

DOCUMENT RESUME

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[Use of Advertised and Negotiated Contracts for Construction and Major Repair and Alterations]. LCD-78-323; B-95136. July 6, 1978. 2 pp. + 2 enclosures (13 pp.).

Report to Sen. Charles H. Percy, Ranking Minority Member, Senate Committee on Governmental Affairs: Permanent Subcommittee on Investigations; by Robert G. Rothwell (for Fred J. Shafer, Director, Logistics and Communications Div.).

Issue Area: Federal Procurement of Goods and Services: Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904); Federal Procurement of Goods and Services (1900).

Contact: Logistics and Communications Div.

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Organization Concerned: General Services Administration.

Congressional Relevance: Senate Committee on Governmental Affairs: Permanent Subcommittee on Investigations. Sen. Charles H. Percy.

Authority: Small Business Act. Federal Property and Administrative Services Act of 1949. =41 C.F.R. 1.

A statistical analysis of the General Services Administration's (GSA's) use of advertised and negotiated contracts for new construction and major repairs and alterations indicated that restricted competition may preclude assurance that awards are made at reasonable prices. There appears to be too high a proportion of negotiated contracts, overly liberal interpretations of public exigency to justify negotiation, and little or no competition for many advertised and negotiated awards. Although conclusive determinations could not be made of procurement methods in individual cases, indicators of serious inadequacies are being reported to the Administrator of General Services. Suggestions are being made that his recently formed task force on activities most susceptible to criminal abuse consider information supplied by GAO, and that they investigate specifically the sufficiency of competition in the Public Building Service's construction and repair and alteration contract work. (Author/HTW)

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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

LOGISTICS AND COMMUNICATIONS  
DIVISION

B-95136

July 6, 1978

The Honorable Charles H. Percy  
Ranking Minority Member  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate

Dear Senator Percy:

In response to your letter of February 17, 1977, requesting that we review certain management practices of the General Services Administration (GSA), we reported the results of our review of Construction Management Division activities in the Boston Region (LCD-78-304, Jan. 17, 1978). As agreed with your representative, your requested nationwide statistical profile, modified to show GSA's use of advertised and negotiated contracts for new construction and major repairs and alterations, would be the subject of a later report.

On May 24, 1978, we orally reported the results of our data gathering and analyses to your representatives. The statistical inferences indicate that restricted competition may preclude assurance that awards are made at reasonable prices. There appears to be too high a proportion of negotiated contracts, overly liberal interpretations of public exigency to justify negotiation, and little or no competition for many advertised and negotiated awards.

We pointed out that without examining contract files and interviewing the responsible persons, one cannot conclusively determine whether or not the contracting method, the basis for negotiation, or a lack of competition is inappropriate in any individual case. It was agreed, however, that we need to promptly report these indicators of serious inadequacies in GSA's contracting practices to the Administrator of General Services. We are suggesting to the Administrator that his recently formed task force--on activities most susceptible to criminal abuse--consider

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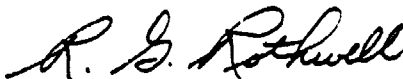
this information and investigate specifically the sufficiency of competition in the Public Building Service's construction and repair and alteration contract work. Attachment I is a copy of the report to the Administrator (LCD-78-330) issued on this date.

At the request of your representatives, we made brief visits to two GSA regional offices (Chicago and San Francisco) to review examples and any readily available explanations of noncompetitive awards, as well as the circumstances considered by GSA to involve such compelling and unusual urgency as to constitute public exigencies requiring negotiation rather than public advertising and competitive bidding. Attachment II shows some of these examples.

It should be noted that the work requested was statistical analysis and inference--as reported in the letter to the Administrator--and that attachment II may not show the most representative or best examples of unnecessary restricted competition. While these individual cases and others in the contract files we examined do not contradict but generally support our statistical inferences, our examinations and inquiries were not complete and do not eliminate the need for closer study by the Administrator's task force.

Trusting that this report satisfies your request for a nationwide statistical profile, we are not planning further work at this time. As arranged with your office, further distribution of the report will be made 7 days after the issuance date unless you publicly release its contents before this time.

Sincerely yours,

  
for F. J. Shafer  
Director

Attachments - 2



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

LOGISTICS AND COMMUNICATIONS  
DIVISION

B-95136

The Honorable Joel W. Solomon  
Administrator of General Services

Dear Mr. Solomon:

We recently completed a statistical analysis of the General Services Administration's (GSA's) contract awards for construction and major repairs and alterations of buildings, at the request of Senator Charles H. Percy, Ranking Minority Member of the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs. The purpose of our analysis was to give Senator Percy a general picture of GSA's contracting for these services, in terms of degree of competition, use of and justifications for negotiated contracts, variations among regions, and any similar characteristics bearing on restricted competition and possible favoritism.

