BY THE COMPTROLLER GENERAL

Report To The Chairman, House Committee On Government Operations OF THE UNITED STATES

Less Sole-Source, More Competition Needed On Federal Civil Agencies' Contracting

The six agencies that GAO reviewed did not take the opportunity to award an estimated 40 percent of their new sole-source contracts competitively during the year ended June 30, 1980. The awards initially obligated an estimated $148.5 million. Two causes of the absence of competition were (1) the lack of effective procurement planning and (2) inappropriate reliance of agency procurement officials on requesting officials' sole-source justifications.

GAO recommends that:

--Federal regulations be amended to set forth standards for measuring accountability in obtaining competition, including strengthening requirements for (1) publicizing notices of prospective awards and (2) otherwise searching the market for potential competitors.

--Agency heads take specific actions to correct the problems identified.

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

B-206577

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

This report summarizes the results of our review of a sample of sole-source contracts awarded by six civil agencies. Due to several problems identified in the report, in many cases the agencies did not award their contracts on a competitive basis to the maximum extent practical, as required.

We made this review in response to your February 27, 1981, request. As you directed, we did not obtain agency comments on the matters discussed in this report.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CHAIRMAN, HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

LESS SOLE-SOURCE, MORE COMPETITION NEEDED ON FEDERAL CIVIL AGENCIES' CONTRACTING

D I G E S T

The Congress has historically required that the Government purchase its goods and services by using competition to the maximum extent practicable.

In fiscal year 1980, Federal civil agencies reported contract actions of over $10,000 each totaling about $23.3 billion. Of this amount, about $10.9 billion (or 47 percent) was categorized as negotiated noncompetitive (or sole-source) procurement. Although new contract awards for goods or services represented only $1.5 billion of the sole-source dollars, they are especially important decisions because they severely limit the Government's choices when contract modifications, orders under existing contracts, or follow-on new contracts are necessary.

At the request of the Chairman, House Committee on Government Operations, GAO examined a sample of six civil agencies' new sole-source contract awards to assess the adequacy of the sole-source decisions. These awards represented $538.1 million in initially obligated funds. The agencies were the National Aeronautics and Space Administration; the Veterans Administration; and the Departments of Energy, the Interior, Transportation, and Health and Human Services. (See ch. 1.)

AGENCIES MISSED MANY COMPETITIVE OPPORTUNITIES

Federal regulations require contracting officers to award all purchases and contracts on a competitive basis to the maximum extent practical. Based on the sole-source contract actions examined, GAO estimates that competition was feasible on 32 percent, representing $123.1 million, in initial obligations. GAO also estimates that competition could have been obtained on another 8 percent, representing $25.4 million, with better agency planning or management. (See p. 10.)

Underlying causes of the absence of competition on these contract awards were often interrelated and included the following:

--A lack of effective procurement planning.

--Inappropriate reliance of agency procurement officials on requesting officials' sole-source justifications.

--Insufficient knowledge of procurement matters. (See p. 15.)

Agencies' frequent acceptance of inadequately supported and invalid reasons for sole-source procurements shows the need for Federal regulations to more clearly set forth what constitutes an adequate sole-source justification. More effective management controls are also needed to ensure that these regulations are followed. (See p. 17.)

MORE MARKET RESEARCH CAN REDUCE UNNECESSARY SOLE-SOURCE CONTRACT AWARDS

The agencies reviewed generally made little, if any, effort to conduct market research before awarding sole-source contracts. They frequently did not effectively use the Commerce Business Daily to publicize notices of their prospective awards. For example, based on the sample results, GAO estimates that agency personnel placed a notice in the Commerce Business Daily inviting competition on only 2 percent of the prospective contract awards in the universe which were not statutorily exempted from the requirement to obtain competition.

Important differences exist among agency personnel, as well as between them and the Federal Procurement Regulations Directorate, General Services Administration, in interpreting the requirement to publicize preaward notices in the Commerce Business Daily.

GAO believes that improving agency efforts to obtain competition, as well as strengthening and clarifying the Federal regulations on market research, would make the greatest contribution toward eliminating unnecessary sole-source awards. For example, Federal regulations should require agency personnel to conduct a market search for competitive sources, unless the existence of specified conditions convincingly demonstrates that competition is not feasible.

When requesting officials claim that one contractor is uniquely capable of meeting the Government's needs and when this claim has not been demonstrated as fact, agencies would benefit from publicizing

a preaward sources-sought synopsis in the Commerce Business Daily. This type of notice tests the market even though a request for proposals is not available.

GAO believes that, if agencies used this procedure whenever there was a question of the availability of competition, they would greatly increase their chances of avoiding unnecessary sole-source awards. This procedure would also be a relatively easy way to demonstrate that a sole-source procurement is appropriate when only one contractor is capable of meeting the Government's needs. (See p. 25.)

OTHER ACTIONS NEEDED TO INCREASE COMPETITIVE CONTRACT AWARDS

Agencies could further reduce the number of unnecessary sole-source awards by more closely following Federal regulations that call for

--correctly identifying the Government's minimum requirements and including only those requirements in contract specifications (see p. 35),

--properly handling unsolicited proposals (see p. 36),

--adequately reviewing sole-source decisions (see p. 39), and

--fostering competition in subsequent procurements after previous noncompetitive procurements (see p. 40).

RELIABILITY OF THE FEDERAL PROCUREMENT DATA SYSTEM NEEDS TO BE IMPROVED

The reliability of the Federal Procurement Data System should be improved. As the official Federal procurement data base, the system is intended to provide a basis for reports to the President, the Congress, Federal executive agencies, and the general public and is a valuable tool for such purposes as measuring and assessing the impact of Federal procurement. (See p. 44.)

Based on sample results, GAO estimates that almost half of the contract actions (representing more than half of the dollars) initially entered into the system as being in its universe had one or more errors in such data elements as the date, dollars obligated, or extent of competition. In addition, at a few agency procurement offices

where GAO checked the completeness of the data, some sole-source contracts had not been entered into the system.

The causes of these problems included the lack of training of agency personnel, inconsistencies between the Federal system and agency reporting systems, and the lack of effective controls for ensuring accurate and complete data. (See pp. 44 and 48.)

RECOMMENDATIONS

In summary, GAO recommends that the Administrator of General Services amend the Federal Procurement Regulations to clearly set forth standards for measuring accountability in obtaining competition on procurement awards. Specifically, the Administrator should:

--Require a market search for competitive sources before approving a sole-source justification, unless specified conditions are met.

--Require that the market search include publicizing in the Commerce Business Daily a preaward notice which invites competition on the prime contract, unless one of the regulatory exceptions to publicizing applies.

--Describe the criteria that must be met to justify sole-source procurement.

--Require a written sole-source justification for each new award over $10,000 to document the facts and circumstances substantiating the infeasibility of competition.

--Require major agencies to establish and maintain effective procurement planning systems.

--Require that agency requesting officials notify procurement offices as soon as requirements become known, to maximize the time available for conducting the market search and obtaining competition. (See pp. 22 and 32.)

GAO further recommends that the heads of all Federal departments and agencies participating in the Federal Procurement Data System take other specific actions to correct the problems identified in this report. Of utmost importance, they should effectively communicate a strong

commitment to competition to personnel throughout their agencies. (See pp. 22, 32, 42, and 49.)

During this review, GAO held discussions with headquarters procurement officials of each agency reviewed and informed them of its findings. At the direction of the Chairman, House Committee on Government Operations, GAO did not obtain agency comments on this report.

The Congress has recently received a proposal for a uniform Federal procurement system from the Office of Federal Procurement Policy, Office of Management and Budget. The proposal includes suggested changes to encourage greater use of competition. We believe this report will be useful to the Congress in evaluating that proposal.

Contents

ABBREVIATIONS

FPRs	Federal Procurement Regulations
GAO	General Accounting Office
HHS	Department of Health and Human Services
NASA	National Aeronautics and Space Administration

CHAPTER 1

INTRODUCTION

The Congress has historically required that the Government purchase its goods and services by using full and free competition to the maximum extent practicable. For example, Public Law 96-83 (41 U.S.C. 401 et seq. (Supp. III 1979)) states that it is the policy of the Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the Federal executive branch by promoting the use of full and open competition.

The broad concept of competition in Government procurement refers to situations in which more than one firm seeks to be awarded the same contract. Adequate price competition is assumed to exist if (1) offers are solicited, (2) at least two offerors which are responsible--capable of satisfactorily performing the Government's requirements--independently contend for the contract by submitting responsive offers, 1/ and (3) the contract is awarded to the responsive and responsible offeror submitting the lowest evaluated price.

Technical, design, or other nonprice competition exists when competition is not based to a significant extent on the lowest price, but rather on the highest demonstrated competence or technical capability or the best design proposal. For example, such nonprice competition is typical on research and development contracts that are cost reimbursable because costs cannot be accurately estimated.

BENEFITS OF COMPETITION

Competition is a prominent factor in Government procurement law and policy for good reasons. All qualified potential contractors should have the opportunity to do business with the Government and the right to strive with others on an equal basis. Contracts should not be awarded on the basis of favoritism but should go to those offering the most advantageous contracts to the Government. Offering all qualified contractors the opportunity to compete also helps to minimize collusion. In addition, competition is intended to ensure that the Government pays, and the contractor receives, prices that represent reasonable payment for the work.

The benefits of competition go beyond short-term price advantage. The competitive process provides a means for finding out what is available to meet a particular Government need and picking the best solution. The most important benefits of competition can often be the improved ideas, designs, technology,

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1/An offer is responsive if it meets the expressed requirements of the Government's solicitation.

or quality of products and services that potential contractors are motivated to seek, produce, or develop to obtain Government contracts. The chance of winning a Government contract or the threat of losing it provides a key incentive for greater efficiency and effectiveness. When competition is restricted, the Government loses opportunities not only to obtain lower prices but also to increase its overall productivity and the effectiveness of its programs.

GOVERNMENT PROCUREMENT METHODS

The two basic methods by which the Government procures supplies and services are (1) formal advertising and (2) negotiation. The law provides that purchases by Government agencies be made by formal advertising for bids whenever feasible and practicable. Formally advertised bidding consists of four distinct steps:

1. The issuance of an invitation for bids which contains specifications describing the Government's minimum needs and often the publicizing of the prospective award.

2. The potential contractors' submission of sealed bids.

3. A public opening of the sealed bids at a specified time and place.

4. The award of a contract to the lowest responsible bidder whose bid conforms in all material respects to the requirements of the invitation for bids.

Formally advertised contracts are almost always awarded on a price competitive basis.

Negotiation, on the other hand, does not involve a rigid set of procedures and may be defined to include all methods of procurement other than formal advertising. Negotiated procurement may be either competitive or noncompetitive (sole-source). In negotiated competitive procurements, notices of the prospective awards are usually publicized and potential contractors are given requests for proposals which state the Government's requirements and criteria for evaluating offers. After interested potential contractors are allowed sufficient time to prepare and submit offers, discussions (or negotiations) with those in the competitive range follow. The competitor submitting the offer most advantageous to the Government, price and other factors considered, is awarded the contract. In negotiated noncompetitive procurement, the Government negotiates with only one source. In either case, negotiated procurement allows the Government to discuss the features of offers with the offerors, in contrast to the "one-shot" procedure which characterizes formal advertising.

Fifteen exceptions to the use of formal advertising are set forth in the law permitting civil agency 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. However, the exceptions are very broad. As a result, in fiscal year 1980, civilian agencies reported that they used negotiation in awarding more than 80 percent of their procurement dollars.

The use of an exception to the requirement for formal advertising is a separate issue from the requirement for competition. In other words, if negotiation is used instead of formal advertising, agencies are still required to base awards on competition to the maximum extent practical. This distinction is not always clearly understood, even by agency procurement and legal personnel.

MAGNITUDE OF THE PROBLEM

In fiscal year 1980, Federal civil agencies' contract actions of over $10,000 each totaled about $23.3 billion, according to the Federal Procurement Data Center. Of this amount

--about $10.9 billion (or 47 percent) was categorized as negotiated noncompetitive;

--about $10.1 billion (or 93 percent of the $10.9 billion) was categorized as "other negotiated noncompetitive," which excludes noncompetitive Buy Indian, 1/ 8(a), 2/ and follow-on awards after competition; and

--less than $1.5 billion (or 15 percent) of the $10.1 billion was obligated for new contract awards, and the remaining $8.6 billion (or 85 percent) was for contract modifications, definitizations of letter contracts, and

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1/The Buy Indian Act (25 U.S.C. 47 (1976)) authorized and encouraged the Government to buy Indian goods, services, and labor to enhance tribal economic development. This act allows the Bureau of Indian Affairs to deal exclusively with Indian tribes or firms to purchase many goods and services that may be available through non-Indian sources.

2/The Administrator of the Small Business Administration is authorized under Section 8(a) of the Small Business Act (15 U.S.C. 631), as amended, to help small businesses which are owned and controlled by socially and economically disadvantaged persons. The agency enters into procurement contracts with other Federal agencies and subcontracts the work to disadvantaged small businesses.

orders under the General Services Administration's Federal Supply Schedule contracts or other existing contracting.

The low percentage of funds obligated for new sole-source contract awards masks their importance, because the other 85 percent of the funds were obligated, usually under essentially the same basic contracts, to contractors which were initially selected for new sole-source awards. Throughout this report, we have cited the dollars initially obligated under the new awards reviewed. However, it should be noted that, over the life of the contract, additional awards may greatly increase the amount of funds obligated.

FEDERAL PROCUREMENT REGULATIONS

The Federal Property and Administrative Services Act of 1949 (Title 41 U.S.C.) authorized the Administrator of General Services to issue procurement regulations for civilian executive agencies. In 1959 the General Services Administration established the Federal Procurement Regulations (FPRs), which set forth detailed rules on purchasing supplies and services from commercial sources. The agency's Federal Procurement Regulations Directorate is responsible for the FPRs.

The FPR provisions on competition are the basic criteria we used in this review because civilian agencies' implementing regulations are required to be consistent with them. Each of the agencies and components we reviewed acknowledged that it was covered either by the FPRs or by similar provisions relating to competition.

The Office of Federal Procurement Policy, Office of Management and Budget, is currently developing the Federal Acquisition Regulation to replace both the FPRs and the Defense Acquisition Regulation, which details the rules covering procurement by the Department of Defense.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our previous reviews of Federal civil agencies' procurement practices indicated that a broad review of sole-source contracts was needed to address the following questions. 1/

--What are the magnitude and primary causes of unjustified noncompetitive procurements?

--What incentives can and should be designed to motivate contracting officers and other agency personnel to maximize effective competition?

1/App. IX lists selected GAO reports addressing Federal agencies' sole-source contract awards.

--What improvements in managerial controls are needed to minimize noncompetitive contracts?

--What changes are needed in the procurement laws, regulations, or agency policies and procedures to ensure that procurements are on a competitive basis to the maximum extent practical?

We made the review at the request of the Chairman, House Committee on Government Operations, based on his February 27, 1981, letter.

We examined a random, stratified, statistical sample of 198 sole-source contracts awarded by six agencies to address the questions cited above and to determine

--the adequacy of the agencies' reasons for awarding sole-source contracts and

--the feasibility of competition on each contract.

We were interested in what efforts had been made to obtain competition regardless of whether the result would have been price competition or technical, design, or other competition.

The contracts we reviewed were all:

--New actions (either new definitive contracts 1/ or initial letter contracts, 2/ rather than modifications of or orders under existing contracts) which involved initial obligations of over $10,000. 3/

--Actions which occurred on or between July 1, 1979, and June 30, 1980.

--Other negotiated noncompetitive actions. 4/

--Actions by purchasing offices located within the continental United States.

1/A new definitive contract is a new binding agreement for goods or services.

2/An initial letter contract is a preliminary agreement authorizing the contractor to immediately begin manufacturing supplies or performing services.

3/Obligations are transactions that require payment during the same or a future period.

4/As used in this report, the term "sole-source contract" is synonymous with "other negotiated noncompetitive contract."

Our rationale for including each of these factors follows.

--We reviewed only new actions to narrow the range of issues and circumstances being analyzed and to simplify our evaluation. As noted above, new actions are especially significant decisions. They frequently limit the Government's choices when contract modifications, orders under existing contracts, or follow-on contracts are necessary.

--We included only contract actions initially obligating over $10,000, because the Federal Procurement Data System, on which our sample was based, does not include individual contract actions of $10,000 or less.

--We used the July 1, 1979, to June 30, 1980, time frame because it provided the latest reliable information available from the data system at the time our sample was selected.

--We limited our review to other negotiated noncompetitive actions to obtain a more homogeneous universe. The Government purposely restricts competition relating to "8(a)" and Buy Indian contracts to achieve certain socioeconomic objectives, and noncompetitive follow-on awards after competition would likely be more difficult to evaluate in terms of the feasibility of competition.

--We included only actions of purchasing offices located within the continental United States to reduce travel costs and to simplify administrative efforts.

We selected the six agencies primarily because they accounted for the highest dollar value of new, other negotiated noncompetitive procurements obligating over $10,000 each. The following table shows the civilian agencies that obligated the most funds for such procurements during the time frame reviewed, according to the Federal Procurement Data System.

