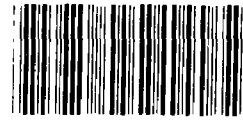


GAO

August 1987

PROCUREMENT

Better Compliance With the Competition in Contracting Act Is Needed



134065

Better compliance with the Competition in Contracting Act is needed to ensure that the Government obtains the best value for its money.

RELEASED



United States
General Accounting Office
Washington, D.C. 20548

**Comptroller General
of the United States**

B-208159.5

August 26, 1987

The Honorable Carl Levin, Chairman
The Honorable William S. Cohen, Ranking
Minority Member
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate

The Honorable Jack Brooks, Chairman
The Honorable Frank Horton, Ranking
Minority Member
Committee on Government Operations
House of Representatives

Your joint letter of August 1, 1984, requested that we review implementation of, and compliance with, the Competition in Contracting Act of 1984. An August 1985 report (GAO/OGC-85-14) summarized our work on implementation of the act in federal acquisition regulations. This report summarizes our work on selected federal agencies' compliance with the act and several other issues.

As arranged with your Offices, 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.

for

Charles A. Bowsher
Comptroller General
of the United States

Executive Summary

Purpose

Federal agencies' purchases totaled \$200 billion in fiscal year 1986, almost one-fifth of the federal budget. In the past, federal agencies frequently awarded contracts on a noncompetitive (or sole-source) basis unnecessarily. As a result, the Congress enacted the Competition in Contracting Act of 1984 to enhance competition and limit unnecessary sole-source contracting. The act took effect on solicitations issued after March 31, 1985.

In a joint letter dated August 1, 1984, the House Committee on Government Operations and the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, requested GAO to report on federal agencies' implementation of, and subsequent compliance with, the competition act. In an August 1985 report (GAO/OGC-85-14) GAO summarized the first phase of its work, which focused on the act's implementation in federal acquisition regulations. GAO's current report summarizes the second phase of its work, focusing on compliance with competition act provisions at seven procuring activities—five in the Department of Defense (DOD), one in the National Aeronautics and Space Administration, and one in the Department of Energy. GAO reviewed contracts that had been awarded during September 1985.

Background

The competition act significantly changed several important federal procurement statutes. Under the act, "full and open competition" means, basically, allowing all sources capable of satisfying the government's needs to compete for a contract award. Some of the act's main provisions require agencies to (1) base contract awards on full and open competition, except in seven specified circumstances, (2) justify, certify, and approve, in writing, decisions not to provide for full and open competition, (3) publish notices of proposed contract awards (preaward notices) in the Commerce Business Daily encouraging competition, and (4) use procurement planning and market research.

The government's primary procurement regulation, the Federal Acquisition Regulation, was revised effective April 1, 1985, to implement the competition act. Subsequent revisions were issued, effective February 3, 1986, to make this regulation more consistent with the act and congressional intent.

Results in Brief

The competition act requires that certain procedures be followed to provide agency officials and others with assurance that agency decisions

not to award contracts based on full and open competition are appropriate. GAO reviewed a random sample of 104 awards of this kind and found mixed results. GAO's projected sample results showed that the procedures the agencies used often provided less assurance than the act intended that all sources capable of meeting the government's needs were allowed to compete whenever appropriate. However, GAO also found that most of the decisions either were or probably were appropriate. Compliance problems relating to written justifications for other than full and open competition and use of the Commerce Business Daily were widespread and need to be corrected to provide the assurance the act intended. (See chs. 2 and 3.)

GAO also reviewed 25 contract awards reported as based on full and open competition but for which only one offer was submitted. It found that agency officials used practices inconsistent with full and open competition for more than one-third of these awards. These contracts were inappropriately awarded without obtaining written justification, certification, and approval. As a result, assurance was less than intended under the act that opportunities for competition were not missed. (See ch. 4.)

In commenting on GAO's findings, agency officials noted the positive trend in the use of competitive contracting during the past few years. This upward trend is reflected in the data GAO analyzed on federal agency contract awards. The competition act appears to be contributing to this trend. (See app. I.)

