Business Daily prior to sole source approval. However, there may be occasions when time is such a critical factor that such a procedure would be impossible to follow. These rare instances would occur when the success of a program would be jeopardized if immediate action were not taken. Any new requirement such as you recommend would have to allow for such occurrences.

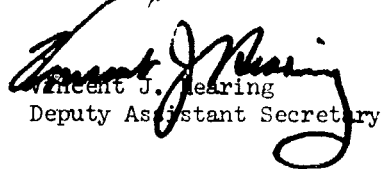
At present, the justification required in support of any proposed noncompetitive procurement over \$10,000 is spelled out in the HUD Procurement Regulations. This justification requires the same information which you are recommending in your report. A copy of this subpart is enclosed for your reference.

We endorse your last recommendation that an annual report of noncompetitive procurement over \$10,000 be prepared. We would submit such a report in HUD to the Secretary and Under Secretary. It would serve to bring directly to their attention the progress being made in the reduction of noncompetitive procurements.

In summary, this office supports any effort to reduce the number of noncompetitive procurements. We look to the Office of Federal Procurement Policy to refine existing procedures and regulatory guidance to further the objective of obtaining competition wherever practicable. It is our intention to continue to support this within the Department and welcome the opportunity to provide whatever assistance is needed by your office in the future.

We appreciate the opportunity to respond and are hopeful that these comments are of assistance.

Sincerely,


Vincent J. Hearing
Deputy Assistant Secretary

Enclosure



ASSISTANT SECRETARY

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 23, 1977

Mr. Henry Eschwege
Director
Community and Economic Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your letter of March 2, 1977, requesting comments on the General Accounting Office draft report entitled "Competition for Negotiated Government Procurement Can, and Should, Be Improved." We have reviewed the report in detail and prepared a Department of Transportation reply.

Two copies of the report are enclosed.

Sincerely,

A handwritten signature in black ink that reads "Edward W. Scott, Jr." with a period at the end.

Edward W. Scott, Jr.
Assistant Secretary
for Administration

Enclosures (2)

DEPARTMENT OF TRANSPORTATION REPLY
TO
GAO DRAFT REPORT OF FEBRUARY 1977

COMPETITION FOR NEGOTIATED GOVERNMENT PROCUREMENT
CAN, AND SHOULD, BE IMPROVED

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

GAO, through an examination of contracts of five procurement offices within five Departments--DOT, Commerce, Labor, HEW, and HUD--concluded that many noncompetitive procurements were not justified. The report cites five types of department shortcomings contributing to GAO's findings of unjustified noncompetitive procurement:

- assumptions that, without seeking other sources, only one source could perform the work;
- unjustified time constraints placed upon the procurement office;
- award of noncompetitive contracts primarily to expend funds still available at year end;
- informal solicitation by technical personnel of contractors before notifying the procurement office of the requirement; and
- failure to publish requirements in the Commerce Business Daily prior to award.

GAO recommends that Agency heads take action to minimize non-competitive procurements. Agency heads should determine if conditions, as cited in the report, exist within procurement offices which were not included in the review; ensure that agency personnel notify the procurement office when requirements become known, so that adequate time is provided to obtain competition; and permit only authorized contracting officials to solicit proposals.

GAO also recommends that procurement offices publicize all proposed procurements \$5,000 and over in the Commerce Business Daily as soon as the requirement is known, and, in any case, prior to sole source approval; prepare written justification for all non-competitive procurements over \$10,000; and prepare and submit to top management an annual report of all noncompetitive procurement over \$10,000. In addition, the Office of Federal Procurement Policy should take steps "...to assure that adequate and uniform regulations are developed to enable all Federal agencies to comply with the national policy to obtain competition whenever practicable." GAO also suggests that Congressional appropriations and oversight committees consider requiring Federal agencies to provide annual statistics on noncompetitive procurements and information on steps taken to increase the number of competitive procurements.

DOT POSITION STATEMENT

For the most part, this Department concurs in the concepts set forth in the draft report. The report does, however, contain several misconceptions and inaccuracies. This Department believes that it has adequate procedures for controlling the use of noncompetitive contracts. It is suggested that the following clarifications be made before the final report is completed.