New, Other Negotiated Noncompetitive Awards Obligating Over $10,000

	Amount (millions)
Tennessee Valley Authority	$ 200.0
Department of the Interior	167.9
National Aeronautics and Space Administration (NASA)	148.7
Department of Energy	135.4
Veterans Administration	106.3
Department of Transportation	95.5
Department of Health and Human Services (HHS)	74.3
Other Federal civil agencies (note a)	369.7
Total	$1,297.8

a/About 50 other civil departments and agencies participate in the Federal Procurement Data System, as does the Department of Defense.

We held discussions with the House Committee on Government Operations to determine which agencies should be included in our review. We excluded the Tennessee Valley Authority because it is not a typical Federal agency in that it is a Government-owned corporation. The remaining agencies listed above were reviewed. They accounted for about $728 million (56 percent) of the new, other negotiated noncompetitive contract actions of over $10,000 reported to the data system for the period reviewed. 1/

To accomplish our review objectives, we examined each contract in our sample and the supporting documentation in the contract file and discussed the procurement with agency personnel, such as the contracting officer and the program or technical personnel who requested the procurement. In addition, we

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1/As discussed in ch. 5, some of these reported actions were in error and should not have been coded in this category.

frequently contacted potential contractors to ascertain their interest in competing. When appropriate, we also contacted independent experts to get their views on the capabilities of sources other than the sole-source contractor for satisfying the Government's requirements. The review was performed in accordance with our current "Standards for Audit of Government Organizations, Programs, Activities, and Functions." We did not review the performance of contractors.

Data base

We based our statistical sample on the computerized Federal Procurement Data System, the official Federal procurement data base. As part of our review, we assessed the accuracy and reliability of some of the system's computer output. For each sole-source contract, we compared the computer output with the information in the contract file and interviewed procurement personnel as necessary to clarify or follow up on problems identified. We corrected miscoded information and replaced sample contract actions that were erroneously coded as being in our statistical universe. We projected the errors identified to the universe of contract actions from which the sample was selected.

At a few procurement offices, we also drew a separate sample of contract actions from agency contract lists. These samples were intended primarily to determine, through independent verification, whether all contracts we were concerned with that should have been included in the data systems were included. (The results of these efforts are included in ch. 5.)

Sampling methodology

Our statistical sample of 198 contract actions involved initial obligations of $168.2 million. (The sample contracts included 51 for research and development, 92 for other services, and 55 for equipment or supplies.) The statistical universe from which the sample was drawn included 5,236 contract actions which initially obligated $538.1 million.

The results from a statistical sample are always subject to some uncertainty or sampling error because only part of the universe is analyzed. Our sample size was determined so that the expected sampling errors would not exceed about 8 percent at the 95-percent confidence level. (App. II shows the sampling errors for certain dollar projections and other estimates used in the report.)

Our analysis does not project potential dollars that could have been saved through additional competition because accurate statistical information was unavailable. 1/ In addition, for convenience of presentation, most dollars and percentages were rounded.

Our statistical universe in each of the agencies was divided into four strata representing contract dollar value ranges to ensure representation of both numbers and dollar values of contracts. Samples were chosen by randomly selecting a predetermined number of contracts for each agency by stratum. The sample size was based on the number and dollar value of contracts in each stratum for each agency. (App. I shows our sampling plan.)

1/Several studies of selected Department of Defense procurements have indicated, however, that as much as 25 percent can be saved through increased competition.

CHAPTER 2

CIVIL AGENCIES HAVE MISSED MANY OPPORTUNITIES TO AWARD CONTRACTS COMPETITIVELY

Although the Federal Procurement Regulations require civil agencies to award purchases and contracts on a competitive basis to the maximum extent practical, the agencies reviewed did not always do so. Many opportunities to award contracts competitively were missed because agency officials accepted invalid reasons for awarding contracts on a sole-source basis or did not effectively plan for the contracts or manage the procurement process.

Our statistical projection shows that the six agencies made sole-source contract awards initially obligating $148.5 million (or 28 percent of the value of our universe) between July 1, 1979, and June 30, 1980, that could have been competitive.

Underlying causes of the absence of competition included:

--The lack of effective procurement planning.

--Inappropriate reliance of agency procurement personnel on the unproven sole-source justifications of agency program or technical personnel.

--Insufficient knowledge of procurement matters on the part of procurement or other agency officials.

--A lack of commitment to competition on the part of key agency personnel, including procurement, program, and higher agency officials.

The agencies' frequent acceptance of inadequately supported and invalid reasons to justify sole-source procurements shows the need for Federal regulations to more clearly set forth what constitutes an adequate sole-source justification and what does not. More effective management controls are also needed to ensure that agencies use the competitive process whenever it would not cause injury to the Government or when agency officials cannot demonstrate that competition is not feasible.

COMPETITION OFTEN AVAILABLE ON SOLE-SOURCE CONTRACTS

When a proposed procurement appears to be noncompetitive, the contracting officer is responsible for ensuring that competition is not feasible and that the reasons for sole-source procurement are valid. Because the agencies reviewed frequently did not comply with these requirements, they awarded many sole-source contracts when competition was feasible. Other sole-source

contract awards could have been competitive if the procurements had been better planned or managed early in the procurement process.

Competition feasible on many sole-source awards

Based on our sample, we estimate that competition was feasible on 1,686 (or 32 percent) of the 5,236 contract awards in our universe. These contracts originally obligated $123.1 million, or 23 percent of the dollar value of our universe. The following table shows the distribution of these awards by agency.

Awards in the Universe for Which Competition Was Feasible

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	286	17	73
HHS	128	8	20
Interior	395	23	31
NASA	256	15	21
Transportation	371	22	49
Veterans Administration	250	15	25
Total	1,686	100	a/32

a/The percent of all six agencies' awards in the universe in this category.

For each of our sample cases in which we found that competition was feasible, we identified one or more potential competitors that (1) we believe could have met the Government's minimum requirements and (2) expressed interest in competing for the award, if they had been given the opportunity. We identified these sources through such means as:

- --Suggestions offered by agency officials responsible for the contracts; representatives of other contractors, trade associations, and professional organizations; and independent experts in the relevant subject, such as those at other agencies and universities.

- --Use of agency bidders' lists (or source lists), catalogs, and standard registers of suppliers.

We did not merely accept a contractor's statement that it was capable of meeting the Government's minimum requirements. We sought additional assurance that competition was feasible. For example, for the large majority of sample awards on which we concluded that competition was feasible, agency program or contracting officials responsible for the contracts admitted that competition could have been obtained, might have been available, or should have been sought.

In only a few sample cases did contracting and program officials disagree with our conclusions that other firms could have met the minimum requirements. In these cases, we had convincing reasons to believe competition was feasible, such as (1) other agency officials, besides those involved in the particular awards, agreed that at least one alternative source could have met the minimum requirements, (2) a knowledgeable, independent individual corroborated the capability of at least one alternative source to meet the minimum requirements, or (3) we believed that agency officials' reasons for the infeasibility of competition had no merit. In some other cases, we identified other potential sources but concluded that competition was not feasible after agency officials convinced us that the alternative sources could not have met the Government's minimum requirements.

Various examples of contract awards that could have been made competitively are provided in chapters 3 and 4 and in appendix IV.

Competition possible with better agency planning and management

Other sole-source awards in our sample may have been appropriate at the time they were made, but better planning or management on the part of agency officials could have resulted in competition. For example, the contracting officers did not have time to obtain competition on some of these awards because the agencies had not adequately planned for or managed the procurement requests in earlier stages of the procurement process.

Based on our sample results, we estimate that an additional 429 (or 8 percent) of contract awards in our universe, originally obligating $25.4 million, could have been competitive under these conditions. The following table shows the distribution of these awards by agency.

Awards in the Universe Which Could Have Been Competitive With Better Agency Planning or Management

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	44	10	11
HHS	0	0	0
Interior	58	14	5
NASA	128	30	11
Transportation	152	35	20
Veterans Administration	48	11	5
Total	a/429	100	b/8

a/ Due to rounding, the amounts shown do not add to the total.
b/ The percent of all six agencies' awards in the universe in this category.

Following is an example of a contract award which could have been competitive with better agency planning or management.

The Department of Energy's Office of Conservation and Solar Energy awarded a sole-source contract which originally obligated $1.2 million for the procurement of an advertising campaign to promote basic energy conservation. Agency officials were aware of the need to obtain competition in the spring of 1979 but took no action. At the direction of program officials, the contractor began work in August 1979, 3 months before the contract's award. The director of the program office wrote in his request for ratification of this unauthorized decision:

> "I sought the assistance of [the contractor] in early August, 1979, assuming that payment for the services could come from unexpended funds [from another contract]. I now fully realize my assumption was wrong, and that I should have discussed this matter with the contracting officer * * * to determine whether my actions were appropriate * * *."

Agency officials had claimed that they could not seek competition due to time constraints and the contractor's unique capabilities. Although we agree that the sole-source decision may have been based on an urgent situation at the time it was made, competition could have been obtained with better and earlier

agency planning. We identified another contractor that expressed interest in competing for the award, if it had been given the chance. Agency officials agreed that the firm probably could have met the minimum requirements and that using the competitive process would not have injured the Government.

Example 1 in appendix IV illustrates a similar situation.

Appropriate sole-source awards

Based on our sample, we estimate that 60 percent of the sole-source awards in our universe, originally obligating $389.6 million (or 72 percent of the amount in our universe), either may have been or definitely were appropriate. The following table shows the distribution of these awards by agency.

Awards in the Universe for Which the Sole-Source Decision May Have Been or Definitely Was Appropriate

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	63	2	16
HHS	501	16	80
Interior	811	26	64
NASA	821	26	68
Transportation	241	8	32
Veterans Administration	684	22	70
Total	3,121	100	a/60

a/The percent of all six agencies' awards in the universe in this category.

The following illustrates an appropriate sole-source award. The National Institutes of Health, HHS, awarded a sole-source contract, originally obligating $115,000, for the procurement of live human tissue cells for leukemia research. The justification was based on the contractor's unique capabilities as a producer and supplier of large quantities of the tissue cells. Because it was crucial to obtain cells that would complement work done under a prior contract,

the agency needed to procure more cells from the same contractor and believed that a change of contractors would have injured the Government.

The proposed procurement was publicized in the Commerce Business Daily. (See ch. 3.) The notice described the agency's need and stated that sources deemed fully qualified would be considered when requests were solicited. However, no inquiries resulted.

We conducted our own market research for potential competitors and could not locate any. One firm stated that the sole-source contractor was the only firm capable of doing the work within the required specifications; one of the miniumum requirements was that the contractor be within 1 hour's delivery time. The firm also told us that the 1-hour restriction seemed reasonable considering the need for live human tissue cells. Another firm stated that, although it could have supplied some of the cells, the continuity or comparability of the research would have been destroyed. We were convinced that competition was not available for this procurement.

UNDERLYING CAUSES OF MISSED OPPORTUNITIES TO OBTAIN COMPETITION

Why did agency officials fail to obtain competition on awards that could have been competitive? We identified several underlying causes, of which the most predominant was ineffective procurement planning. Although this problem has been pointed out in some of our previous reports, many agencies still do not have procurement planning systems or effective systems.

In an effective planning system, the efforts of all personnel responsible for procuring goods and services are coordinated as early as practicable to obtain required items of requisite quality on time and at the lowest price. Effective planning ensures that agency personnel will take proper steps to obtain competition or demonstrate that it is not feasible. Such steps include (1) using the Commerce Business Daily to invite competition on prospective contract awards, (2) otherwise searching the market for potentially competitive contractors, and (3) fostering competition on subsequent procurements after prior sole-source contract awards. (See chs. 3 and 4.) Ineffective planning, on the other hand, can contribute to excessive year-end contracting, shortcutting of the procurement process, inadequate specifications or work statements, and higher prices.

Based on our sample results, we estimate that ineffective procurement planning was a possible cause of the lack of competition on all of the 1,686 awards on which competition was feasible. Agency officials claimed that they had included some of these proposed contract actions in a procurement plan. This

indicates that procurement planning does not necessarily ensure that procurements will be effectively made. For example, scheduling procurements more evenly throughout the year allows more time to obtain competition but does not guarantee that procurement personnel will actually take steps, such as performing market research, to achieve that objective. We therefore believe that, in implementing improved procurement planning systems, agencies should ensure that the FPRs are followed and that contract awards are made competitively to the maximum extent practical.

Other major underlying causes for missed competitive opportunities, based on our sample results, are summarized below. We identified more than one possible cause--often interrelated--on many of the contracts.

--Inappropriate reliance of procurement officials on the unproven statements of agency program or technical officials was a possible cause in 89 percent of the contract awards on which competition was feasible. In most of these cases, procurement personnel accepted the justification documents as sufficient reason for awarding sole-source contracts without adequately questioning or testing their accuracy. (See the discussion of agencies' justifications for sole-source awards later in this chapter and in app. III.)

--Insufficient knowledge of procurement matters on the part of procurement or other agency officials was a possible cause in 80 percent of the awards on which competition was feasible. The procurement matters include proper use of the Commerce Business Daily for proposed sole-source awards, proper handling of unsolicited proposals, and other issues discussed throughout this report.

--A lack of commitment to competition on the part of key agency personnel was a possible cause in 73 percent of the contract awards on which competition was feasible. Contributing to this problem were (1) agency officials' disregard of legal requirements relating to competition and (2) procurement personnel's perceived lack of authority or influence within their agencies when faced with demands or pressure from program or higher agency officials for questionable sole-source awards. (This cause was an underlying problem in many of our findings.)

Tables 1 through 4 on pages 74 through 77 show the distribution by agency of the major causes. As can be seen in the tables, these causes were also factors in those contract awards which could have been competitive with better agency planning or management.

The following table summarizes the frequency of other less common causes for the lack of competition.

Frequency of Other Possible Causes of Missed Competitive Opportunities

Possible underlying cause	Percent of awards in the universe for which competition was feasible	Percent of awards in the universe for which better planning or management could have resulted in competition
Procurement personnel followed agency policies which were inconsistent with the FPRs or other legal authority	30.5	13.5
Personnel wanted to award the contract before the end of the fiscal year or some other date unrelated to a valid urgency claim	19.2	20.0
The procurement workload was heavy	14.1	22.4
Agency personnel mistook their authority to award negotiated contracts for authority to award sole-source contracts	10.6	0
Clear procedures did not exist for expediting procurements when urgency did not permit competition through the normal competitive process	8.7	26.1
Procurement personnel believed that higher agency officials wanted the sole-source contractor to be awarded the contract	4.3	0

PROBLEMS WITH JUSTIFICATIONS FOR SOLE-SOURCE AWARDS

The reasons agencies used to justify their sole-source decisions were often not valid. Agency contracting officers and other officials responsible for reviewing the validity of the justifications need to do a better job of ensuring that competition is not feasible before approving such decisions. In addition, Federal regulations need to clearly set forth

--the criteria that must be met to award sole-source contracts and

--the documentation requirements for demonstrating that competition is not feasible.

The agencies also need effective management controls to ensure that they meet these requirements.

Need for clear guidance on justifying sole-source decisions

The FPRs provide little guidance on what justifies a sole-source decision. Therefore, some Federal agencies have come to rely on the Comptroller General's decisions in bid protest cases for basic principles and guidance. 1/ However, the degree of knowledge concerning these principles varies greatly among agency procurement personnel. We believe the basic principles should be set forth in the Federal regulations so that the accountability of agency personnel can be clarified and more easily measured.

When the facts and circumstances have substantiated an agency's claims, the Comptroller General's decisions have accepted the following reasons as valid justifications for civil agencies to award contracts on a sole-source basis.

--The agency has statutory authority to award the sole-source contract. (However, it should be noted that agency officials sometimes incorrectly claimed this authority because they mistook authority to award negotiated contracts for authority to award sole-source contracts.)

--The Government's need for a product or service is so urgent that there is not enough time to obtain competition. Urgency in itself, however, does not necessarily justify a sole-source decision. A search for other sources, to the extent reasonable in the circumstances, is required.

--The data, such as drawings or other specifications, needed for competition is not available. (However, we believe the agency is responsible for making sure that adequate data is available for competition or for demonstrating that this is not in the Government's best interests.)

1/The Comptroller General, as the head of GAO, renders legal decisions when an interested party, such as an individual or a firm doing business or seeking to do business with the Government, protests against the award of a contract in accordance with GAO regulations (4 CFR Part 20). Also see FPR 1-2.407-8.

--The sole-source justification demonstrates there is a reasonable basis for concluding that one contractor is uniquely capable of meeting the Government's minimum requirements (only those features which are essential to meeting the Government's need).

--A few other reasons, such as the need for standardization of parts and the need for compatibility of equipment when the safety of human life is at stake, may be acceptable in certain circumstances but these are very infrequent and the standards to be met are stringent.

In addition, the FPRs do not require competition on procurements of $500 or less.

According to the Comptroller General's decisions, each of the following reasons is unacceptable, in and of itself, as a basis for making a sole-source award:

--Administrative convenience of the Government.