Principal Findings

Awards Based on Other Than Full and Open Competition

The competition act requires the use of certain procedures to assure that agency decisions not to award contracts based on full and open competition are appropriate. GAO's projected sample results showed that the procedures the agencies used did not provide the assurance the act intended for almost 80 percent of such awards.

GAO's projected results show that the decisions were clearly inappropriate for less than 1 percent of the awards. GAO could not determine whether the decisions were appropriate for another projected 23 percent of the awards and classified them as questionable, primarily because the agencies' required preaward efforts relating to use of the

Commerce Business Daily were substantially flawed. GAO concluded that the decisions for another projected 56 percent of the awards were probably appropriate but could not be sure because the agencies' required preaward efforts were flawed, although to a lesser extent than for the decisions considered questionable. The decisions on the remaining projected 21 percent of the awards were appropriate.

GAO identified one or more compliance problems for most of the sample contract award justifications that were required to be prepared. For example, many of the justifications did not include elements of information required by the act or the Federal Acquisition Regulation, many were certified prematurely as to their accuracy and completeness, and some were not properly approved. (See ch. 2.)

Awards Reported as Full and Open Competition

Regarding the other 25 contracts GAO reviewed, 9 (36 percent) were one-offer awards reported as, but based on practices inconsistent with, full and open competition. All nine were DOD awards. In four cases, the solicitation was limited to a particular product of one manufacturer. In three other cases, the solicitation was limited to a particular product of one manufacturer or alternate products meeting the agency's requirement, but did not describe the essential features of the agency's requirement so that potential offerors of alternate products could know what would be acceptable. In the two remaining cases, agency officials did not submit the required preaward notice for publication in the Commerce Business Daily. (See ch. 4.)

Use of the Commerce Business Daily

Agencies did not fully comply with requirements relating to use of the Commerce Business Daily for almost all of the sample awards GAO reviewed for which preaward notices were required. Deficiencies included:

- Not publishing some required notices.
- Not providing required information or providing inaccurate information in most of the notices.
- Not allowing the proper time for potential offerors to respond to the notices or issuing the solicitations too early in some cases.
- Using certain footnotes in many of the notices which conflicted with competition act requirements. (See chs. 3 and 4.)

Competitiveness of Federal Awards

The government's main procurement reporting systems show a positive trend in the percent of the value of federal agency contracts awarded competitively during the last few fiscal years: 50.9 percent (1986), 44.4 percent (1985), 39.7 percent (1984), 36.1 percent (1983), and 38.6 percent (1982). The percentages reported just for awards made under the competition act in fiscal years 1985 and 1986 were even higher: 58 and 60.2 percent, respectively. This suggests that the competition act is having a positive effect on the level of competition in government procurement. (See app. I.)

Other Issues

Based on the limited data available, contract award processing times had increased at the seven procuring activities since fiscal years 1983 or 1984. Although agency officials generally stated it was too early to assess the competition act's effect on processing time, some officials said the act had contributed to increases or would do so in the future. Officials at three of the five DOD activities said that the increases were at least partly the result of actions taken to correct problems in procuring military spare parts. (See ch. 6.)

Recommendations

GAO recommends that those responsible for the Federal Acquisition Regulation adopt several specific regulatory revisions to correct the management control problems identified. This includes (1) strengthening requirements for written justifications to include certain information relating to use of the Commerce Business Daily, (2) precluding the inappropriate use of certain footnotes in the Commerce Business Daily, and (3) clearly stating that certain practices are not consistent with full and open competition. (See pp. 31, 44, 54, and 65.) GAO also recommends that agency heads take several actions to ensure that appropriate procurement personnel understand and comply with statutory and Federal Acquisition Regulation requirements. (See pp. 31 and 45.)

Agency Comments

The views of directly responsible officials were sought during the course of GAO's work and were considered in preparing this report. At the Committees' request, GAO did not ask the agencies reviewed to provide official comments on a draft of this report.