For this purpose your office provided us with computer printouts detailing and summarizing data on all such contracts awarded for over \$10,000 in calendar years 1974-76. We also looked at the contract files documenting some of these awards in your Chicago and San Francisco regions for examples and any readily available explanations of noncompetitive awards (made after receiving less than three bids or proposals) and the use of public exigency to justify negotiation.

As we advised Senator Percy, our analysis raises questions about the sufficiency of competition in GSA's contract awards. Because we did not audit the data or examine any contract awards in detail, we consider the results of our analysis to be only indicators of serious inadequacies in GSA's contracting practices which require further study. You may wish to use our findings in your current efforts to improve procurement management.

The data for the 3 years show awards of 324 new construction contracts for a total of about \$335 million, and 1,610 contracts for major repairs and alterations for

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about \$177 million. The enclosure contains five tables of information on these contracts; they identify the use of negotiated contracts, justifications for negotiated awards, and extent of competition obtained. The most significant indicators of potential problems are described below.

HIGH PROPORTION OF  
NEGOTIATED CONTRACTS

Tables 1 and 2 show that about 13 percent of all contracts were negotiated awards. In terms of the total value of these contracts, negotiation covered over 6 percent of new construction awards and nearly 10 percent of repairs and alterations. The nature of construction and repair work and the large number of firms generally operating in most localities do not seem to require such a high degree of negotiated, rather than formally advertised, procurements.

Furthermore, the numbers of negotiated contracts shown are less than the actual awards, because those negotiated with the Small Business Administration and businesses eligible under section 8(a) of the Small Business Act were misclassified as advertised contract awards rather than as negotiated awards otherwise authorized by law. Section 8(a) awards, and other small business set-asides authorized under section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, were not specifically identified in the computer printouts, but we would normally expect small business to be one of the most frequently cited justifications for negotiated awards. There is added reason, therefore, to question the need for GSA's large number of negotiated awards shown in the data provided to us.

Table 3 shows the statutory exceptions which were used to justify negotiation rather than formal advertising procedures for the 257 negotiated awards. Public exigency (some type of emergency situation requiring immediate contracting) was used for more than 174 cases--the majority of all negotiated awards for both new construction and major repairs and alterations. The number is nearly 10 percent of all the contracts for these services, seemingly a very high proportion of emergency situations. We scanned

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the underlying information and noted some services that appear to be doubtful cases of public exigency. Among these were: (1) new construction awards for landscaping, miscellaneous concrete, and completion of interior finishes and (2) major repair and alteration awards for renovation design work, painting and decorating, and additional bookshelving.

The second and third most frequent reasons for negotiation were the impracticality of securing competition (45 instances) and the unsatisfactory bids obtained after advertising (33 cases). In regard to the impracticality of competing for major repairs and alterations, there may have been appropriate justifications for negotiation in those cases where the nature and scope of the work was not certain--contrasted with the availability of work descriptions and specifications for new construction. Although these reasons for negotiation are to be used to get competition not attainable by advertising, the actual extent of competition obtained by GSA generally seems inadequate.

Referring again to tables 1 and 2, the GSA regions varied widely in their use of negotiation. For new construction, the highest proportion of their total numbers and/or value of contracts negotiated was experienced by Boston, San Francisco, and Auburn. Negotiated major repair and alteration awards were particularly heavy in New York, Washington, Chicago, and Denver.

#### LITTLE OR NO COMPETITION FOR MANY CONTRACTS AWARDED

Table 4 shows the range of bidders responding to invitations for formally advertised contracts. The unusual feature is that over 20 percent of the awards for which pertinent data was available (both new construction and major repairs and alterations) were made after receiving only one or two bids.

Formal advertising requires a minimum of two prospective sources; the award is made to the lowest responsive and responsible bidder. However, all of the bids may be rejected if the prices are unreasonable or the competition is inadequate to insure reasonable prices.

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If less than three bids are received, the contracting officer may make the award, but the Federal Procurement Regulations require that he determine whether the small number of bids received is due to an absence of the prerequisites of formal advertising. These include non-restrictive specifications, wide dissemination of announcements on prospective procurements before issuing invitations for bids, and sufficient time for bid preparation. The record of the invitation for bids must include the contracting officer's recommendation on action needed to get more than one or two bids in future procurements.