--Government officials' belief that the sole-source contractor can provide the product or service at the lowest cost.

--Unsolicited proposals.

--Patented rights or proprietary information.

--Compatibility of equipment required.

Inadequate agency justifications

Based on our sample, we estimate that on 3,218 contract awards, or 61 percent of the awards in our universe, the documentation in support of the sole-source decisions was deficient. These awards represent $248.7 million in original obligations. We considered the documentation inadequate when we could not find a written explanation for any valid reason which was sufficient to justify the sole-source decision. (Table 5, app. V, shows the distribution of these contract awards by agency.)

We estimate that, for the 3,218 inadequately documented awards:

--Agency officials were subsequently able to provide us with adequate justifications for 38 percent. Frequently, agency personnel had simply neglected to adequately document the reasons for the sole-source awards.

--Our interviews with agency procurement and program officials still did not bring forth adequate justifications for 2,004 awards (or 62 percent). These included cases

in which (1) our market search for potential competitors and other findings demonstrated the invalidity or inaccuracy of agency officials' reasons for the sole-source awards or (2) agency officials were not able to provide convincing reasons for the sole-source awards, but our investigation did not demonstrate that competition was feasible. (Table 6, app. V, shows the distribution of these awards by agency.)

The agencies' most frequently used sole-source justification was the unique capabilities of the contractor. Other common justifications included:

--Urgency. (Urgency was often one of several reasons cited and was infrequently used as the only important justification.)

--The need for compatibility of equipment.

--A lack of data needed for competition.

--Receipt of a technically acceptable unsolicited proposal. (See ch. 4.)

In addition, agencies claimed legal authority to award sole-source contracts on an estimated 1,087 of the 5,236 awards in our universe. We estimate that 693 of these awards had legitimate statutory authority. When we found that a sample contract award was legitimately exempted from competition by statute, we did not obtain answers to some of the evaluation questions which we pursued on the other contracts. Therefore, many of the remaining issues discussed in this report cover only the estimated 4,543 contract awards not statutorily exempted from competition.

A more detailed discussion of the reasons which agency officials claimed most frequently to justify their sole-source awards is included in appendix III.

USING THE COMPETITIVE PROCESS USUALLY NOT INJURIOUS TO THE GOVERNMENT

When the agencies reviewed decided that sole-source awards were appropriate, they normally did not go through the competitive process to allow competitive proposals to be offered. (See p. 2.) Since the approved sole-source justifications were often not valid, this approach frequently eliminated competitive opportunities. As stated earlier, agencies should use the competitive process when (1) the Government would not be injured by doing so and (2) they cannot demonstrate the infeasibility of competition. Regardless of the apparent feasibility or infeasibility of competition, we sought to determine, for each of the estimated 4,543

contract awards in our universe not statutorily exempted from competition, whether the Government would have been injured if the procurement had been made only after going through the competitive process. "Injury" in this context means (1) the agency's failure to accomplish, or a critical delay in accomplishing, an important deadline or critical schedule or (2) anything that would inhibit the agency in carrying out its mission, such as incurrence of substantial additional costs.

Our sample results show that on an estimated 75 percent of the 4,543 contract awards, representing original obligations of $287.3 million, the Government would not have been injured if it had gone through the competitive process. That is, the agencies would have incurred only the normal administrative costs and inconvenience associated with the process. On an estimated 19 percent of the awards, we concluded that the Government would have been injured, and we could not draw a conclusion on the remaining awards.

CONCLUSIONS

Federal regulations require contracting officers to award contracts on a competitive basis to the maximum extent practical. But the agencies reviewed frequently missed opportunities to award contracts competitively because contracting officials decided to award sole-source contracts for invalid reasons. Underlying causes of these missed opportunities included:

- --The lack of effective procurement planning.
- --Inappropriate reliance of agency procurement officials on agency program or technical officials' unproven statements without adequately questioning or testing their accuracy.
- --Insufficient knowledge of procurement matters on the part of procurement or other agency officials.
- --A lack of commitment to competition on the part of key agency personnel, including procurement, program, and higher agency officials.

Agency contracting officers and other officials responsible for reviewing the validity of sole-source justifications need to do a better job of (1) ensuring that competition is not feasible before approving sole-source decisions and (2) using the competitive process whenever the Government would not be injured by doing so or when the infeasibility of competition cannot be demonstrated.

Federal regulations need to more clearly set forth

--the criteria that must be met to award sole-source contracts and

--the documentation requirements for demonstrating that competition is not feasible.

The agencies also need effective management controls to ensure that they meet these requirements.

RECOMMENDATIONS

We recommend that the Administrator of General Services amend the Federal Procurement Regulations to clearly set forth standards for measuring personal and organizational accountability in obtaining competition on procurement awards. Specifically, we recommend that the Administrator:

1. Describe the criteria that must be met to justify sole-source procurement, such as:

--Statutory authority to award the contract noncompetitively.

--Urgency, but only if there are compelling reasons that prevent competition. However, a search for other sources, at least to the extent which is reasonable in the circumstances, should be conducted.

--The lack of data needed for competition. However, it should be clearly established that agency officials are responsible for obtaining such data or demonstrating that this is not in the best interests of the Government.

--The unique capabilities of one contractor, provided the sole-source justification fully demonstrates that this contractor is the only one capable of meeting the Government's minimum needs.

2. Require a written sole-source justification for each noncompetitive procurement over $10,000, except those involving orders under existing contracts or modifications within the current scope of work, to document the facts and circumstances substantiating the infeasibility of competition. 1/ This justification should:

1/We believe the dollar threshold for this requirement should be the same as the threshold for the requirement that sole-source awards receive a prior review at a level higher than the contracting officer. As discussed in ch. 4, a higher-level review is presently required on contracts of more than $10,000 and we believe such reviews are often ineffective because of the lack of documentation of the sole-source justification.

--Identify the problem, mission deficiency, or need which the procurement is intended to satisfy.

--Demonstrate how the agency knows that the contractor is the only one that can meet the Government's minimum requirements.

--Describe the market search that was conducted, including whether a preaward notice inviting competition was publicized in the Commerce Business Daily.

3. Require each agency obligating over $5 million annually in procurement funds (or some similar threshold) to establish and maintain an effective procurement planning system. The system should ensure that the efforts of all personnel responsible for procurement of goods and services are coordinated as early as practicable to obtain required items of requisite quality, on time, and at the lowest price.

We also recommend that the Administrator of NASA make these same amendments to NASA's procurement regulations, because it maintains that it is not covered by the FPRs.

In addition, we recommend that the Director, Office of Management and Budget, direct the Administrator, Office of Federal Procurement Policy, to incorporate these provisions in the Federal Acquisition Regulation being developed to replace the FPRs and the Defense Acquisition Regulation.

Because of the pervasive nature of the problems identified, we believe that all Federal agencies are susceptible to them. Accordingly, we recommend that the heads of all Federal departments and agencies participating in the Federal Procurement Data System:

--Install effective management procedures or controls to ensure agency compliance with the above recommended requirements.

--Use the Federal Procurement Data System to set goals for, and measure the progress of, increasing competition by agencies, components, and purchasing offices. The approach used should emphasize (1) periodically and thoroughly analyzing the system's data on noncompetitive awards by such categories as purchasing office and product or service code, (2) pinpointing areas having the greatest opportunity for increasing competition, (3) measuring incremental yearly progress, and (4) placing responsibility on program, technical, and procurement officials heading the various offices for making a "good faith" effort to meet agreed-upon goals.

--Direct appropriate agency officials to use the competitive process, unless the Government would be injured by doing so or agency officials demonstrate that competition is not feasible.

--Improve the procurement training provided to agency technical, program, and procurement personnel to better enable them to correct the types of problems identified in this report and avoid unnecessary sole-source awards.

--Perhaps most importantly of all, effectively communicate a strong commitment to competition to personnel throughout their agencies.

CHAPTER 3

MORE MARKET RESEARCH CAN REDUCE UNNECESSARY SOLE-SOURCE CONTRACT AWARDS

Federal Procurement Regulations state that, whenever property or services are to be procured by negotiation, proposals shall be solicited from the maximum number of qualified sources, consistent with the requirements for supplies or services, so that the procurement will be made to the best advantage of the Government. In addition, the Comptroller General's decisions in bid protest cases have established the principle that Federal agencies should conduct a market search, to the extent which is reasonable in the circumstances, to ensure that contract awards are based on competition, where feasible.

However, the agencies reviewed generally made little, if any, effort to identify potential competitors before awarding sole-source contracts. They usually did not effectively use the Commerce Business Daily to publicize notices of their prospective awards and otherwise did not adequately search the market for potential competitors. We believe that improving agency efforts to obtain competition, as well as strengthening and clarifying the Federal regulations in this area, would make the greatest contribution toward eliminating unnecessary sole-source awards.

NEED TO MAKE BETTER USE OF THE COMMERCE BUSINESS DAILY

With one partial exception, the six agencies reviewed did not effectively use the Commerce Business Daily to test the market for competitive sources when officials requested the award of sole-source procurements. We believe better use of the Commerce Business Daily would not only increase the use of competition and decrease the number of unwarranted sole-source awards but also provide a relatively easy way of demonstrating that the sole-source procurement is appropriate when only one contractor is capable of meeting the Government's needs.

The Commerce Business Daily is published every day except weekends and holidays by the Department of Commerce. It provides industry with notice concerning current Government contracting and subcontracting opportunities, including information on the identity and location of contracting offices and prime contractors having current or potential need for certain requirements. This publication is especially effective for reaching potential suppliers outside the local area in which the need arose.

The FPRs require that, to increase competition, all proposed civilian agency procurement actions of $5,000 and above be published promptly in the Commerce Business Daily unless

one of several specific exceptions applies. (These exceptions are shown in app. VI.) This requirement is based on the Small Business Act (15 U.S.C. 637(e)). The Director of the Federal Procurement Regulations Directorate said the requirement means that, unless one of the exceptions applies, a notice which invites competition on the prime contract is required to be placed in the Commerce Business Daily. He stated, and other General Services Administration officials agreed, that agencies were not in full compliance with the requirement when they publicized preaward synopsis notices which did not encourage or invite competition on the prime contract.

Few notices inviting competition publicized

Based on our sample results, we estimate that agency personnel placed a notice in the Commerce Business Daily which requested proposals or invited inquiries to obtain competition on the prime contract on only 84 awards. This represents only 2 percent of the estimated 4,543 contract awards in our universe which were not statutorily exempted from the requirement to obtain competition. For the remaining awards, our sample results indicated that:

--Preaward notices which stated that the Government was negotiating with a particular contractor were placed in the Commerce Business Daily for an estimated 1,751 awards. This type of notice, called a sole-source notice or intent-to-negotiate synopsis, is published for information purposes, such as alerting potential subcontractors to subcontracting opportunities. We believe such notices strongly discourage additional proposals on the prime contract.

--No preaward notices were placed in the Commerce Business Daily for an estimated 2,707 awards. When no preaward notices were publicized, those who may have wished to protest the agencies' sole-source decisions were not given adequate opportunity to do so prior to award. Of the 2,707 awards, an estimated 1,663 had no valid exceptions to the regulatory requirement to publicize. This shows widespread noncompliance with the requirement to publicize. (Tables 7 and 8, app. V, show the distribution by agency of the 2,707 and 1,663 contract awards, respectively.)

Following is an example of a contract award which was made without sufficient notice in the Commerce Business Daily. A similar case can be found in example 2, appendix IV.

The Office of the Secretary, Department of Transportation, made a competitive procurement to develop agencywide graphics standards. The following year, the Federal Aviation Administration, a Department component, awarded a separate,

new sole-source contract, initially obligating $194,700 (but later modified to $289,000), to the same contractor. This contract was to develop more detailed graphics standards than those being procured under the departmental contract, including logos and aircraft paint design. Although we found no reason why this award could not have been competitive, the agency did not publicize it before or after award in the Commerce Business Daily. Agency officials agreed that a preaward notice should have been placed in the Daily, and some of the contractors competing on the earlier contract told us they would have competed for the sole-source contract had they been notified. The agency could not provide an acceptable rationale for its sole-source decision.

Benefits offered by Health and Human Services procedure

We believe it is not coincidental that of the six agencies reviewed, the Department of Health and Human Services had both the lowest rate of unwarranted sole-source awards and the best record in using the Commerce Business Daily to invite competition. In fact, the 84 awards in our universe for which notices inviting competition were publicized were projected from 7 actual sample cases, and 6 of the 7 notices were placed by HHS. (The other notice, placed by the Veterans Administration, is discussed in example 3, app. IV.)

HHS procurement regulations provide for the use of a sources-sought notice in determining whether a proposed noncompetitive procurement is justifiable, as follows:

> "If the contracting officer or the approving official concludes that support offered to justify a noncompetitive procurement is not convincing, or where there is some unresolved doubt, a sources sought synopsis should be issued to test the marketplace * * * The sources sought synopsis does not permit potential sources to request solicitations and, therefore, is merely an opportunity for the marketplace to indicate its interest in submitting bids, offers, or quotations * * * If there is only one source identified as a result of the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement.
>
> As each justification for noncompetitive procurement is reviewed * * * the reviewer should ask: why the procurement cannot be competed, are there sufficient grounds for excluding all other actual or potential offerors, [and] what action can be taken to obtain competition * * *?"

While stating that sole-source procurement is justified when only one source can meet the contract requirements, the regulations stipulate that the existence of one source

--should be a matter of fact, not a matter dependent on the relative and limited knowledge of the project or contracting officers, and

--may not be used to justify a noncompetitive procurement before testing the marketplace by issuing a sources-sought notice.

The advantages of using a sources-sought notice, rather than the normal type of notice inviting competition, are that:

--The agency is allowed to test the market before preparing a request for proposals, so that unnecessary effort can be avoided if only one source is identified.

--Contractors, at least in some cases, are not given as many days to respond, so that the procurement cycle is not unnecessarily lengthened if no other contractors are capable and interested.

We believe that other agencies would benefit from following HHS' procedure. If they used the procedure whenever there was a question of the availability of competition, they not only would greatly increase their chances of avoiding unnecessary sole-source awards but also could obtain strong evidence for sole-source procurement when they do not identify potential competitors.

Although we believe that the HHS regulatory provisions are important, their mere existence does not ensure compliance. In relation to the other agencies reviewed, HHS also generally demonstrated a strong commitment to competition. We believe that these factors, taken together, account for HHS' superior showing in our review. The following illustrates HHS' use of the sources-sought notice.

The National Institute of Mental Health awarded a sole-source contract, originally obligating $280,000, to a professional counseling organization. A contract modification subsequently increased the obligated amount to $603,000. The contractor was required to further develop a clinical research program for the study of high-risk families and their infants, particularly those with mental and social disorders.

The agency claimed that (1) a sole-source award was necessary to maintain the continuity of research and data analysis obtained under a previous contract with the same contractor and (2) the chosen contractor was the only local source that had proven clinical research experience with infants, young

children, and their families. The agency tested its claim by issuing a sources-sought notice in the Commerce Business Daily. The notice, which explained the nature of the work and the required qualifications of the contractor, stated that the Government knew of only one capable source but invited inquiries from others that could document their capabilities to perform the work. Interested organizations were given 10 days to respond to the notice, but no inquiries resulted. We conducted an independent market search and were also unable to identify another source. We concluded that the sole-source contract was properly awarded. Moreover, we believe that the results of the sources-sought notice provided a sound basis for the sole-source decision.

Exceptions to the requirement to publicize not generally claimed

Based on our sample results, agency officials did not claim any exceptions to the requirement to publicize prospective awards in the Commerce Business Daily on an estimated 2,859 awards. This represents 64 percent of the contract awards in our universe for which (1) competition was required and (2) agencies did not publicize a preaward notice inviting competition. (Table 9, app. V, shows the distribution of these results by agency.) In addition, the exceptions claimed on an estimated 308 of 1,600 awards were not appropriate. In total, then, the agencies did not fully comply with the requirement, as interpreted by the FPR Directorate, to place notices inviting competition on 3,167 awards in our universe. An illustration of an inappropriately claimed exception follows, and another can be found in example 4, appendix IV.

The National Institutes of Health, HHS, awarded a sole-source contract, initially obligating $26,000, for the procureemnt of a cell separator. One of the exceptions to the requirement to publicize is for procurements that are of such unusual and compelling emergency that the Government would be seriously injured if offers were permitted to be made more than 15 calendar days after (1) issuance of a request for proposals or (2) the date of transmittal of the synopsis, whichever is earlier. Citing this exception, the agency did not publicize the proposed procurement in the Commerce Business Daily. We believe that the use of this exception was not valid because time was available and agency officials should have acted more promptly. For example:

--The need for the device was identified in late 1978.

--The purchase request was initiated on June 1, 1979, and was not received by the procurement office until July 27, 1979.

--Negotiations were conducted between August 27 and September 20, 1979, and the award was made on the latter date.

--The delivery date was specified as September 30, 1979. In addition, an HHS program official told us that (1) although delivery was made on that date, the machine could not be used because peripheral items, such as tubes and cups, were not delivered and the manufacturer could not provide a representative to teach agency personnel how to operate the machine, (2) the machine was finally put into operation on November 19, 1979, and (3) the delay did not cause injury to the Government or the patients.