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Abbreviations

DOD	Department of Defense
FAR	Federal Acquisition Regulation
GAO	General Accounting Office
GSA	General Services Administration
NASA	National Aeronautics and Space Administration
PALT	procurement administrative lead time

Introduction

In fiscal year 1986, 59 federal agencies procured \$200 billion worth of products and services, almost one-fifth of the federal budget, according to the Federal Procurement Data System.¹ The Data System also reported that about 51 percent of this amount was awarded competitively. Historically, the Congress has required that purchases by federal agencies be based on competition in the marketplace whenever practicable. However, federal agencies have frequently missed opportunities to award contracts competitively.²

Benefits of Competition

Competition is an important factor in government procurement law and policy for good reasons. The government is best served when all potential contractors have the opportunity to compete equally with others for its business. Contracts should not be awarded on the basis of favoritism, but should go to those submitting the most advantageous offers to the government. Offering all contractors the opportunity to compete helps to minimize collusion and ensure that the government pays fair and reasonable prices.

In addition, 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 choosing the best solution. The most important benefits of competition can often be the improved ideas, designs, technology, delivery, or quality of products and services that potential contractors are motivated to produce or develop to obtain government contracts. The chance of winning a government contract, or the threat of losing a subsequent contract award similar to one currently being performed, provides an incentive for greater efficiency and effectiveness. When competition is restricted, the government loses opportunities not only to obtain lower prices but also to increase the productivity and the effectiveness of its programs.

The Competition Act Substantially Changed Statutes

Enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98-369) on July 18, 1984, significantly changed previously existing procurement statutes. The competition act made a number of changes to both of the federal government's primary procurement statutes: (1) the Armed Services Procurement Act of 1947,

¹The Federal Procurement Data System was established by Public Law 93-400 as a means for collecting, developing, and disseminating procurement data to meet the needs of the Congress, the executive branch, and the private sector.

²App. XII lists some of our reports addressing this subject

10 U.S.C. 2301 et seq., used by the Department of Defense (DOD), the Coast Guard, and the National Aeronautics and Space Administration (NASA) and (2) the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251 et seq., used by most federal civilian agencies. The competition act also amended the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and added provisions relating to bid protests to title 31 of the U.S. Code. For an explanation of the most significant provisions of the competition act, see appendix IX.

Federal Regulations Implementing the Competition Act

Procurement by the federal government is regulated primarily by the Federal Acquisition Regulation (FAR) system, which consists of FAR and agency regulations that implement and supplement it. FAR, a single government-wide procurement regulation, was developed in accordance with the Office of Federal Procurement Policy Act of 1974, as amended.

DOD, NASA, and the General Services Administration (GSA) issue and maintain FAR. Two councils coordinate the development of FAR changes, the Defense Acquisition Regulatory Council representing DOD and NASA and the Civilian Agency Acquisition Council representing other agencies. In addition, the Office of Federal Procurement Policy Act, which established the Office of Federal Procurement Policy within the Office of Management and Budget, has given the Administrator for Federal Procurement Policy limited authority to revise FAR. The Administrator also is responsible for providing overall direction of government procurement policy.

The initial FAR changes implementing the requirements of the competition act were issued as Federal Acquisition Circular 84-5, and took effect on all solicitations issued after March 31, 1985. These FAR changes were issued as interim regulations. After receipt and consideration of public comments, the final rule, Federal Acquisition Circular 84-13, was published on December 23, 1985, and took effect on February 3, 1986.³

Objectives, Scope, and Methodology

Our office was requested in a letter dated August 1, 1984, from the Chairman and Ranking Minority Member, House Committee on Government Operations and the Chairman and Ranking Minority Member of the

³We reviewed contracts awarded in September 1985. Therefore, Federal Acquisition Circular 84-13 and subsequent changes had not yet taken effect at the time of these awards.

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, to review federal agencies' implementation of, and subsequent compliance with, the competition act. In August 1985 we issued a report⁴ summarizing the first phase of our work, which focused on the regulatory implementation of the act as of April 1, 1985.

As agreed with the Committees, we then began efforts to analyze selected federal agencies' compliance with the competition act (phase 2). Based on our preliminary survey work, we reached agreement with the Committees that we would (1) assess compliance with the act in awarding certain categories of contracts and (2) provide certain information on several other issues relating to implementation of the act at five DOD and two civilian agency procuring activities within six agencies—four DOD agencies, the Department of Energy, and NASA. Two of the seven activities covered are in the Washington, D.C., area: the Naval Sea Systems Command Headquarters and the Department of Energy's Office of Procurement Operations, its headquarters procurement office. The other five locations are the Navy Aviation Supply Office, Philadelphia, Pennsylvania; the Defense Logistics Agency's Defense General Supply Center, Richmond, Virginia; the Army Aviation Systems Command, St. Louis, Missouri; the Air Force's San Antonio Air Logistics Center, Kelly Air Force Base, San Antonio, Texas; and NASA's Marshall Space Flight Center, Huntsville, Alabama. (See app. VIII for background information on each of the seven procuring activities.)