Table 5 shows the extent of competition for contracts awarded after negotiation. Although one might expect less competition because of the conditions justifying use of negotiated awards, the amount actually obtained is so limited that it is questionable. Only one or two firms responded in 17 of 41 new construction procurements and in 92 of 216 major repair and alteration awards--over 40 percent of all such awards. The average contract value in these cases was below the average of all negotiated contracts for new construction, but above the average of all contracts in the case of major repairs and alterations. For the latter type of work particularly, awards made after negotiating with only one or two firms were for relatively large amounts.

The combined data from tables 4 and 5 show that a total of 409 contracts were awarded for all types of work when only one or two firms responded. That represents about 25 percent of the 1,686 contracts for which pertinent data was available. With a record of such limited competition, there may be serious inadequacies in GSA's contracting procedures for construction and major repairs and alterations. Do the procurement offices develop and maintain adequate lists of potential bidders for various types of work? Does the work planning system allow sufficient time for developing specifications and advertising before the work must begin? Are procurement offices soliciting a reasonably wide range of firms for these contract awards? Are potential contractors not bidding because they are reluctant to accept terms and conditions associated with Government contracting?

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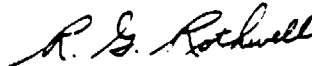
OBSERVATIONS

After the allegations of fraud, favoritism, and kick-backs in GSA's contracting activities, you started several internal surveys of the agency's procurement management, and took or are planning to take such positive actions as strengthening your Office of Audits and Investigations, separating contract award and inspection activities, and refining methods of procurement solicitation so that orders are not limited to the same few businesses.

We also understand that you recently formed a task force to thoroughly investigate activities most susceptible to criminal abuse and recommend corrective actions. The information in this report is directly related to the thrust of that investigation. We suggest, therefore, that your task force specifically consider this information and cover (1) the efforts of the procurement offices to obtain competition for construction and repair and alteration contract work and (2) the reasonableness of the justifications for using negotiated procurement for such work.

If your office has any questions about the statistical tables in the enclosure or our analyses of the data, we would be pleased to meet with you.

Sincerely yours,



for F. J. Shafer  
Director

Enclosure



TABLE 1  
CONTRACTS OVER \$10,000 AWARDED  
BY GSA FOR NEW CONSTRUCTION  
DURING CALENDAR YEARS 1974-76

GSA regional office	Number of contracts		Value of contracts		Total
	Negotiated	Advertised	Negotiated	Advertised	
Boston, Mass.	2	10	\$8,354,551	\$ 11,677,296	\$ 20,031,847
New York, N.Y.	0	6	-	731,947	731,947
Washington, D.C.	2	70	230,440	100,996,603	101,227,043
Atlanta, Ga.	4	72	4,309,611	109,642,872	113,952,483
Chicago, Ill.	3	24	681,400	20,151,455	20,832,855
Kansas City, Mo.	0	19	-	10,280,593	10,280,593
Fort Worth, Tex.	1	11	25,188	16,168,554	16,193,742
Denver, Colo.	0	10	-	6,463,710	6,463,710
San Francisco, Calif.	22	35	6,062,650	17,508,955	23,571,605
Auburn, Wash.	7	26	1,767,300	19,544,512	21,311,812
<b>Total</b>	<u>41</u>	<u>283</u>	<u>\$21,431,140</u>	<u>\$313,166,497</u>	<u>\$334,597,637</u>
<b>Percent</b>	12.7	87.3	6.4	93.6	100

TABLE 2

## CONTRACTS OVER \$10,000 AWARDED

## BY GSA FOR MAJOR REPAIRS AND ALTERATIONS

## DURING CALENDAR YEARS 1974-76

GSA regional office	Number of contracts		Value of contracts		Total
	Negotiated	Advertised	Negotiated	Advertised	
Boston, Mass.	10	100	\$ 451,266	\$ 6,461,894	\$ 6,913,160
New York, N.Y.	37	132	2,635,119	15,722,400	17,357,519
Washington, D.C.	31	348	7,643,144	62,957,432	70,600,576
Atlanta, Ga.	2	162	46,504	10,441,524	10,488,028
Chicago, Ill.	44	119	2,581,677	11,328,395	13,910,072
Kansas City, Mo.	17	112	638,384	16,037,232	16,675,616
Fort Worth, Tex.	16	98	488,279	9,338,999	9,827,278
Denver, Colo.	26	116	1,679,145	10,936,125	12,615,270
San Francisco, Calif.	22	110	874,370	8,435,231	9,309,601
Auburn, Wash.	11	97	727,231	8,660,286	9,387,517
Total	216	1,394	\$16,765,119	\$160,319,518	\$177,084,637
Percent	13.4	86.6	9.5	90.5	100