Need to clarify Federal regulations

We asked procurement officials about their agencies' criteria for determining what is and what is not to be publicized in the Commerce Business Daily. Our sample results indicate that they:

--Believed their preaward sole-source notices fulfilled the requirement for publicizing on an estimated 1,054 of the 2,859 awards for which they did not claim exceptions. (Table 10, app. V, shows the distribution of these responses by agency.)

--Believed no preaward notices of any kind were required because they had decided competition was not feasible on another estimated 861 of the awards. (Table 11, app. V, shows the distribution of these responses by agency.)

--Gave other explanations for the remaining 944 awards.

These findings and others in previous sections of this chapter show that important differences exist among agency personnel, as well as between them and the FPR Directorate, in interpreting the requirement to publicize preaward notices. This confusion may be at least partly due to the wording of FPR 1-1.1001, the general policy on publicizing procurement actions, which states:

"Proposed procurements which offer competitive opportunities for prospective prime contractors or subcontractors shall be publicized as prescribed in this Subpart 1-1.10 to increase competition, thus assisting small business and labor surplus area concerns and broadening industry participation in Government procurement programs."

Some agency officials believe this policy means that, whenever they decide competitive opportunities do not exist on the prime contract, a preaward notice inviting competition is not required.

However, this interpretation appears to conflict with the FPR intent to promote the use of competition to the maximum extent practical. For cases in which no preaward notice was publicized and no valid exception existed, it also clearly conflicts with the FPR requirement that all proposed civilian agency procurement actions of $5,000 and above be published promptly in the Commerce Business Daily, unless one of the specific exceptions applies.

Our findings in this chapter, as well as those discussed in chapter 2, demonstrate the need for stronger and clearer requirements on notifying potential competitors of prospective awards. Agencies also need to ensure that the requirements are met in a timely way. If requesting agency officials notified procurement personnel as soon as requirements became known, there would be more time to obtain competition.

INADEQUATE MARKET SEARCH FOR COMPETITIVE SOURCES

Unless the evidence adequately demonstrates that competition is not feasible, agencies should conduct a market search for competitive sources. But in addition to not placing notices in the Commerce Business Daily inviting competition, agency officials generally did not otherwise search the market for potential competitors before awarding sole-source contracts. Even when a search was conducted, it frequently was inadequate. Some procurement personnel told us they did not conduct a market search when they received a requesting official's sole-source justification.

Our sample results indicate that a market search or some other type of competitive solicitation was conducted on only an estimated 696 (or 15 percent) of the 4,543 contract awards in our universe which were not statutorily exempted from the requirement to obtain competition. The 696 cases included the 84 awards for which notices inviting competition on the prime contract were placed in the Commerce Business Daily. Other examples of a market search included (1) telephoning or otherwise contacting more than one potential contractor to discuss their capability and/or interest in meeting the Government's needs or (2) sending more than one contractor a copy of the request for proposals before awarding the sole-source contract. Frequently, the limited efforts to identify other sources were made primarily or entirely by program or other nonprocurement personnel, even though contracting officers are legally responsible for obtaining competition.

For the 4,543 contract awards not exempted from competition, our sample results show that:

--The market search (or the lack of a search) was adequate for an estimated 36 percent. In other words, we concluded

that (1) the agency's search provided adequate assurance that competition was not feasible or (2) even without any search, there was adequate evidence that competition was not feasible and that a market search or solicitation would have been futile. (Table 12, app. V, shows the distribution of these awards by agency.)

--The market search was not adequate, considering the circumstances, for ensuring that competition was not feasible on an estimated 52 percent. Agency claims that only one contractor can satisfy the Government's requirements need to be supported by factual evidence, generally obtained from the marketplace. (Table 13, app. V, shows the distribution of these awards by agency.)

--We were not able to judge whether the market search was adequate for the remaining 12 percent, primarily because of the agencies' failure to place notices in the Commerce Business Daily inviting competition.

Sample cases of inadequate market searches can be found in examples 5, 6 and 7, appendix IV, and adequate searches are illustrated in example 8, appendix IV, and on pages 14 and 28.

CONCLUSIONS

The agencies reviewed generally made little, if any, effort to conduct market research and identify potential competitors before awarding sole-source contracts. We believe that, to make the greatest contribution toward eliminating unnecessary sole-source awards, agencies should (1) effectively use the Commerce Business Daily to publicize notices of prospective awards and (2) otherwise search the market for potential competitive sources to the extent reasonable in the circumstances. When there is any reasonable doubt about the availability of competition, and especially when the request for a sole-source award is based on the claim that only one firm is capable of meeting the Government's needs, a market search should be required.

Important differences exist among agency personnel, as well as between them and the FPR Directorate, in interpreting the requirement to publicize preaward notices in the Commerce Business Daily. Federal regulations need to better define this requirement. In addition, if requesting agency officials notified procurement personnel as soon as requirements became known, there would be more time to obtain competition. Agencies need to ensure that the requirements to publicize prospective awards are met in a timely way.

RECOMMENDATIONS

In chapter 2 we recommended that the Administrator of General Services amend the Federal Procurement Regulations to clearly set forth standards for measuring personal and organizational

accountability in obtaining competition. To help accomplish this objective, we further recommend that the Administrator amend the regulations to:

1. Require that a market search for competitive sources be made before a sole-source justification can be approved. This requirement should apply to all contract awards over $10,000, except those involving orders under existing contracts or modifications within the current scope of work, unless it can be conclusively demonstrated with facts, not opinions, that competition is either not feasible or not legally required. The extent of the market search should depend on what is reasonable in the circumstances to ensure that competition is not feasible.

2. Require that the market search include publicizing in the Commerce Business Daily a preaward synopsis notice which invites competitive offers on the specific prime contract award, unless one of the regulatory exemptions to publicizing applies and is adequately documented in the sole-source justification. Other reasonable steps, such as soliciting capable firms and contacting local businesses, should also be taken, when appropriate. Federal regulations should also provide guidance on when each of the following types of Commerce Business Daily notices should and should not be used, consistent with the requirements of the Small Business Act (15 U.S.C. 637(e)):

--A preaward sources-sought synopsis which seeks to find out if more than one firm is interested and qualified to provide a particular product or service to the Government, although a request for proposals is not available. This type of synopsis should be used when one contractor is thought to be uniquely capable of meeting the Government's minimum requirements. If no other potential contractor responds and is interested and capable, sole-source procurement is usually justified. If potential contractors are identified, they should be solicited.

--A preaward synopsis inviting competition on the prime contract and stating that a request for proposals is available.

--A preaward notice of the agency's intent to negotiate with one particular firm and to award a sole-source contract.

3. Require that, especially in potential sole-source situations, the agency requesting officials notify procurement offices as soon as requirements become known, to maximize the time available for conducting the market search and obtaining competition.

We recommend that the Administrator of NASA make these same amendments to NASA's procurement regulations, because it maintains that it is not covered by the FPRs.

In addition, we recommend that the Director, Office of Management and Budget, direct the Administrator, Office of Federal Procurement Policy, to incorporate these provisions in the Federal Acquisition Regulation being developed to replace the FPRs and the Defense Acquisition Regulation.

Because of the pervasive nature of the problems identified, we believe that all Federal agencies are susceptible to them. Accordingly, we further recommend that the heads of all Federal departments and agencies participating in the Federal Procurement Data System install effective management procedures or controls to ensure agency compliance with the above recommended requirements.

CHAPTER 4

OTHER ACTIONS ARE NEEDED TO INCREASE COMPETITIVE CONTRACT AWARDS

Agency officials did not always follow Federal regulations that call for specific actions to promote competition. As a result, they missed opportunities to obtain competition on contract awards. Agencies could reduce the number of unnecessary sole-source contract awards by

--correctly identifying the Government's minimum requirements and, including only those requirements in contract specifications;

--properly handling unsolicited proposals;

--adequately reviewing sole-source decisions; and

--fostering competition in subsequent procurements after previous noncompetitive procurements.

UNNECESSARILY RESTRICTIVE SPECIFICATIONS

Federal agencies need to ensure that purchase descriptions, statements of work, and other forms of contract specifications are not unnecessarily restrictive. The FPRs state that purchase descriptions, as well as other forms of specifications, must accurately reflect the Government's minimum needs. Purchase descriptions should not specify features, such as dimensions, materials, or other salient characteristics, peculiar to the product of one contractor unless the user has determined in writing that

--those features are essential to the Government's requirements and

--other contractors' similar products, which lack those features, would not meet the minimum requirements.

In addition, past Comptroller General decisions have stated that "where the legitimate needs of the Government can be satisfied from only one source, the law does not require that those needs be compromised to obtain competition."

In examining our sample of sole-source contract awards, we attempted to identify minimum requirements. The complexity of the specifications used on some awards and the time limitations of our review prevented us from examining this issue in depth on every award. In addition, because only one firm was usually solicited on the contracts in our sample, our results in this area may not truly reflect agency solicitations

sent to more than one potential contractor. Nevertheless, we found evidence that the specifications, purchase descriptions, statements of work, etc., unnecessarily restricted competition by requiring more than the minimum requirements on an estimated 7 percent of the 4,543 contracts not exempted from the requirement to obtain competition. (Table 14, app. V shows these results by agency.) An example of unnecessarily restrictive specifications follows.

The Bartlesville Energy Technology Center, Department of Energy, awarded a sole-source contract, initially obligating $218,000, to study a patented process for determining the amount of oil remaining in an abandoned reservoir. The Department claimed that the sole-source contractor was unique because it was the only nonpetroleum company having a license granted by the patent holder. We contacted the company that held the patent and found it did not require that firms hold licenses to use the patented process in conducting a study as set forth in the contract. We concluded that the Department had unnecessarily restricted competition by not identifying the minimum requirements correctly. Other firms said they would have competed for the award if they had been given the opportunity. The agency contracting officer agreed that competition should have been obtained.

Although unnecessarily restrictive wording in purchase descriptions and similar documents is a problem that procurement personnel should attempt to correct, we identified a far more serious and widespread restriction on competition. As previously discussed, agency officials often decided that sole-source awards were appropriate and never gave other capable firms an opportunity to make offers. We believe that, if agency officials take such actions as publicizing prospective awards to invite competition and soliciting potentially competitive sources, it will become more important that specifications not preclude competition by requiring features nonessential to meeting the Government's needs.

IMPROPER HANDLING OF UNSOLICITED PROPOSALS

The agencies reviewed frequently did not obtain competition on contracts evolving from unsolicited proposals even though competition was feasible. When competition is feasible, the Government's minimum requirements, along with its evaluation criteria, should be incorporated into a solicitation document, such as a request for proposal, in such a way that

--any proprietary information or unique ideas contained in an unsolicited proposal are not disclosed and

--other potential offerors have an opportunity to compete on an equal basis.

The Government's policy is to encourage the submission of unsolicited proposals. An unsolicited proposal, a written offer to do a proposed task under contract, is initiated by a prospective contractor and submitted to the Government without Government solicitation.

The FPRs state that unsolicited proposals

--are a valuable means by which unique or innovative methods or approaches from outside the Government can be made available to Government agencies for use in accomplishing their missions,

--should not be merely advance proposals for specific agency requirements which would normally be procured by competitive methods, and

--should be prepared independent of Government supervision.

The FPRs also provide that, when a document qualifies as an unsolicited proposal, it "shall not be acceptable" if the substance:

> "(1) is available to the Government without restriction from another source, or (2) closely resembles that of a pending competitive solicitation, or (3) is otherwise not sufficiently unique to justify acceptance * * *."

When procurement is intended and competition is feasible, the proposal should be returned to the offeror. Also, a favorable comprehensive evaluation of an unsolicited proposal is not, in itself, sufficient justification for sole-source award.

We found frequent improper handling of unsolicited proposals. Our sample results indicate that, on an estimated 507 (or 66 percent) of the 767 contract awards in our universe resulting from unsolicited proposals, the contractors did not possess unique capabilities for meeting the Government's minimum requirements and competition was feasible. (Table 15, app. V, shows these results by agency.)

This problem was due to not only the lack of market research, as discussed in chapter 3, but also agency officials' lack of understanding of the requirement to return unsolicited proposals and obtain competition when the product or service is available without restriction from another source. Such lack of understanding was especially noticeable at the Department of Energy.

Another recurring problem was the failure of agency officials to identify the Government's minimum requirements for

the contract which the unsolicited proposal was funded to satisfy. If others are capable of solving the Government's problem or satisfying its need, the procurement regulations clearly require that the award be based on competition. The competition can be structured to emphasize either cost or technical factors through the evaluation criteria contained in the Government's request for proposals. Instead of using this approach and allowing all capable and interested sources an opportunity to compete, agency officials often adopted the unsolicited proposal as the Government's minimum requirements. As a result, sole-source contracts were unnecessarily awarded and the Government may have been prevented from obtaining better solutions to its problems and/or lower prices through competition.

Based on our sample results, only an estimated 175 of the 767 unsolicited proposals involved proprietary information. On 83 percent of the 175 contract awards, use of the proprietary information was not essential to satisfy the Government's minimum requirements. In other words, other solutions not involving the proprietary information contained in the unsolicited proposal may have been available to satisfy the Government's problem or need.

An example of an unsolicited proposal that was not properly handled follows, and another is included as example 9, appendix IV. In addition, appendix VII discusses a special problem relating to certain Department of Energy unsolicited proposals.

The Bureau of Mines, Department of the Interior, awarded a sole-source contract, initially obligating $47,000, to cosponsor with the Bureau a 2-day symposium on the utilization of mining wastes. The contractor had done six previous symposiums, and all seven awards resulted from unsolicited proposals. We found no sole-source justification. In addition, the agency did not conduct a market search to find out whether competition was feasible. According to agency officials, no procurement notice was placed in the Commerce Business Daily due to "administrative oversight" and a "heavy agency workload." We concluded that competition was feasible on this award. We found another firm that (1) was interested in competing if it had been given the opportunity and (2) had conducted similar symposiums for various mining organizations and for congressional personnel responsible for mining legislation. An agency official admitted that the other firm could have met the Government's minimum requirements.

It is often difficult to obtain information on the nature of the contacts which occurred between agency and contractor officials before unsolicited proposals were submitted. However, we believe there is a need for limitations on prior agency contacts with only <u>one</u> potential contractor when others could also meet the Government's needs. A market search for alternative solutions is needed.

INADEQUATE OR NONEXISTENT REVIEWS OF CONTRACTING OFFICERS' SOLE-SOURCE DECISIONS

The agencies frequently did not adequately review the contracting officers' sole-source decisions, as required. The FPRs state that, except for procurement of utility services and educational services from nonprofit institutions, contracts of more than $10,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to ensure that

--negotiated procurements are on a competitive basis to the maximum extent practical;

--competitive procurement is not feasible on proposed noncompetitive procurements; and

--subsequent noncompetitive procurements are avoided, whenever possible, after previous sole-source procurement.

We estimate that 56 percent of the 4,543 sole-source contract awards in our universe which were not exempted from competition either (1) should have been and were not reviewed by a higher-level official or sole-source review board in accordance with this requirement or (2) were not adequately reviewed. (Table 16, app. V, shows the distribution of these awards by agency.) In many of the inadequate reviews, the reviewing officials accepted justifications for the sole-source awards that we demonstrated to be inaccurate.

Some agencies follow policies which are inconsistent with the FPRs by using a higher threshold than $10,000. For example, Department of Transportation Order 4200.10 states that proposed noncompetitive procurements in excess of $25,000 must be reviewed at a higher level than the contracting officer. Also, NASA regulations state that proposed noncompetitive procurements between $10,000 and a designated dollar threshold over $100,000, which varies among NASA installations, are to be approved by the procurement officer or his or her designee. "Procurement officer," as defined by NASA, means the head of a procurement office. The term "designee" means the official authorized by the procurement officer to sign the sole-source justification. For procurements above the dollar threshold, the installation's head, the deputy, or the associate director is responsible for approval.

In most situations, NASA's regulations were, in effect, the same as the FPRs. However, in a couple of sample cases, the NASA procurement officer delegated the reviewing responsibility to the contracting officer, the same person who made the sole-source decision. In our opinion this procedure defeats the purpose of the requirement. NASA regulations need to

stipulate that the procurement officer's designee be someone at a higher level than the contracting officer. An example of a sole-source decision which was not adequately reviewed follows.

The Urban Mass Transportation Administration, Department of Transportation, awarded a noncompetitive contract, initially obligating $17,500. The contract was to investigate and design a demonstration which would provide comparative cost-effectiveness analysis of service improvement versus fare-free services in transit systems. The sole-source decision had not been reviewed, and we concluded that the procurement should have been competitive. The contracting officer told us he did not know of the FPR requirement for a higher-level review of contracts over $10,000. Instead, he cited Department of Transportation Order 4200.10, which deals only with the higher-level review of procurements in excess of $25,000. The Director of the Administration's procurement office agreed to correct this review practice and informed us that the Administration's guidance was also being changed to conform to the FPR requirement.