- . The discussion of negotiated contracts on page ii of the Digest implies that negotiation as a method of procurement is not competitive. While it is true that formal advertising is preferred to negotiation where firm specifications, adequate time, and two or more suppliers are available, and where award can be made on the basis of price, negotiation is by no means noncompetitive. We do not accept your dismissal of the significance of procurement statistics with regard to negotiated competitive and noncompetitive awards. This Department does maintain such data in our DOT Contract Information System and has provided such information to GAO in the past. Throughout the Digest and Chapter I of the report, the terms "negotiated" and "noncompetitive" are freely and incorrectly substituted for one another, drawing the reader to conclude that negotiation, per se, is the cause of poor procurement planning or practices. The merits of negotiation as a method of procurement, even when appropriately used, are apparently misunderstood by many members of Congress and other high officials. This misunderstanding complicates procurement management throughout the Federal establishment. We agree that the Office of Federal Procurement Policy should take steps to insure that adequate policy guidance is promulgated with respect to obtaining competition.
- . The report is also inaccurate with respect to the discussion of Subpart 1-1.3 of the Federal Procurement Regulations (FPR). The FPR does not state, as GAO claims, that proposals for providing property or services "...shall be solicited from the maximum number of qualified sources." What the Federal Procurement Regulations do state, in section 1-1.301-1, is that "All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent..." and in 1-1.302-1 (b) "...competitive

offers...shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to ensure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned." We believe the present FPR regulation is proper and realistic.

Data on noncompetitive procurements over \$10,000, such as you suggest reporting to top management, is already available through the DOT Contract Information System. All Federal agencies will shortly come under the aegis of the Federal Procurement Data System, which will also contain such information. Further, documented justification for each noncompetitive transaction is already required by DOT regulations. DOT management is already aware of sole source actions above \$25,000 because of the requirements set forth in a DOT order designed to control the use of such techniques. A special report is not considered necessary because of these existing controls.

The DOT believes that the information contained in Appendix II, concerning negotiated procurements of the Federal Aviation Administration (FAA) during calendar year 1975, should be clarified. The data for FAA is misleading in that the 73 percent figure represents the ratio of noncompetitive negotiated awards to all negotiated awards. We believe that an accurate representation of non-competitive awards would be their dollar value in proportion to all awards, both negotiated and advertised, in which case the 73 percent figure would drop to 33 percent. The report also does not acknowledge the advantage of achieving more favorable prices and terms by negotiating with a sole source. Moreover, the figures shown pertain only to the Washington office, just one of 14 procurement activities in the FAA. Our analysis of total FAA negotiated procurements for calendar year 1975 (see attachment) shows that agencywide 75 percent were made on a competitive basis, 67 and 84 percent in Washington and the field, respectively. When small business set-aside procurements are included, these percentages increase to 80, 68, and 90, respectively. In addition, percentages based upon dollar values of procurements do not accurately

reflect the relatively low number of noncompetitive negotiated procurements (only 67 in the Washington office). The Washington office normally has the majority of FAA noncompetitive procurements because it buys to meet the requirements of expanded major systems. Such procurements which are made pursuant to 41 U.S.C. 252(c)(13) (Technical Equipment Requiring Standardization and Interchangeability of Parts) are documented to show the savings resulting from noncompetitive procurements for this reason.

The Department believes in securing competition for its procurements to the fullest practicable extent. We feel that DOT procurement offices do follow this concept, both in theory and practice, and that their noncompetitive procurements are well documented and justified. However, DOT will be glad to assist the Office of Federal Procurement Policy in developing uniform regulations on the subject, should that recommendation be accepted by the executive branch.

/s/ WILLIAM P. DAVIS

Deputy Assistant Secretary
for Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION
WASHINGTON, D.C. 20210



2 MAY 1977

Mr. Gregory Ahart
Director
Division of Human Resources
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

We appreciate the opportunity to review and comment on the General Accounting Office (GAO) report to the Congress concerning the excessive use of noncompetitive procurements within the Government. The report clearly demonstrates that Federal agencies apparently do circumvent the competitive process. The Department of Labor (DOL) concurs with GAO's conclusion that "Government Procurements Can, and Should, Be Improved."