TABLE 3

GSA JUSTIFICATIONS FOR NEGOTIATED  
CONTRACTS OVER \$10,000 AWARDED FOR NEW CONSTRUCTION  
AND MAJOR REPAIRS AND ALTERATIONS DURING  
CALENDAR YEARS 1974-76

Type of negotiated contract justification	<u>Negotiated contracts</u>	
	<u>Number</u> (note a)	<u>Value</u>
New construction:		
Public exigency	25	\$10,125,485
Impracticable to secure competition by formal advertising	11	2,254,792
Negotiation after advertising	<u>5</u>	<u>9,050,863</u>
Total	<u>41</u>	<u>\$21,431,140</u>
Major repairs and alterations:		
Public exigency	149	\$12,327,398
Impracticable to secure competition by formal advertising	34	2,287,999
Negotiation after advertising	28	1,916,911
Others	<u>5</u>	<u>232,811</u>
Total	<u>216</u>	<u>\$16,765,119</u>
Total negotiated contracts:		
Public exigency	174	\$22,452,883
Impracticable to secure competition by formal advertising	45	4,542,791
Negotiation after advertising	33	10,967,774
Others	<u>5</u>	<u>232,811</u>
Total	<u>257</u>	<u>\$38,196,259</u>

a/When GSA showed more than one justification for the negotiated contract, we divided the contract number and dollar value equally between the justifications in order to maintain the integrity of the total contract number count and values. For example, in the case of public exigency as a justification, there were 163 awards justified solely on that basis and 22 awards justified by more than one reason. We divided the latter cases between public exigency and one other reason.

**TABLE 4**  
**DEGREE OF COMPETITION FOR ADVERTISED CONTRACTS OVER \$10,000**  
**AWARDED BY GSA FOR NEW CONSTRUCTION AND MAJOR**

		<u>REPAIRS AND ALTERATIONS DURING</u>				<u>CALENDAR YEARS 1974-76</u>			
<u>Number of firms responding</u>		<u>New construction contracts</u>		<u>Major repair and alteration contracts</u>		<u>and alteration contracts</u>			
		<u>Percent</u>	<u>Number</u>	<u>Value</u>	<u>Percent</u>	<u>Number</u>	<u>Value</u>	<u>Percent</u>	<u>Value</u>
1		8	22	\$ 5,099,654	11	149	\$13,914,667		
2		9	26	16,935,762	7	103	11,590,521		
	Subtotal	17	48	22,035,416	18	252	25,505,188		
	3-5	35	99	81,705,261	27	381	38,358,186		
	6-9	24	79	128,221,357	24	331	44,489,996		
	10-up	12	22	20,514,487	16	216	27,875,142		
	Subtotal	88	249	252,476,521	85	1,180	136,228,512		
	No data (note a)	12	34	60,689,976	15	214	24,091,005		
	Total	100	283	\$313,166,497	100	1,394	\$160,319,518		

a/The degree of competition was not identified by GSA for advertised contracts which had been completed and transferred to records centers at the time of our review. After eliminating these contracts, the percentages of contracts awarded on the basis of less than three bids are 19 percent for new construction, 22 percent for major repairs and alterations, and 21 percent overall.

TABLE 5  
DEGREE OF COMPETITION FOR NEGOTIATED CONTRACTS OVER \$10,000

AWARDED BY GSA FOR NEW CONSTRUCTION AND MAJOR

REPAIRS AND ALTERATIONS DURING

CALENDAR YEARS 1974-76

Number of firms responding	New construction contracts		Major repair and alteration contracts	
	Per-cent	Num-ber	Per-cent	Num-ber
		Value		Value
1	12	\$ 1,384,400	27	\$ 6,261,368
2	29	5,560,704	15	1,122,613
Subtotal	41	6,945,104	42	7,383,981
3-5	51	12,634,866	46	6,585,813
6-9	8	1,851,170	11	1,985,591
10-up	-	-	1	809,734
Total	100	\$21,431,140	100	\$16,765,119

EXAMPLES OF NONCOMPETITIVE AWARDS AND  
CIRCUMSTANCES DETERMINED BY GSA TO BE  
PUBLIC EXIGENCIES REQUIRING NEGOTIATION

Example 1

Citing public exigency, a \$78,537 contract was negotiated and awarded on September 30, 1976, for roofing repairs at the Federal Service Center Building, Bell, California.