Many of the reviews were inadequate at least partially because the documentation requirements for sole-source decisions are too lax. For example, the FPRs do not require agencies to document in the sole-source justification (1) the extent and results of the market search or why such a search was not made or (2) the type of notice publicized in the Commerce Business Daily or even whether any notice was publicized. Consequently, if agency officials claim that the proposed sole-source contractor is uniquely capable of meeting the Government's needs, the reviewer may not have sufficient information to determine if this claim has a reasonable basis. This situation puts reviewing officials at a severe disadvantage in trying to ensure that competition is used whenever feasible.

We believe that the Federal regulations need to provide clearly defined standards for justifying and documenting sole-source decisions. Agencies also need to ensure that the reviews are effectively made to assess compliance with the regulations and to reduce the number of unnecessary sole-source contracts.

LACK OF EFFORTS TO FOSTER COMPETITION IN SUBSEQUENT PROCUREMENTS AFTER PREVIOUS NONCOMPETITIVE AWARDS

Although agencies are required to avoid repeated sole-source awards by fostering competitive conditions after a noncompetitive procurement, they frequently failed to do so.

The FPRs state that:

"When a proposed procurement appears to be noncompetitive, the procuring activity is responsible not only for ensuring that competitive procurement is not feasible but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action shall include * * * 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."

Our sample results indicate that, on an estimated 1,756 of the 4,543 contract awards which were not exempt from the requirement to obtain competition, the procurement office had previously procured the item or service noncompetitively. (At least two previous sole-source contracts had been awarded in an estimated 73 percent of these cases.) In an estimated 52 percent of the 1,756 cases, the agencies had not taken adequate steps since the previous sole-source awards to foster competitive conditions and avoid the need for subsequent sole-source procurements. (Table 17, app. V, shows these results by agency.) In most of the remaining cases, we concluded that competition was not feasible even though no such effort had been made. In most of the cases for which the agencies did not take adequate steps to foster competition, the product or service had been previously procured noncompetitively at least twice by that procurement office. An example of the lack of effort to foster competition in subsequent procurements follows.

The National Institutes of Health, HHS, awarded a sole-source contract, initially obligating $76,000, for preventive maintenance and emergency service on a laboratory device called a spectrophotometer. The contracting officer admitted he had not sought competition in awarding this contract. We found that the agency had been awarding sole-source contracts for this purpose for 10 years. Procurement personnel did not encourage or even suggest competition. Instead, the contracting officer simply informed the using departments what was needed for an acceptable sole-source justification. We identified another capable firm that told us it would have competed for the award if it had been given the opportunity. Agency officials agreed that this potential competitor probably could have done the work. We found no evidence that the Government would have been injured by going through the competitive process.

CONCLUSIONS

Several types of actions which, contrary to requirements, agency officials did not perform adequately or at all resulted in missed opportunities to obtain competition. First, Federal agencies sometimes used contract specifications that unnecessarily restricted competition by requiring more than the minimum requirements.

Second, Federal agencies frequently did not obtain competition on contracts evolving from unsolicited proposals when competition was feasible. This problem was due to not only the lack of market research but also agency officials' (1) lack of understanding of the requirement to return unsolicited proposals and obtain competition when the product or service is available without restriction from another source and (2) failure to define the Government's minimum requirements for the contract and adoption of the unsolicited proposal as the minimum requirements. When competition is feasible, the Government's minimum requirements, along with its evaluation criteria, should be incorporated into a solicitation document in such a way that

--any proprietary information or unique ideas contained in an unsolicited proposal are not disclosed and

--other potential offerors have an opportunity to compete on an equal basis.

In addition, agencies need to limit their preaward contacts with only one potential contractor when others could also meet the Government's needs.

Third, the agencies often did not, or did not adequately, review the contracting officers' sole-source decisions, as required. The reviews were inadequate at least partially because of lax documentation requirements for sole-source decisions. Consequently, reviewing officials did not always have the information needed to determine whether sole-source decisions had a reasonable basis. In addition, NASA regulations need to stipulate that reviews of contracting officers' decisions be made by persons at a higher level than the contracting officers.

Fourth, although agencies are required to avoid repeated noncompetitive awards by fostering competitive conditions after a noncompetitive procurement, they frequently failed to do so.

RECOMMENDATIONS

Because of the pervasive nature of the problems identified, we believe that all Federal agencies are susceptible to them. Accordingly, we recommend that the heads of all Federal departments and agencies participating in the Federal Procurement Data System:

--Increase the effectiveness of the required reviews of sole-source decisions and ensure that they are made. Improving the documentation of sole-source justifications and implementing other recommendations suggested

in this report should help improve the quality of these reviews.

--Reduce the number of unjustified sole-source contracts evolving from unsolicited proposals by (1) requiring at a minimum the type of documentation and market research that we are recommending for other sole-source procurements, (2) educating agency personnel that unsolicited proposals are not acceptable if the substance is available to the Government without restriction from another source, and (3) requiring that potential offerors be provided with a solicitation document, such as a request for proposals, stating the Government's problem and minimum requirements as well as its evaluation criteria (but not the particular ideas, proprietary information, or solution contained in the unsolicited proposal), when competition is feasible and a valid requirement exists.

--Better ensure that (1) contract specifications are not unnecessarily restrictive and (2) competition is fostered to the maximum extent practical in subsequent procurements after previous noncompetitive awards, as required.

We further recommend that the Administrator of NASA amend NASA's regulations to stipulate that the required review of a contracting officer's sole-source decision be made by someone at a higher level than the contracting officer.

CHAPTER 5

RELIABILITY OF THE FEDERAL PROCUREMENT DATA SYSTEM NEEDS TO BE IMPROVED

Public Law 93-400, 88 Stat. 796, required the Administrator, Office of Federal Procurement Policy, to establish a system for collecting, developing, and disseminating procurement data to meet the needs of the Congress, the executive branch, and the private sector. The resulting Federal Procurement Data System is the official Federal procurement data base and is a valuable tool used for such purposes as measuring and assessing the impact of Federal procurement. The computerized system provides a basis for required recurring and special reports to the President, the Congress, Federal executive agencies, and the general public. However, the data in the system is not as accurate and complete as possible.

As explained in chapter 1, we used the Federal Procurement Data System as the basis for our statistical sample. We also (1) verified the accuracy of the data in our sample to determine the reliability of the data base and (2) conducted a few limited tests to assess the completeness of the system. Based on our sample results, we estimate that almost half of the contract actions (representing more than half of the dollars) initially entered into the system as being in our universe had one or more errors, such as inaccurate dates, dollars obligated, or extent of competition. In addition, some sole-source contracts had not been entered into the system.

The causes for both of these problems include the lack of training of agency personnel, inconsistencies between the Federal system and agency reporting systems, and the lack of effective controls for ensuring accurate and complete data.

NEED TO IMPROVE THE DATA'S ACCURACY

The Federal Procurement Data System contains numerous, widespread, and potentially significant inaccuracies. Based on our sample results, we estimate that 47 percent of the contract actions coded into our universe, representing 53 percent of the dollar value, had one or more errors. The inaccuracies affected the 12 data elements and the 6 agencies reviewed. Four of the agencies had one or more errors in at least an estimated 48 percent of their contract actions. (Table 1, app. VIII, shows our projections of the number of errors per contract award by agency.)

The significance of such inaccuracies depends on the system user's particular needs. For example, we estimate that 19 percent of the contract actions which the agencies coded as being in our universe should not have been in our universe.

(Tables 2 and 3 in app. VIII show the number and value of these miscoded actions.) Because these errors were significant, we had to remove the inaccurately coded actions from our universe and replace them with other randomly selected actions that were correctly coded into the data system. This costly and time-consuming effort would be impractical for most system users who do not have access to agency contract files.

Because the errors were widespread, improvements are needed not only on an individual agency basis, where the causes may be unique agency problems, but also on a Government-wide basis, so that the users can be assured of the data's reliability.

Inaccuracies found in all data elements checked

The following table, based on our sample results, shows the error rates and percentages of dollars affected for the data elements reviewed.

Projected Data Element Error Rates for Contract Actions Coded as Being in Our Universe

Data elements	Percent of elements miscoded	Percent of dollars affected
Agency name (including agency component code)	3	6
Dollars obligated (rounded to the nearest thousand)	11	15
Contract number (assigned by the agency)	9	5
Action date	14	13
Purchasing or contracting office	2	4
Kind of contract action (for this review, either a new definitive contract or initial letter contract)	6	8
Method of contracting (for this review, negotiated noncompetitive)	5	8
Extent of competition (for this review, other negotiated noncompetitive)	7	14
Negotiation authority	10	13
Product or service code	4	8
Type of contract	5	5
Estimated completion date	6	7

There is a problem with contract awards having multiple errors. For example, only one Department of Energy contract action had four errors: (1) agency component, (2) action date, (3) negotiation authority, and (4) product or service. But this one action accounted for 20 percent (or $26 million) of Energy's projected total of $132 million. The errors on this action could materially distort the Department's true procurement picture and lead to erroneous conclusions if the data were provided to a system user who desired information relating to one of those elements, such as a calendar year or monthly basis. (The action date was miscoded as February 1980 instead of December 1979.)

Causes of inaccuracies in the data

It was often difficult to identify the causes of inaccuracies in the data because agencies are not required to retain their data input forms. As a result, we cannot project to our universe the causes of errors identified. However, through interviews with agency procurement personnel, we identified the causes listed below.

--The Federal system requirements were not consistent with the agencies' own procurement data systems from which the Federal data is derived.

--Agencies lacked proper controls to correct errors.

--Agency procurement personnel, who enter data in the system, were sometimes inexperienced or lacked sufficient knowledge of Federal Procurement Data System procedures. For example, some of them were not familiar with system definitions of procurement terms.

--Agencies sometimes split procurement functions among subgroups. Because the individuals who entered the contract actions were unaware of all the facts, they often used incorrect codes.

Some examples follow.

--System data showed that a Health Service Administration, HHS, contract had originally obligated $102,000 on the action date. Our review of the contract file showed that the obligation was actually zero. Because the agency's computer program would not process a contract action unless a dollar amount was entered under "dollars obligated," agency personnel entered a dollar figure even if no dollars were obligated. An agency official stated that the agency was aware of this inconsistency with the Federal system's requirements but needed to receive information quickly on the amount expected to be spent on a contract. We believe that the agency needs to revise its computer program to accept zero obligations and to ensure that its procurement data system is consistent with the Federal system.

--System data showed that a Veterans Administration contract action was a new definitive contract. Data in the contract file showed that the action was, in fact, a modification to an existing contract. The reason for the miscoding was apparently the inexperience of the individual who prepared the input form; she said she had prepared the input document when she was relatively new. This illustrates the need for agencies to provide adequate training on the Federal system to ensure quality control.

--Information in the data system indicated that a NASA contract was noncompetitive. After reviewing the contract file and interviewing agency officials, we concluded, and NASA officials agreed, that the contract should have been coded as competitive. The cause of the incorrect coding was apparently a lack of communication between two groups within NASA. The headquarters unit had solicited proposals, conducted a technical competition, selected the winner, and directed a NASA field unit to award the contract. The field unit treated the procurement as a sole-source contract because it had been directed to make the award to a specific offeror. After bringing this problem to the attention of a NASA procurement official, he stated the agency would correct the situation by instructing field units to code such procurements as competitive in the future.

NEED TO IMPROVE THE DATA SYSTEM'S COMPLETENESS

Some sole-source contract actions which should have been entered into the Federal Procurement Data System were missing. At three purchasing offices in two agencies, we assessed the number of contracts that should have been entered into the system by examining agency contract lists and searching the Federal system for a sample of these contracts. As shown below, we found that 7 percent of the 117 contract actions examined had not been entered into the system.

Purchasing office	Number of contracts reviewed	Contracts not in the system	
		Number	Percent
Department of Energy's Washington Procurement Office	20	1	5
Veterans Administration's Office of Supply Service	18	5	28
Veterans Administration's Department of Veteran's Benefits	79	2	3
Total	117	8	7

We cannot statistically project these findings to the universe of contract actions because we did not have the resources to conduct a statistically valid random sample.

Agency personnel gave us various reasons for the missing contract actions. Officials of Energy's Washington Procurement Office told us that the one missing contract action had been entered into Energy's computerized information system before submission to the Federal system but that it had been rejected

by the computer edit program because it included some incorrect information. Energy officials said they were working to "purify" the contract action and would then resubmit it to the Federal system.

The Chief of Procurement at the Veterans Administration's Office of Supply Services stated that he was unable to account for some of the contract actions not entered into the Federal system. However, he said (1) the contracting officers are responsible for entering information into the agency's own procurement data system which is later entered into the Federal system and (2) they simply forgot to enter some of the contract actions into the agency's data system. Apparently, one of the missing contract actions was submitted to the Federal system but was rejected due to an error. However, the agency never corrected and resubmitted the data.

At the Veterans Administration's Department of Veteran's Benefits, 2 of 79 contract actions were missing from the Federal system. The division's Chief of Procurement told us that, due to an oversight, one of the missing actions was not entered into the system until after our reliability assessment. He said the Federal system probably rejected the second action because it included unacceptable information.

CONCLUSIONS

The Federal Procurement Data Center and Federal agencies need to improve the reliability of the Federal Procurement Data System. The data was not as accurate and complete as possible due to the lack of training of agency personnel, inconsistencies between the Federal system and agency reporting systems, and the lack of effective controls for ensuring accurate and complete data. Because the quality of the data entered into the system depends on those most familiar with Government procurement practices and the individual procurement actions, contracting officers ultimately need to be held accountable. With increased agency commitment and personal accountability, the data's reliability should improve and the system should become a more valuable tool.

RECOMMENDATIONS

Because of the pervasive nature of the problems identified, we believe that all Federal agencies are susceptible to them. Accordingly, to improve the accuracy and completeness of the Federal Procurement Data System, we recommend that the heads of all Federal departments and agencies participating in the system, in conjunction with the Director, Federal Procurement Data Center, and the Administrator, Office of Federal Procurement Policy: (1) institute a quality control program, including periodic sampling of agency data, (2) improve data entry and correction procedures, (3) resolve inconsistencies between the system's requirements and the agencies' own systems,

(4) provide training to appropriate personnel concerning system definitions and procedures, and (5) hold contracting officers accountable for ensuring that correct and complete data is promptly entered into the system on each of their contract actions by providing feedback on the coding errors for their contracts and assessing their performance.

SAMPLING PLAN

Original Sample Universe and Sample Size

Agency	$(000) Strata	Actions coded into our universe: Value of actions	Actions coded into our universe: Number of actions	Original sample size
		$(000)		
Energy	10 - 99	$ 7,871	222	10
	100 - 999	43,830	212	10
	1,000 - 4,999	31,925	15	5
	5,000 and above	48,093	4	4
		$131,719	453	29
HHS	10 - 99	$ 26,070	702	16
	100 - 999	44,879	175	10
	1,000 - 4,999	8,601	7	7
	5,000 and above	0	0	0
		a/$ 79,549	884	33
Interior	10 - 99	$ 43,220	1,151	18
	100 - 999	59,208	280	10
	1,000 - 4,999	51,377	14	4
	5,000 and above	19,774	2	2
		$173,579	1,447	34
NASA	10 - 99	$ 35,197	1,208	18
	100 - 999	59,721	238	10
	1,000 - 4,999	13,779	12	4
	5,000 and above	20,835	2	2
		a/$129,531	1,460	34
Transportation	10 - 99	$ 18,581	670	14
	100 - 999	30,650	108	12
	1,000 - 4,999	14,841	8	4
	5,000 and above	28,651	3	3
		a/$ 92,724	789	33
Veterans Administration	10 - 99	$ 34,645	1,193	18
	100 - 999	33,153	169	10
	1,000 - 4,999	16,170	8	4
	5,000 and above	11,852	1	1
		a/$ 95,819	1,371	33

TOTAL	10 - 99	$165,584	5,146	94
	100 - 999	271,441	1,182	62
	1,000 - 4,999	136,693	64	28
	5,000 and above	129,205	12	12
		a/$702,922	6,404	196

a/Totals do not equal sums of amounts shown due to rounding.

The actual sample size differed from that originally planned because agency personnel had miscoded some of the contract actions selected when they were entered into the Federal Procurement Data System and the actions did not belong in our universe. (See ch. 5.) We replaced these miscoded contracts with others from the same agency and stratum whenever possible. However, in some instances no more replacement contracts were available within a stratum. In addition, eight other miscoded contracts were retained in our sample, although the correct amount of dollars obligated caused them to shift to different strata.

The next page shows the resulting universe and sample size. As a result of the changes described above, we reviewed a total of 198 sample contract awards, instead of 196 as originally planned. The changes by stratum were: 98 awards instead of 94 in the lowest dollar stratum, 72 instead of 62 in the $100,000 to $999,000 stratum; 20 instead of 28 in the $1 million to $4.999 million stratum, and 8 instead of 12 in the largest stratum.