The Department of Labor intends to fully adopt the recommendations delineated in the report. In fact, certain of the recommendations are currently being implemented through existing policies and procedures.

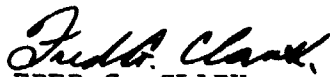
For example, the Department of Labor Procurement Regulations (DOLPR) require that procurement officials question procurements which "appear to be solicited from an unreasonably small number of suppliers" and that all procurements in excess of \$5,000 be advertised in the Commerce Business Daily in accordance with Federal Procurement Regulations (FPR) (41 CFR 1-1.1003). In addition, a proposed revision of DOLPR (enclosure 1), which is being transmitted to the Federal Register for publication, defines specific requirements of the DOL procurement management program. This program which has been in effect since 1974, has recently been amended to close loopholes which became apparent in its operation. The program requires submission of annual advance procurement plans and prior review and approval of proposed sole source procurements above given dollar amounts. The program is covered in Department of Labor Manual Series (DLMS) - 2, Chapter 830 (enclosure 2).

A survey of the Division of Procurement within the Office of Administrative Programs and Services (the office reviewed by GAO) indicates that, during Fiscal Year 1976, and the transitional period that office issued 139 noncompetitive contract and modification awards with a total amount of \$5.6 million. This amount represents approximately 17% of the 32.6 million procurement dollars for that office.

We have also made a brief survey of the other procurement offices within the Department of Labor. This survey indicates that out of 180.2 million procurement dollars, \$65.9 million or 30% was for awards without competition.

We believe that with the insertion in DOLPR of regulations relating to sole source procurement, the strengthening of instructions and effective monitoring of sole source procurements, the Department of Labor will be able to achieve maximum competition in its procurement operations.

Sincerely,



FRED G. CLARK
Assistant Secretary for
Administration and Management

Enclosures

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



April 26, 1977

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

Your letter of March 2, 1977, invites comments from the General Services Administration with regard to GAO draft report entitled "Competition for Negotiated Government Procurement: Can, and Should, be Improved" (B-160725), February 1977.

We have reviewed the draft report and are in agreement with its contents. We do not have any further comments or suggestions.

We appreciate being given the opportunity to review the draft report.

Sincerely,

A handwritten signature in cursive script that reads "Robert T. Griffin".

Robert T. Griffin
Acting Administrator



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

MAY 12 1977

Mr. R. W. Gutmann
Director, Procurement and
Systems Acquisition Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Gutmann:

This is in response to your letter of March 2, 1977, requesting comments on a draft of your proposed report entitled "Competition for Negotiated Government Procurement Can, and Should, Be Improved."

Your report, based upon a review of 36 noncompetitive contract awards in five procurement offices, each in a different civilian agency, discusses numerous cases of inadequately documented or apparently unjustified determinations that only one source was available for the materials or services involved. In addition to a number of recommendations for improved procedures within the agencies, you recommend that the Office of Federal Procurement Policy "take steps to assure that adequate and uniform regulations are developed to enable all Federal agencies to comply with the national policy to obtain competition wherever practicable." Our comments address this recommendation.

Section 1-3.101(d) of the Federal Procurement Regulations provides as follows:

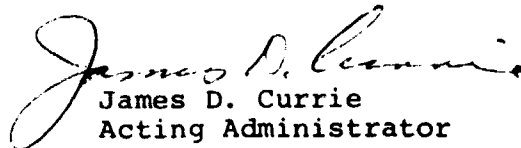
"Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the procuring activity is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action shall include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive procurements."

Section 3-101(d) of the Armed Services Procurement Regulation has an identical provision, with the further requirement that "contracts in excess of \$10,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance."

We believe that these existing directives establish adequate requirements for justifying and minimizing noncompetitive procurements, except that the Federal Procurement Regulations might be modified to include a requirement for prior higher level review of noncompetitive procurements such as contained in the Armed Services Procurement Regulation. We shall initiate action to make the two regulations uniform in this respect.

Although the existing regulations are otherwise adequate, it is clear that they are sometimes not followed, and that, in some cases, improved agency management attention is warranted. We look forward to issuance of your final report, which we plan to use to bring these problems to the attention of agency management. We are pleased to have had the opportunity to furnish you these comments.

Sincerely,


James D. Currie
Acting Administrator