In justifying negotiation, GSA noted that the roof had deteriorated and would continue to do so unless a protective coating was applied before the rainy season, and that funds had become available shortly before the end of the fiscal year. GSA determined that the requirement involved compelling and unusual urgency and called for negotiation to meet the deadline.

We noted that (1) documentation in the files does not explain the deadline and the additional time required for public advertising that might jeopardize meeting the deadline and (2) the contract was awarded on the last day of the fiscal year.

Example 2

Citing public exigency, a \$42,745 contract was negotiated and awarded on May 27, 1976, for exterior sculpture foundations at the U.S. Courthouse, Federal Office Building and Parking Facility, San Diego, California.

In its justification, GSA noted that funds for this project were going to expire. GSA found that the remaining short time did not permit solicitation of bids and that the unusual urgency could not tolerate delay incident to formal advertising.

We noted that (1) GSA's citation of public exigency to award a contract before expiration of funds is a questionable interpretation of section 302(c)(2) of the Federal Property and Administrative Services Act, as amended, and (2) documentation made available to us mentioned "critical time frames of construction completion" but did not explain how the Government would be seriously injured, financially or otherwise, if these services were not furnished by a certain time.

Example 3

Citing public exigency, a \$134,000 contract was negotiated and awarded on September 22, 1976, for partitions and related items at the Federal Center, Battle Creek, Michigan.

GSA's support for use of public exigency was that (1) relocation of some elements of the Air Force Logistics Command, which started May 1, 1976, was scheduled to be completed January 1, 1977, (2) time lost in failing to award the contract by advertising had reduced the available time for performing the work needed to accommodate the proposed relocation, and (3) solicitation by public advertising "does not afford us the negotiating opportunities \* \* \* which could preclude long delays due to possible irregularities in submitted proposals."

We noted that bids had been solicited as early as October 1974, a sole bid was rejected because it was about 50 percent over the Government estimate, and a decision was made to readvertise. Bids were again solicited in May 1976, and in August 1976 all four bids received were "rejected because inadequate and defective specifications were cited in the bid forms."

In its rejection decision, the Board of Awards said

"the errors, omissions, and discrepancies of specifications are numerous. The specifications are considered to be so defective that fair and equal effective competition cannot be accomplished."

The Board recommended that the specifications and bid forms be thoroughly reviewed and corrected before resolicitation.

This seems to be a type of situation meriting close examination by the Administrator's task force for (1) possible overly liberal use of public exigency and (2) from a remedial viewpoint, insufficient planning by the GSA procurement office and failure to develop suitable specifications before the work must be started.

Example 4

An advertised \$803,240 contract was awarded to a sole responsive bidder in July 1974 for a new courtroom on the 19th floor of the Everett McKinley Dirksen Building, Chicago, Illinois, and for miscellaneous alterations on the 7th and 20th floors for agencies relocated by the courtroom work.

The contract files given to us did not have documentation related to the work request, the pre-invitation solicitations of interest or publicizing in trade journals, the actual solicitations or data thereon, an abstract of bids, or recommendations of a Board of Award. The files we examined did not include the contracting officer's recommendation on action needed to get more than two bids on future procurements, as called for in 41 CFR 1-2.407-1(b).

The contracting officer rejected the low bid as non-responsive because it did not meet the bid guarantee and other conditions. The award was made to the 2nd (of two) low bidder, "such bid having been found fair, reasonable and responsive to the invitation."

This type of situation seems to merit close examination by the Administrator's task force for (1) the adequacy of pre-invitation publicizing and lists of potential bidders for various types of work and (2) the sufficiency of the basis for deciding if prices bid are fair and reasonable.

#### Example 5

Citing public exigency, a \$287,000 contract was negotiated and awarded on February 27, 1975, for construction at the U.S. Border Station, San Diego, California.

In its justification, GSA stated a need to complete the inspection facilities within 6 months to (1) relieve the annual summer tourist traffic delays, (2) avoid higher labor wage rates after July 1, 1975, (3) maintain the existing excellent relations with Mexico, and (4) increase efficiency and productivity.

The claimed benefits of negotiation were illustrated by comparing a normal (presumably advertising) acquisition schedule with the actual schedule planned. This comparison showed a decrease of 15 days in the bid/award period (from 1 month to 1/2 month) and a decrease of 4-1/2 months in the design period (from 6 months to 1-1/2 months).

We questioned whether maintaining good relations and increasing efficiency represent compelling needs of unusual exigency. Also, we noted that the contract price escalated from \$287,000 to about \$350,000--an increase of about 22 percent--even though we could not establish that the cost increase resulted from the 75-percent reduction in design time or the lack of full competition.