Adjusted Sample Universe and Sample Size

Agency	$(000) Strata	Adjusted actions in our universe: Value of actions	Adjusted actions in our universe: Number of actions	Adjusted sample size
		$ (000)		
Energy	10 - 99	$ 8,133	202	10
	100 - 999	39,232	197	12
	1,000 - 4,999	17,660	10	6
	5,000 and above	33,712	2	2
		$ 98,737	411	30
HHS	10 - 99	$ 19,392	529	17
	100 - 999	20,731	96	14
	1,000 - 4,999	2,342	2	2
	5,000 and above	0	0	0
		$ 42,465	627	33
Interior	10 - 99	$ 39,019	1,036	18
	100 - 999	46,242	215	10
	1,000 - 4,999	40,944	11	4
	5,000 and above	19,774	2	2
		$145,979	1,264	34
NASA	10 - 99	$ 30,529	988	18
	100 - 999	54,594	201	11
	1,000 - 4,999	13,779	12	4
	5,000 and above	17,600	1	1
		$116,502	1,202	34
Transportation	10 - 99	$ 13,936	628	17
	100 - 999	26,575	86	12
	1,000 - 4,999	7,938	3	3
	5,000 and above	23,401	2	2
		$ 71,850	719	34
Veterans Administration	10 - 99	$ 24,194	859	18
	100 - 999	22,758	114	13
	1,000 - 4,999	1,216	1	1
	5,000 and above	11,852	1	1
		$ 60,020	975	33

TOTAL	10 - 99	$135,203	4,242	98
	100 - 999	210,132	909	72
	1,000 - 4,999	83,879	39	20
	5,000 and above	106,339	8	8
		$535,553	5,198	198

The adjusted numbers in the preceding table differ from the numbers cited in previous chapters.

	Estimated actions in universe	Estimated value of universe
		(000 omitted)
Estimated universe resulting from reliability assessment for accuracy (table on previous page)	5,198	$535,553
Less estimated universe resulting from feasibility of competition review results shown in earlier chapters	5,236	$538,053
Difference	-38	$ -2,500

Although these estimates differ due to different sample bases, both sets of numbers fall within the same sampling intervals and therefore are not statistically significantly different.

SAMPLING ERROR RATES

A sampling error consists of two parts: confidence level and range. The confidence level indicates the degree of confidence that can be placed in estimates derived from the sample. The range is the upper and lower limits between which the actual universe value will be found. Our sample size was designed so that expected sampling errors would not exceed plus or minus about 8 percent at the 95-percent confidence level.

Table 1

Estimated Dollar Amounts

(In millions of dollars)

From page (note a)	Estimate	Sampling error at the 95-percent confidence level
8	$538.1	$50.1
10	148.5	21.0
11	123.1	16.6
12	25.4	5.5
14	389.6	30.6
19	248.7	19.7
21	287.3	32.2

Table 2

Estimated Numbers

From page (note a)	Estimate	Sampling error at the 95-percent confidence level
11	1,686	406
12	429	253
19	2,004	425
26	84	93
26	1,751	383
26	2,707	415
26	1,663	400
29	2,859	430
29	3,167	416
30	1,054	347
30	861	309
31	696	339
37	507	224
37	767	265

a/The page references relate to the pages in the body of the report on which the estimates first appear.

Table 3

Estimated Percentages

From page (note a)	Estimate	Sampling error at the 95-percent confidence level
32	52 percent	b/9.4 percent
39	56 percent	b/9.2 percent
41	52 percent	b/18.5 percent
44	53 percent	6.3 percent

a/The page references relate to the pages in the body of the report on which the estimates first appear.

b/The sampling error is based on a portion of the universe; hence, it has a larger sampling error.

REASONS AGENCIES USED TO JUSTIFY THEIR SOLE-SOURCE DECISIONS

Based on our sample results, the following table summarizes how frequently agency officials used various reasons to justify their sole-source contract awards. We obtained these reasons both from justification documents and from interviews with agency program and procurement officials. Many of the sole-source decisions were based on more than one reason.

Justification	Estimated number of awards	Percent of all awards in the universe
Specific legal authority	1,087	21
Unique capabilities of one contractor	3,667	70
Compatability of equipment	866	17
Urgency	1,092	21
Lack of data needed to obtain competition	733	14
Receipt of an unsolicited proposal	504	10
Lowest cost to the Government	595	11
Patented or proprietary information	403	8
Standardization of parts or equipment	193	4
Other	901	17

The most frequently claimed reasons are discussed in the following sections.

STATUTORY AUTHORITY

The agencies claimed statutory or legal authority to award contracts on a sole-source basis on 44 of the 198 sample contracts reviewed. We found legitimate statutory authority existed to award 29 of the contracts sole-source. Of the 29 awards:

--Seventeen were Bureau of Indian Affairs, Department of the Interior, contracts under the Indian Self-Determination and Education Assistance Act, Public Law 93-638

(25 U.S.C. 450 et seq.) and one was an HHS contract under this same authority.

--Nine were Veterans Administration contracts under chapter 36 of the Veterans' Readjustment Benefits Act of 1966 (38 U.S.C. 1770), which authorizes the Veterans Administration to contract with an agency (designated by the Governor) in each State to approve and supervise veterans' education and training programs under the GI bill.

--One was for Veterans Administration procurement of prosthetic appliances under 38 U.S.C. 5023.

--One was the HHS contract authorized to be conducted by the National Academy of Sciences under 42 U.S.C. 289.

On 7 of the 44 sample contract awards for which the agencies claimed legal authority for sole-source procurement, we concluded that the reason was not valid and competition was feasible. We identified other sources that appeared to be capable of and interested in competing for the awards. On the remaining eight sample contract awards, we concluded that competition may not have been feasible. However, this conclusion was not based on specific statutory authority to award the contracts noncompetitively. For example, in many of these cases, the contractor was uniquely capable of meeting the Government's needs.

Based on our sample results, we estimate that:

--On 13 percent of the awards in our universe, originally obligating $107 million (or 20 percent of the dollars originally obligated), there was legitimate statutory authority to award sole-source contracts.

--On the other 87 percent, representing $431 million in original obligations, the awards were required to be made on a competitive basis to the maximum extent practical.

The following two examples illustrate invalid claims of legal authority to award sole-surce contracts.

The Social Security Administration, HHS, awarded a sole-source contract, initially obligating $79,000, for the procurement of career-related courses for employees participating in the Upward Mobility College Program. The agency's sole-source justification was based on chapter 410, subchapter 5, of the Federal Personnel Manual, which states that training through non-Government facilities is exempt from competitive bids. In our opinion, the agency's claim was invalid. The provision cited

exempts a procurement from formal advertising (the sealed-bid process) and thereby permits negotiation. It does not exempt the procurement from the FPR requirements that (1) negotiated procurement be on a competitive basis to the maximum extent practical or (2) proposals be solicited from the maximum number of qualified sources. However, the agency took no steps to search for other sources and competition was never considered. We concluded that this procurement could have been competitive because we identified two other colleges that expressed interest in submitting proposals, if they had been given the opportunity. Agency officials agreed that both of these schools undoubtedly could have met the minimum requirements.

The Bureau of Land Management, Department of the Interior, awarded a sole-source contract, initially obligating $46,000, for the procurement of services from a State game and fish agency. Claiming that it had legal authority to award a noncompetitive contract, the agency cited language contained in Public Law 93-452 (16 U.S.C. 670a et seq., as amended), otherwise known as the Sikes Act. We believe the agency may have misinterpreted the intent of the Sikes Act, which contemplated cooperation between the Federal Government and the States in planning and coordinating conservation programs. It does not authorize the Government to procure services noncompetitively from the States without attempting to obtain competition. We believe that competitive procurement is compatible with cooperation with the States. The Federal Government and the State could have shared the results of the services competitively procured whether or not the State agency was ultimately selected to perform the contract. Competition was feasible on this procurement because we identified another source that said it would have competed, if given the opportunity. An agency official who had been the technical representative on the contract admitted that other firms (1) could have met the Government's minimum requirements and (2) probably could have offered a lower price than the sole-source contractor.

UNIQUE CAPABILITIES

The claim of unique capabilities of the sole-source contractor was by far the most common reason agencies used to justify their sole-source awards. Based on our sample, we estimate that agency officials claimed unique capabilities on 70 percent of the contract awards in our universe. Each of the agencies used this reason frequently, especially when they did not claim statutory authority.

Our sample findings indicate that, on an estimated 1,448 (or 39 percent) of the awards in our universe for which this reason was claimed, the sole source contractors were not uniquely capable. These awards represent an estimated $354.2

million in original obligations. The following table shows the distribution of these awards by agency.

Awards in the Universe for Which the Claim of Unique Capabilities Was Not Valid

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	289	20	74
HHS	128	9	20
Interior	201	14	16
NASA	260	18	22
Transportation	368	25	48
Veterans Administration	202	14	21
Total	1,448	100	a/28

a/The percent of all six agencies' awards in the universe in this category.

Based on our sample results, we concluded that competition was feasible on an estimated 1,141 (or 31 percent) of the awards on which unique capabilities were claimed. An example follows.

The Veterans Administration Medical Center, Gainesville, Florida, awarded a sole-source contract, initially obligating $36,000, for repairing a hospital conveyor system. The justification for noncompetitive procurement cited the contractor's unique capabilities to supply these items as well as the need for standardization of parts and equipment. The agency erroneously stated that the repairs had to be done by the manufacturer because it was the distributor of the parts needed to do the job. We believe that the reasons for the sole-source award are invalid. The acting contracting officer admitted that the claim of standardization was not a valid basis for the sole-source decision. In addition, agency officials did not conduct a market search. In fact, competition was never considered, and no preaward or post-award notice was placed in the Commerce Business Daily. Agency personnel told us they had overlooked it. We identified two firms that appeared capable of meeting the Government's needs and told us they would have competed, if they had been given

the opportunity. One firm was currently doing similar work for the Government and would have had no trouble getting the parts from the manufacturer. An agency official agreed that competition should have been sought.

Our sample findings also indicate that, on an estimated 258 (or 7 percent) of the awards on which unique capabilities were claimed, the sole-source decisions may have been legitimate, but better agency planning or management could have resulted in competition.

COMPATABILITY OF EQUIPMENT

Based on our sample, we estimate that agency officials claimed the need for compatibility of equipment to justify sole-source decisions on 866 (or 17 percent) of the contract awards in our universe. This claim is normally related to unique capabilities because, except in very unusual circumstances, the need for compatibility of equipment is a valid reason for a sole-source award only when one contractor alone is capable of providing equipment which is reasonably compatible, consistent with its intended use.

Our sample results indicate that, on 241 (or 28 percent) of the 866 awards, the contractors were not, in fact, uniquely capable of providing compatible equipment and the claims were not valid. The following table shows the distribution of these contract awards by agency.

Awards in the Universe for Which the Claim of Compatibility Was Not Valid

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	20	8	5
HHS	0	0	0
Interior	0	0	0
NASA	18	7	1
Transportation	203	84	27
Veterans Administration	0	0	0
Total	241	a/100	b/5

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in the universe in this category.

We concluded that competition was feasible on an estimated 162 (or 19 percent) of the 866 contract awards for which the agencies claimed compatibility of equipment. The sole-source decisions on another 124 (or 14 percent) of the awards may have been appropriate, but better agency planning or management could have resulted in competition. Following is an example of the claim that compatibility of parts or equipment was needed.

The United States Coast Guard, Department of Transportation, awarded a sole-source contract, initially obligating $14,000, for the procurement of winch parts for winches on buoy tender vessels. The contracting officer claimed that, because the winch parts were replacements for existing parts, the Coast Guard needed to procure from the original contractor for reasons of compatibility and interchangeability of parts and geographical proximity. We believe that this sole-source justification was invalid. The Coast Guard solicited only the original contractor and did not conduct a market search to determine if other sources could have provided compatible parts. The contracting officer told us that he did not take the time to search for other sources because he accepted the agency engineer's word that the requested source was the only source of the item. We concluded that the Coast Guard did not comply with the applicable regulations because competition was feasible. We identified three firms that said they would have made an offer, if they had known of the proposed procurement. A program official agreed that the

Coast Guard could have procured the parts from the firms we identified.

URGENCY

Based on our sample results, agency officials claimed that urgency necessitated sole-source awards on an estimated 1,092 (or 21 percent) of the contract awards in our universe. However, our findings indicate that urgency was not a valid reason on 716 (or 66 percent) of these awards. The following table shows the distribution of these contract awards by agency.

Awards in the Universe for Which the Claim of Urgency Was Not Valid

	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	118	16	30
HHS	32	4	5
Interior	137	19	11
NASA	183	26	15
Transportation	151	21	20
Veterans Administration	95	13	10
Total	716	a/100	b/14

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in the universe in this category.

We concluded that competition was feasible on an estimated 476 (or 44 percent) of the 1,092 contract awards in our universe for which urgency was claimed. We estimate that the sole-source decisions on another 303 (or 28 percent) may have been legitimate, but better agency planning and management could have resulted in competition. As noted in chapter 2, urgency was often just one of several reasons used to justify sole-source awards. An example of a sole-source award based on urgency which could have been competitive follows.

The Department of the Interior's Bureau of Indian Affairs awarded a sole-source contract, initially obligating $18,000,

to write and evaluate 88 permanent position descriptions for a newly established office. The agency created the office on June 7, 1979, and desired to have it fully staffed and operational by October 1, 1979. Procurement planning began in June 1979. A letter contract was awarded on August 13, 1979, and was definitized on September 7, 1979. The sole-source justification stated that (1) failure to accomplish the work would deny full service to Indian tribes and (2) the contractor was the only known and available individual who had the knowledge to complete the project in the prescribed time frame.

We believe that the use of urgency as a justification for noncompetitive procurement was invalid. The agency's market search was confined to other Federal agencies and retired Federal classifiers; no search was conducted for outside firms. In spite of the "urgent" situation, the agency contracted with only one individual, instead of considering firms that could have used more than one classifier to meet the deadline. In fact, a program official told us that the sole-source contractor missed the October 1, 1979, deadline by more than a month. In addition, the completion date set forth in the contract was 6 weeks after the "urgent" deadline. We identified an outside firm that said it would have been able to meet the Government's minimum requirements and would have made an offer if it had been given the opportunity. This firm, which had been writing position descriptions for 20 years, told us that it might have used more than one person on the assignment. We believe this would have increased the possibility of more timely contract completion.

LACK OF DATA NEEDED FOR COMPETITION

Based on our sample results, we estimate that agency officials claimed a lack of data needed to obtain competition on 733 (or 14 percent) of the 5,236 contract awards in our universe. However, we found evidence that an estimated 218 (or 30 percent) of the 733 awards had sufficient data available to obtain competition. We estimate that:

--Competition was feasible on 114 (or 16 percent) of the 733 contract awards because available data was sufficient for competition and because we identified at least one other source capable of and interested in competing. The Department of Transportation accounted for 96 of these awards and NASA for the remaining 18.

--The sole-source decision may have been legitimate in 220 (or 30 percent) of the 733 contract awards, but better agency planning or management could have resulted in competition. The Department of Transportation was

responsible for an estimated 145 of the 220 awards and NASA for 55.

Following is an illustration of a sole-source contract award for which the agency inappropriately claimed a lack of data needed for competition.

NASA's Wallops Flight Center awarded a sole-source contract, initially obligating $378,000, for the procurement of two mini-tracker ranging systems to be used for obtaining trajectory and telemetry data for airborne scientific devices. We believe that NASA's claim that the details essential to reproduce the system did not exist in a form suitable for use by another source was not valid. Data for two of the components was available; the contractor had been required to furnish this data under a prior contract for the same components. The data was also available for a third component.

We concluded that competition was feasible on this procurement. We found another firm which said it would have competed, if it had been given the opportunity. A company representative told us that his firm had produced such equipment for the Air Force and he considered it off-the-shelf equipment. The NASA contract negotiator admitted that the technical details, provided in the request for proposals sent to the contractor, could possibly have provided enough detail to allow another source to have submitted a proposal. A NASA procurement specialist stated that he had a bidders' list for telemetry equipment and, in retrospect, had no defense for not recommending that this procurement be competitive. He said the sole-source procurement had just "slipped by."

RECEIPT OF AN UNSOLICITED PROPOSAL

Our sample results indicate that an estimated 767 contract awards, or 15 percent of the awards in our universe, resulted from unsolicited proposals. On an estimated 504 of these awards, the agencies claimed that receipt of technically acceptable unsolicited proposals justified sole-source awards. However, according to the FPRs, this justification is not valid if the substance of the unsolicited proposal is available to the Government without restriction from another source. The regulations also state that, when competition is feasible, the unsolicited proposal "shall be returned to the offeror together with the reasons for the return."

We estimate that, on 381 (or 76 percent) of the 504 awards, the contractors submitting the unsolicited proposals did not possess unique capabilities for meeting the Government's minimum requirements and competition was feasible. The Department of Energy was responsible for an estimated 206 of these awards,

NASA for 110, the Department of the Interior for 58, and the Department of Transportation for 7.

Our sample results show that, on an estimated 263 (or 34 percent) of the 767 awards resulting from unsolicited proposals, the agencies did not claim that receipt of technically acceptable unsolicited proposals justified the sole-source decisions but instead used other justifications. Because we found serious problems with some agencies' procedures for handling unsolicited proposals, we believe that specific actions need to be taken to address these problems. We cover this issue in more depth in chapter 4.

ADDITIONAL EXAMPLES

EXAMPLE 1

In July 1979, the Coast Guard awarded a sole-source contract, initially obligating $13,000, for the procurement of printed circuit board assemblies used in land-based scanners, which scan radio frequencies for vessel distress signals. In 1977, on a prior contract with the same contractor, the Coast Guard had procured complete scanners and the specifications to allow competitive reprocurement. Before the 1977 award, the Coast Guard told the contractor it had underbid, although the contractor insisted that it could meet its offer. The Coast Guard made a preaward inspection which created some doubts about the contractor's abilities but went ahead and awarded the contract. Serious problems developed in the contractor's performance, including poor workmanship, faulty mechanical design, delivery delays, and numerous rewrites of the deliverable software. A Coast Guard procurement officer told us that, even though the agency eventually paid the contractor and accepted the deliverables, it did not receive adequate data for reprocurement, as called for in the contract.

As a result of underbidding the prior contract, the contractor filed for bankruptcy. The Coast Guard did not press the contractor for the technical data purchased due to the firm's financial problems. In a December 1978 memo, the same Coast Guard officer wrote "the Coast Guard is extremely fortunate to have gotten a delivery of any kind from the company * * * this bidder should have been declared nonresponsive."

In early 1979, when the Coast Guard determined that printed circuit board replacement parts were needed for the scanners, competition was not considered because the quality of the data was insufficient to allow competition. The Coast Guard therefore contracted with the same contractor for replacement parts in July 1979. The four types of assemblies bought under this contract had unit prices totaling 30 percent higher than the 1977 contract cost of a complete scanner, which had many parts.

We identified a firm that said it would have made an offer on this procurement, if it had been solicited. This firm would have reverse-engineered the part by drawing up specifications based on a sample from the Coast Guard's inventory. Coast Guard officials agreed that this could have been done but said they avoid doing it because of apprehension over reliability of the parts.

We agree with the Coast Guard that competition may not have been feasible because of the lack of adequate data for competition. However, we believe that this illustrates a situation in

which better agency planning and management could have resulted in competition.

EXAMPLE 2

The Department of Energy awarded a contract which originally obligated $35,000 for the production of a film depicting the history of energy production and consumption in the United States from 1776 to the present. Agency officials did not publicize the proposed procurement in the Commerce Business Daily because they felt that the procurement did not offer competitive opportunities. The sole-source decision was based on the "exclusive capability" of the sole-source contractor, and the justification also stated that the contractor had the unique skills necessary to produce the film. The contract specialist/negotiator stated that (1) in general the Department issued too many noncompetitive contracts and (2) he had been expected not to question "practically any" sole-source justifications that had been approved by program offices.

We found another contractor which stated that it could have met the minimum requirements. This potential competitor said it would have made an offer for the award, if it had been given the opportunity. Department officials admitted that others could have met the minimum requirements and that they knew of no injury to the Government that would have resulted from competition. Therefore, competition should have been sought. We believe the agency's failure to place a notice in the Commerce Business Daily was probably an important factor in the absence of competition on this award.

EXAMPLE 3

The only instance in our sample of a Commerce Business Daily notice inviting competition that involved an agency other than HHS concerned a Veterans Administration contract originally obligating $32,000. This contract was for the installation of an intrusion detection and alarm system at one of the buildings comprising the Veterans Administration Hospital Center in Columbia, S.C. The proposed procurement was publicized in the Commerce Business Daily, as the FPRs require. Thirteen vendors responded and requested bid packages under the formal advertising procedure. All prospective bidders were mailed copies of the plans and specifications; however, no bids were received.

Although the Federal regulations permit negotiated procurement when bids have been solicited under formal advertising and none have been received, negotiated procurements are still required to be on a competitive basis to the maximum extent practical. However, in this case, when no bids were received, agency officials negotiated with only one firm. It appears

that contracting officials mistook the authority to negotiate as authority to award a sole-source contract. In our opinion, their market search was inadequate in spite of a notice inviting competition because (1) agency officials failed to seek competition through negotiated procedures and (2) competition was available from local small businesses and contracting officials should have been aware of this.

We concluded that competition was feasible. Using the local telephone directory, we identified nine firms that appeared to be capable of performing the required tasks. All of these firms told us they would have been interested in bidding on the contract. Moreover, an agency contract specialist and an engineering services official admitted that the sole-source contractor was not uniquely qualified to perform the work.

EXAMPLE 4

The Bureau of Land Management, Department of the Interior, awarded a sole-source contract, initially obligating $46,000, to a State agency to conduct a wildlife inventory of certain federally-owned land. According to the agency's contract specialist, he did not publicize the prospective procurement in the Commerce Business Daily because the FPRs exempt procurements from this requirement if they are made from another Government department or agency. In our opinion, "Government," as stated in the FPRs, refers to the Federal Government and does not include State government agencies. Representatives of the FPR Directorate confirmed our interpretation. In fact, we found potential competitors capable of and interested in competing for this award.

EXAMPLE 5

The United States Coast Guard, Department of Transportation, awarded a sole-source contract, originally obligating $150,000 (but since modified to $240,000), to the National Academy of Sciences to (1) evaluate the equivalent safety concept, a proposed method of ranking the relative safety of marine cargo shipments, and (2) study accident prevention in the marine transport of hazardous materials. Coast Guard officials stated that (1) they considered the National Academy of Sciences to be a "quasi-Government organization," (2) the academy was the only organization which could provide the expertise to accomplish the work, and (3) the academy's impartial recommendations carried weight in the Congress.

In our opinion, because the Coast Guard improperly treated the academy as a quasi-Government organization, it skipped essential steps in the procurement process. For instance, the Coast Guard did not conduct a search for other sources. In our limited market search, we identified a contractor which could have met

the minimum requirements and told us it would have competed for the contract, if given the opportunity. The Coast Guard's technical advisor admitted that the contractor we identified was capable of performing the work. In fact, this potential competitor had completed a competitively awarded Coast Guard contract and had provided the Coast Guard with a report entitled "Deep Water Ports Approach/Exit, Hazard and Risk Approach" before the award to the National Academy of Sciences. This report caused the Coast Guard to delete one of the nearly identical tasks from the sole-source contract after it was awarded to the academy. The Coast Guard contracting officer stated that the Government would not have been injured had the contract been competed.

EXAMPLE 6

The Veterans Administration's Department of Medicine and Surgery awarded a sole-source contract, initially obligating $11.9 million, for the procurement of 48 energy-saving devices to recover waste heat loss from federally-owned buildings. A 1977 executive order had set a goal of reducing energy use by 20 percent in all Federal buildings by 1985. The purchased system was expected to recover at least 10 to 15 percent.

Agency officials did not synopsize the procurement in the Commerce Business Daily, although they did not claim an exception to the requirement to publicize. The agency technical officer conducted a limited search and determined that one potential competitor could not meet the procurement's technical requirements. Before the contract was awarded, a second interested firm contacted the agency in an attempt to market its device. The firm's representative told us that the technical officer was too busy to meet with him. At a later date, the technical officer met with the firm's representatives and told him that the contract had already been awarded.

In our limited market search, we identified another firm that appeared capable of and expressed interest in competing for this procurement, if it had been given the opportunity. A Department of Energy official, familiar with this potential competitor's device, stated that tests had shown it could have saved 10 to 12 percent of waste energy. Meanwhile, the device purchased sole-source has been saving only about 9 percent in waste heat, according to tests conducted by an independent evaluation team.

The technical officer stated that the Veterans Administration probably should have sought competition. The former Director of Engineer Service, who signed the sole-source justification, told us that his involvement in this procurement was limited because he was in the process of moving his residence.

Another agency official stated that, if the contract had gone through the competitive process, the agency would have lost the use of funds available at the end of the fiscal year. The contract was awarded on August 21, 1979, less than 6 weeks before the end of the fiscal year. A memorandum from the agency's General Counsel to a Deputy Assistant Inspector General stated "the apparent reason for awarding the contract expeditiously was to obligate available funds before the end of the fiscal year." This is not a valid sole-source justification.

Other possible causes of the agency's failure to obtain competition on this award included

--the lack of effective procurement planning,

--a lack of commitment to obtaining competition on the part of the agency program and procurement officials, and

--inappropriate reliance of procurement personnel on the unproven statements of other agency personnel.

EXAMPLE 7

The Veterans Administration's Department of Medicine and Surgery awarded a sole-source contract, originally obligating $149,000 for the procurement of 22 days of leadership development training. We conducted a limited market search and found another source that expressed interest in competing for the award, had it been given the opportunity. This firm has a long history of conducting leadership development programs for large organizations. The contracting officer admitted that, if the agency had publicized this procurement, it would have received many proposals.

We believe that an underlying cause of this unwarranted sole-source decision was a lack of commitment to competition. Agency officials told us that the former Administrator of the Veterans Administration, the agency's highest official, (1) held the contractor in high regard because he had earlier participated in one of the contractor's training programs, (2) had asked his staff to examine the contractor's training program and determine whether it would be satisfactory for use, and (3) had told an agency official that he wanted the sole-source contractor brought into the agency.

A high-ranking agency official also informed us that the former Administrator not only definitely wanted to hire the sole-source contractor but also told the Office of General Counsel to "make it legal." An Office of General Counsel official

told us a representative of his office had telephoned the Office of Personnel Management and asked for an interpretation of section 5, chapter 410, of the Federal Personnel Manual, which states that training through non-Government facilities is exempt from "competitive bid procedures." According to the Office of General Counsel official, an Office of Personnel Management official (1) said that agencies, Government-wide, routinely use the Federal Personnel Manual to justify the purchase of training on a sole-source basis and (2) took the position that training is not procurement. The Office of General Counsel official could not recall which Office of Personnel Management official gave this information.

We contacted the Office of Personnel Management, and the official we spoke with contradicted the Veterans Administration's version. That is, she said the policy has always been that training procurements under the Government Employees Training Act (5 U.S.C. 4105) are exempt from the requirement for formal advertising but not from the requirement for competition. She did not believe that the Office of Personnel Management ever told any agency that the regulations permit sole-source training procurements.

We reviewed the Government Employees Training Act and concluded that it does not authorize noncompetitive procurement. We also discussed the matter with the Veterans Administration's Assistant General Counsel. After he reviewed the statute with us, he acknowledged that the exemption "would appear to be limited to formal advertising."

Other possible underlying causes of the absence of competition included

--inappropriate reliance of procurement personnel on the unproven statements of other agency personnel and

--a lack of effective procurement planning because of an inadequate market search.

EXAMPLE 8

NASA's Goddard Space Flight Center awarded a sole-source contract, initially obligating $1.4 million, for the procurement of high-density recording devices which receive and record information from satellites. We concluded that NASA's efforts to maximize competition were reasonable in the circumstances and that the noncompetitive procurement was appropriate.

A NASA official told us that he had telephoned the representatives of the six firms known or thought to be capable of building the type of recorders needed. He told these firms that

the Government's minimum requirements would be for recorders capable of recording data in a format compatible with existing Landsat image generation recorders, which had been procured earlier. As a result, only the manufacturer of the existing equipment submitted a proposal. The other five firms declined to submit proposals because either they did not build high-density recorders or they used their own unique tape format and their systems would not be compatible with the existing recorders. Although the manufacturer's tape format was freely available to others, developing compatible recorders would involve high cost. We contacted most of the firms which had declined to submit proposals, and our inquiries confirmed that (1) NASA's requirement for compatibility with existing equipment was valid and (2) competition was not available.

EXAMPLE 9

The Department of Energy's Division of Fossil Fuel Extraction awarded a sole-source contract, initially obligating $186,000. The contractor had submitted an unsolicited proposal making use of a patented process. The contract work statement called for a study of the technical and economic feasibility of combining dried coal sludge, using sodium chloride, into weather-resistant, transportable briquettes. The project manager stated that the patented information was proprietary and unique to this contractor and that this was the basis for the sole-source award. He knew that there were other methods of briquetting and binding coal sludge, but the Department did not consider other methods.

We found that the Department could have competed the procurement among different sources' solutions to the problem. We identified another firm that (1) had a commercial process to combine coal sludge into briquettes and (2) said it would have submitted a proposal had the procurement been competitive. Moreover, we did not find any reasonable argument for not having at least considered other possible sources and solutions before awarding the contract. Both program and procurement personnel admitted that the Department never attempted to search for alternative solutions or sources. We concluded that (1) the contract's minimum requirement was restrictive and unnecessarily inhibited competition and (2) competition was feasible.

ADDITIONAL INFORMATION ON THE DISTRIBUTION OF OUR FINDINGS BY AGENCY

Table 1

Awards in the Universe for Which a Lack of Effective Procurement Planning Was a Possible Underlying Cause of the Agency's Failure to Obtain Competition

Department or agency	Competition was feasible		Better planning or management could have resulted in competition	
	Estimated number of awards	Percent	Estimated number of awards	Percent
Energy	286	17	44	12
HHS	128	8	0	0
Interior	395	23	58	15
NASA	256	15	128	34
Transportation	371	22	104	27
Veterans Administration	250	15	48	13
Total	1,686	100	a/381	a/100

a/Due to rounding, the amounts shown do not add to the total.

Table 2

Awards in the Universe for Which Inappropriate Reliance on Unproven Statements Was a Possible Underlying Cause of the Agency's Failure to Obtain Competition

Department or agency	Competition was feasible		Better planning or management could have resulted in competition	
	Estimated number of awards	Percent	Estimated number of awards	Percent
Energy	226	15	42	21
HHS	128	9	0	0
Interior	374	25	58	29
NASA	256	17	55	27
Transportation	309	21	0	0
Veterans Administration	202	14	48	24
Total (note a)	1,494	100	202	100

a/Due to rounding, the amounts shown do not add to the total.

Table 3

Awards in the Universe for Which a Lack of Knowledge of Procurement Matters Was a Possible Underlying Cause of the Agency's Failure to Obtain Competition

Department or agency	Competition was feasible: Estimated number of awards	Competition was feasible: Percent	Better planning or management could have resulted in competition: Estimated number of awards	Better planning or management could have resulted in competition: Percent
Energy	249	18	22	12
HHS	128	9	0	0
Interior	374	28	58	32
NASA	128	9	55	30
Transportation	268	20	0	0
Veterans Administration	202	15	48	26
Total	1,349	a/100	a/182	100

a/Due to rounding, the amounts shown do not add to the total.

Table 4

Awards in the Universe for Which a Lack of Commitment to Competition was a Possible Underlying Cause of the Agency's Failure to Obtain Competition

Department or agency	Competition was feasible		Better planning or management could have resulted in competition	
	Estimated number of awards	Percent	Estimated number of awards	Percent
Energy	208	17	42	17
HHS	128	10	0	0
Interior	280	23	58	23
NASA	201	16	55	22
Transportation	220	18	49	20
Veterans Administration	202	16	48	19
Total	1,239	100	a/251	a/100

a/Due to rounding, the amounts shown do not add to the total.

Table 5

Awards in the Universe for Which Contract File Documentation Did Not Justify the Sole-Source Decisions

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	388	12	99
HHS	315	10	50
Interior	706	22	56
NASA	402	12	33
Transportation	683	21	89
Veterans Administration	723	22	74
Total	a/3,218	a/100	b/61

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in the universe in this category.

Table 6

Awards in the Universe for Which the Agencies Could Not Justify Their Sole-Source Decisions

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	349	17	89
HHS	167	8	27
Interior	453	23	36
NASA	311	16	26
Transportation	380	19	50
Veterans Administration	345	17	35
Total	a/2,004	100	b/38

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in the universe in this category.

Table 7

Awards in the Universe for Which No Preaward Notice Was Placed in the Commerce Business Daily

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	281	10	72
HHS	213	8	36
Interior	391	14	55
NASA	585	22	49
Transportation	442	16	58
Veterans Administration	795	29	99
Total	2,707	a/100	b/61

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 4,460 awards required to be competitive but on which no preaward notice inviting competition on the prime contract was publicized. Each agency's percentage is based on the estimated number of its awards in the 4,460 figure.

Table 8

Awards in the Universe With No Preaward Notice and No Valid Exception to the Requirement to Publicize

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	123	7	44
HHS	71	4	33
Interior	276	17	71
NASA	348	21	59
Transportation	251	15	57
Veterans Administration	594	36	75
Total	1,663	100	a/61

a/The percent of all six agencies' awards in this category in relation to the estimated 2,707 awards with no preaward notice of any kind. Each agency's percenage is based on the estimated number of its awards in the 2,707 figure.

Table 9

Awards in the Universe for Which No Exception to the FPR Publicizing Requirement Was Claimed

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	235	8	60
HHS	277	10	47
Interior	434	15	61
NASA	839	29	70
Transportation	470	16	62
Veterans Administration	604	21	75
Total	2,859	a/100	b/64

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 4,460 awards required to be competitive but on which no preaward notice inviting competition on the prime contract was publicized. Each agency's percentage is based on the estimated number of its awards in the 4,460 figure.

Table 10

Awards in the Universe for Which Agency Officials Believed a Sole-Source Notice Fulfilled All Requirements for Publicizing in the Commerce Business Daily

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	59	6	25
HHS	96	9	35
Interior	173	16	40
NASA	546	52	65
Transportation	122	12	26
Veterans Administration	58	6	10
Total	1,054	a/100	a/37

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 2,859 awards on which officials did not claim any regulatory exception to the publicizing requirement. Each agency's percentage is based on the estimated number of its awards in the 2,859 figure.

Table 11

Awards in the Universe for Which Agency Officials Believed No Preaward Notice Was Required Because They Decided Competition Was Not Feasible

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	115	13	49
HHS	78	9	28
Interior	103	12	24
NASA	55	6	7
Transportation	165	19	35
Veterans Administration	345	40	57
Total	861	a/100	b/30

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 2,859 awards on which officials did not claim any regulatory exception to the publicizing requirement. Each agency's percentage is based on the estimated number of its awards in the 2,859 figure.

Table 12

Awards in the Universe for Which the Search (or the Lack of a Search) Was Adequate

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	3	0	1
HHS	320	19	52
Interior	254	15	36
NASA	638	39	53
Transportation	226	14	30
Veterans Administration	212	13	25
Total	1,653	100	a/36

a/The percent of all six agencies' awards in this category in relation to the estimated 4,543 awards in the universe not statutorily exempted from competition. Each agency's percentage is based on the estimated number of its awards in the 4,543 figure.

Table 13

Awards in the Universe for Which the Extent of the Market Search Was Inadequate

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	371	16	94
HHS	167	7	27
Interior	453	19	64
NASA	384	16	32
Transportation	482	21	63
Veterans Administration	488	21	57
Total	a/2,344	100	b/52

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 4,543 awards in the universe not statutorily exempted from competition. Each agency's percentage is based on the estimated number of its awards in the 4,543 figure.

Table 14

Awards in the Universe for Which the Specifications May Have Been Unnecessarily Restrictive

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	112	33	28
HHS	0	0	0
Interior	79	23	11
NASA	0	0	0
Transportation	99	29	13
Veterans Administration	49	14	6
Total	339	a/100	b/7

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 4,543 awards in the universe not statutorily exempted from competition. Each agency's percentage is based on the estimated number of its awards in the 4,543 figure.

Table 15

Awards in the Universe Resulting From Unsolicited Proposals And Those On Which Competition Was Feasible

Department or agency	Estimated number of awards resulting from unsolicited proposals	Estimated number on which competition was feasible	Percent on which competition was feasible
Energy	264	223	84
HHS	128	0	0
Interior	101	101	100
NASA	219	128	58
Transportation	55	55	100
Veterans Administration	0	0	0
Total	767	507	66

Table 16

Awards in the Universe for Which the Agencies Did Not Adequately Review the Sole-Source Decision

Department or agency	Estimated number of awards	Percent of all awards in this category	Percent of agency's universe
Energy	365	14	93
HHS	199	8	32
Interior	431	17	61
NASA	384	15	32
Transportation	579	23	76
Veterans Administration	566	22	66
Total	2,524	a/100	b/56

a/Due to rounding, the amounts shown do not add to the total.

b/The percent of all six agencies' awards in this category in relation to the estimated 4,543 awards in the universe not statutorily exempted from competition. Each agency's percentage is based on the estimated number of its awards in the 4,543 figure.

Table 17

Awards in the Universe for Which Agencies' Steps to Foster Competition After Previous Sole-Source Awards Were Not Adequate

Department or agency	Estimated number of contracts previously awarded noncompetitively	Estimated number for which steps to foster competition were inadequate	Percent on which steps to foster competition were inadequate
Energy	57	56	98
HHS	393	146	37
Interior	374	237	63
NASA	265	18	7
Transportation	216	152	70
Veterans Administration	451	297	66
Total	1,756	906	52

FEDERAL PROCUREMENT REGULATIONS'

EXCEPTIONS TO THE REQUIREMENT TO PUBLICIZE

NOTICES OF PROPOSED PROCUREMENT ACTIONS

Chapter 1--Federal Procurement Regulations

§1-1.1003-2 General Requirements. 1/

(a) In accordance with section 8 of the Small Business Act, all proposed defense procurement actions of $10,000 and above, and all proposed civilian agency procurement actions of $5,000 and above, will be published promptly in the Department of Commerce Synopsis (see §1-1.1003-6), except that the following need not be so publicized:

(1) Procurements of a classified nature where the information necessary to be included or referenced in the solicitation (invitation for bids or request for proposals) is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Synopsis if sufficient information of an unclassified nature can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal;

(2) Procurements of perishable subsistence;

(3) Procurements which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made;

(4) Procurements which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 calendar days after issuance of the invitation for bids or request for proposals or the date of transmittal of the synopsis, whichever is earlier;

(5) Procurements which are made by an order placed under an existing contract except as provided in §1-4.1107-6(a) with respect to non-mandatory schedule contracts for Automatic Data Processing Equipment;

1/For a temporary regulation affecting §1-1.1003-2, see Appendix--Temporary Regulations, appearing at the end of Ch. 1 [of the FPRs].

(6) Procurements which are made from another Government department or agency, or a mandatory source of supply;

(7) [Reserved]

(8) Procurements which are for services from educational institutions;

(9) Procurements in which only foreign sources are to be solicited; or

(10) Procurements for which it is determined in writing by the procuring agency, with the concurrence of the Administrator of the Small Business Administration, that advance publicity is not appropriate or reasonable.

(The term "defense procurement actions," as used in this §1-1.1003-2, shall apply only to procurement made by the Department of Defense.)

(b) The dollar amount specified in §1-1.1003-2(a) is not a prohibition against publicizing procurements below that amount where it is determined that such publication would be advantageous to industry or to the Government.

[29 FR 10104, July 24, 1964, as amended at 35 FR 3070, Feb. 17, 1970; 41 FR 43538, Oct. 1, 1976]

DEPARTMENT OF ENERGY'S SPECIAL RESEARCH CONTRACTS WITH EDUCATIONAL INSTITUTIONS NOT PROPERLY AWARDED

The use of Special Research Contracts with Educational Institutions is a Department of Energy procurement method for supporting headquarters-designated basic research with educational institutions or other not-for-profit institutions when such support does not exceed $1 million annually. The objectives of the research programs are to ensure continued research and training and the acquisition of theoretical and practical knowledge in the areas of nuclear processes, atomic energy theory and production, nuclear materials' utilization and development of more efficient energy methods.

The use of special research contracts is also intended to

--respect the traditions of the contracting institutions and encourage the quest for new knowledge without restrictions on scientific initiative,

--provide reasonable levels of support in energy fields to strengthen research programs, and

--maintain effective contact with the scientific community.

The Department of Energy's implementation of its procurement regulations covering the special research contracts did not comply with the FPR requirements on competition. Department officials maintained that these awards are statutorily exempted from competition. We disagree and believe that the officials have mistaken authority to award negotiated contracts for authority to award sole-source contracts. Department officials have requested their Office of General Counsel to research and provide a written opinion on this matter.

The officials indicated that these awards are not typical sole-source contracts. They believe their award process is a reasonable substitute for competition because they (1) publicize areas of interest, (2) subject individual unsolicited proposals to outside peer reviews to determine their technical merit and program relevance, and (3) fund only some of the new unsolicited proposals received. For example, in fiscal year 1981, 28 percent of the 574 new unsolicited proposals, as well as almost all of the 374 renewal proposals submitted, were funded, accounting for $108 million in obligations.

However, Department officials we spoke with generally agreed that the awards were properly classified as sole-source. In fact, unsolicited proposals should not be competed against each other because no solicitation document exists and the necessary

evaluation criteria for selecting the winner(s) have not been provided. For competitive procurements on which factors other than price are critical, solicitations should set forth such criteria because the competitors have a right to know the basis on which their proposals will be judged. We believe that in seeking special research proposals the Department should follow competitive procedures, including issuance of a solicitation setting forth the evaluation criteria, because (1) the Department selects some of these unsolicited proposals for funding as special research contracts and rejects others, and (2) contractors frequently submit the proposals in response to the Department's publicized areas of interest, rather than purely on their own initiative.

Our random sample of 30 Department of Energy contract awards included 5 special research awards, all of which were processed through the Department's Chicago Operations Office. All five resulted from unsolicited proposals and competition was never sought on any. We found that competition was feasible on three of the five contracts. In addition, none of the contract awards (1) had justifications explaining the reasons for the sole-source decisions or (2) were reviewed by officials higher than the contracting officers to determine if competition was feasible, as the FPRs require.

All of the special research awards we reviewed were for basic research, and we believe that the proper method of award in each case would have been a grant or cooperative agreement. One high official in the Department's Office of Basic Energy Sciences told us that the reasons his office awards contracts in these cases is because some Congressmen view grants as "give-aways" which do not receive the same degree of technical review or monitoring as contracted activities and congressional committees tend to scrutinize grant programs more intensely.

Whether contracts continue to be used or not, we believe that improvements are needed in obtaining competition. The Department should implement a formal system of soliciting proposals before making special research awards. For example, the Department has a solicitation procedure called the Program Research and Development Announcement which could be used to ensure that the Department's general area of need is communicated to, and competition is solicited from, qualified researchers. The Department's regulations state that the procedure (1) is to be used to solicit research, development, and related proposals within broadly defined areas where it is difficult, if not impossible, to describe in detail the nature of the work to be undertaken, and (2) can be used to solicit procurement contracts, grants, or cooperative agreements. In our opinion, the Department could use this or a similar approach to obtain competition efficiently. That is, the Department could use one solicitation

to make a large number of special research awards, instead of issuing a separate solicitation for each award.

If contracts continue to be used for such research, the Department also needs to

--follow the intent of the FPRs and attempt to obtain competition, whenever feasible;

--ensure that each noncompetitive award has a justification explaining why a sole-source contract was needed and what attempts were made to obtain competition; and

--require that the justifications be reviewed at a higher level than the contracting officer.

ADDITIONAL INFORMATION ON THE FEDERAL PROCUREMENT DATA SYSTEM

Table 1

Data Element Errors Per Contract Action by Agency

Department or agency	Data element errors per contract action	Estimated contract actions coded as in our universe			
		Actions	Percent	Obligations	Percent
				$ (000)	
Energy	0 errors	237	52	$ 34,834	26
	1 error	127	28	32,153	24
	2	86	19	34,573	26
	3	2	0	4,146	3
	4	1	0	26,012	20
		453	a/100	a/$131,719	a/100
HHS	0	149	17	$ 10,221	13
	1	390	44	36,193	45
	2	183	21	21,120	27
	3	154	17	11,265	14
	4	7	1	751	1
		a/884	100	a/$ 79,549	100
Interior	0	909	63	$116,509	67
	1	413	29	31,468	18
	2	79	5	5,693	3
	5	46	3	19,910	11
		1,447	100	a/$173,579	a/100
NASA	0	1,074	74	$ 92,753	72
	1	147	10	13,744	11
	2	183	13	7,304	6
	3	1	0	15,072	12
	6	55	4	659	1
		1,460	a/100	a/$129,531	a/100
Transportation	0	337	43	$ 46,336	50
	1	199	25	30,437	33
	2	201	25	13,127	14
	3	45	6	715	1
	9	7	1	2,110	2
		789	100	a/$ 92,724	100

Veterans Administration	0	706	51	$ 26,751	28
	1	241	18	30,102	31
	2	263	19	30,084	31
	3	153	11	7,942	8
	4	9	1	939	1
		a/1,371	100	a/$ 95,819	a/100
Total	0	3,412	53	$327,404	47
	1	1,517	24	174,097	25
	2	995	16	111,901	16
	3	355	6	39,140	6
	4	17	0	27,702	4
	5	46	1	19,910	3
	6	55	1	659	0
	9	7	0	2,110	0
Grand Total		6,404	a/100	a/b/$702,922	a/100

a/The numbers shown do not add to the total due to rounding.

b/The difference between (1) the grand total of $702.9 million and (2) the $728 million total value of contract actions which the six agencies reported to the Federal Procurement Data System (see p. 7) occurs because the weights used in projecting the sample data to the universe had to account for the contract actions that shifted from one stratum to another (see app. I). Because the difference in these totals is minor, it is not a problem.

The table shows that HHS had the highest projected error rate; 83 percent of its contract actions had at least one error in the data element reviewed. NASA had the lowest projected error rate; 26 percent of its contract actions had one or more errors.

Table 2

Number of Contract Actions That Should Not Have Been Included in Our Universe

Department or Agency	$(000) Strata	Number of actions coded into our universe	Actions that should not have been coded into our universe Number	Percent
Energy	10 - 99	222	20	9
	100 - 999	212	19	9
	1mil -4.999mil	15	3	20
	5mil and above	4	0	0
		453	42	9
HHS	10 - 99	702	191	27
	100 - 999	175	61	35
	1mil -4.999mil	7	5	71
	5mil and above	0	0	0
		884	257	29
Interior	10 - 99	1,151	115	10
	100 - 999	280	65	23
	1mil -4.999mil	14	3	21
	5mil and above	2	0	0
		1,447	183	13
NASA	10 - 99	1,208	220	18
	100 - 999	238	37	16
	1mil -4.999mil	12	0	0
	5mil and above	2	1	50
		1,460	258	18
Transportation	10 - 99	670	45	7
	100 - 999	108	22	20
	1mil -4.999mil	8	2	25
	5mil and above	3	1	33
		789	70	9
Veterans Administration	10 - 99	1,193	334	28
	100 - 999	169	56	33
	1mil -4.999mil	8	6	75
	5mil and above	1	0	0
		1,371	396	29
TOTAL	10 - 99	5,146	925	18
	100 - 999	1,182	260	22
	1mil -4.999mil	64	19	30
	5mil and above	12	2	17
		6,404	1,206	19

Table 3
Value of Contract Actions That Should Not Have Been Included in Our Universe

Agency	$(000) Strata	Value of awards coded into universe $ (000)	Value of awards that should not have been coded into the universe $ (000)	Percent
Energy	10 - 99	$ 7,871	$ 323	4
	100 - 999	43,830	5,848	13
	1mil -4.999mil	31,925	11,995	38
	5mil and above	48,093	0	0
		$131,719	$ 18,166	14
HHS	10 - 99	$ 26,070	$ 7,020	27
	100 - 999	44,879	20,710	46
	1mil -4.999mil	8,601	6,259	73
	5mil and above	0	0	0
		a/$ 79,549	$ 33,989	43
Interior	10 - 99	$ 43,220	$ 4,201	10
	100 - 999	59,208	12,966	22
	1mil -4.999mil	51,377	10,433	20
	5mil and above	19,774	0	0
		$173,579	$ 27,600	16
NASA	10 - 99	$ 35,197	$ 4,942	14
	100 - 999	59,721	5,126	9
	1mil -4.999mil	13,779	0	0
	5mil and above	20,835	5,763	28
		a/$129,531	$ 15,831	12
Transportation	10 - 99	$ 18,581	$ 2,233	12
	100 - 999	30,650	4,126	13
	1mil -4.999mil	14,841	2,450	17
	5mil and above	28,651	5,250	18
		a/$ 92,724	$ 14,059	15
Veterans Administration	10 - 99	$ 34,645	$ 10,451	30
	100 - 999	33,153	10,525	32
	1mil -4.999mil	16,170	13,671	85
	5mil and above	11,852	0	0
		a/$ 95,819	$ 34,647	36
TOTAL	10 - 99	$165,584	$ 29,170	18
	100 - 999	271,441	59,301	22
	1mil -4.999mil	136,693	44,808	33
	5mil and above	129,205	11,013	9
		a/$702,922	$144,292	21

a/Total does not equal sum of amounts shown due to rounding.

APPENDIX IX

SELECTED GAO REPORTS ADDRESSING FEDERAL AGENCIES' SOLE-SOURCE CONTRACT AWARDS

		Date
1.	Labor Needs to Better Select, Monitor and Evaluate its Employment and Training Awardees (HRD-81-111)	Aug. 28, 1981
2.	DOD Loses Many Competitive Procurement Opportunities (PLRD-81-45)	July 29, 1981
3.	Controls Over DOD's Management Support Service Contracts Needs Strengthening (MASAD-81-19)	Mar. 31, 1981
4.	Government Earns Low Marks on Proper Use of Consultants (FPCD-80-48)	June 5, 1980
5.	Controls Over Consulting Service Contracts at Federal Agencies Need Tightening (PSAD-80-35)	Mar. 20, 1980
6.	The Department of Energy's Practices for Awarding and Administering Contracts Need to be Improved (EMD-80-2)	Nov. 2, 1979
7.	Increased Competition Can Reduce Elevator Maintenanace and Cleaning Service Contract Costs (PSAD-78-115)	June 14, 1978
8.	Competition For Negotiated Government Procurement Can and Should be Improved (PSAD-77-152)	Sept. 15, 1977
9.	More Competition in Emergency Defense Procurements Found Possible (B-171561)	Mar. 25, 1971

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