The primary focus of our work was to review two random samples of contract awards, including (1) contract awards based on other than full and open competition⁵ and (2) contract awards reported as based on full and open competition, but for which only one offer was submitted. Because of our sample sizes, our sample results can be projected to the statistical universe for the first sample, but not for the second sample. Under the first sample, we focused on whether (1) the competition act's justification, certification, and approval requirements were met, (2) required notices of proposed contracts were published in the Commerce Business Daily, and (3) the decisions not to provide for full and

⁴Federal Regulations Need to Be Revised to Fully Realize the Purposes of the Competition in Contracting Act of 1984 (GAO/OGC-85-14, Aug. 21, 1985). Federal Acquisition Circular 84-13, mentioned previously, adopted 10 of the FAR revisions recommended in the report.

⁵Under the competition act, "full and open competition" means permitting all responsible sources to submit offers. Basically, responsible offerors are those that are capable of satisfying the government's needs. (See FAR 9.101 or 41 U.S.C. 403(8).) In defining competition, the act focuses on the procedures used in awarding contracts rather than the number of offers submitted.

open competition were appropriate under the circumstances. (See chs. 2 and 3.) Under the second sample, we focused on whether actions taken by agency officials were consistent with full and open competition. (See ch. 4.)

Our work on these two samples did not include review of (1) contract modifications or orders under existing contracts (we limited our work to new contract actions),⁶ (2) contract actions of \$25,000 or less, or (3) compliance with Public Law 98-577 (the Small Business and Federal Procurement Competition Enhancement Act of 1984), except the provisions of the law that relate to publicizing proposed contract actions in the Commerce Business Daily. A few of the provisions of that law amended the competition act and took effect at the same time.

We reviewed only new contract actions to narrow the range of issues and circumstances being analyzed, simplify the evaluation, and emphasize these important initial decisions. New actions are especially significant because (1) the scope and funding of the awards may increase if contract modifications are made and (2) the same contractors may also benefit from the award of follow-on contracts. Such modifications and follow-on contracts obligate substantial amounts of funds annually.⁷ Each contract action we reviewed initially obligated over \$25,000.

We reviewed contracts awarded in September 1985 because (1) that was the latest month for which contract award data were available for sampling from the agencies' computerized procurement data systems at the time we were planning and initiating this work and (2) before September many contracts were still being awarded based on solicitations issued before the competition act's April 1, 1985, implementation date.

Our first sample was a random, statistical sample of 104 contract awards based on other than full and open competition made by the seven procuring activities. For the second sample, we randomly selected 25 awards reported as based on full and open competition, but for which

⁶New contract actions include (1) new definitive contracts, (2) initial letter contracts, and (3) orders under basic ordering agreements. A new definitive contract is the first binding instrument containing all the terms and conditions of the agreement. An initial letter contract is a preliminary agreement authorizing the contractor to immediately begin manufacturing supplies or performing services; such contracts should be used only when necessary in the interest of the federal government and are required to be definitized at a later date. A basic ordering agreement, which is not a contract, is a written instrument of understanding negotiated with a contractor containing (1) terms and clauses applying to future contracts (orders) between the parties during its term and (2) methods for pricing, issuing, and delivering future orders under the basic ordering agreement (See FAR 16.703.)

⁷Obligations are transactions that require payment during the same or a future period.

only 1 offer was submitted. At each activity, we selected up to 20 of the former and up to 5 of the latter contract awards made during September 1985. However, as agreed with the congressional committees, at locations where there were fewer contracts which met our selection criteria, we reviewed the lesser number. (Our sampling methodology and data base are discussed in app. III.)

For each of our sample awards, we examined the contract and 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 several cases we also contacted potential contractors or independent experts to get their views on such matters as the capabilities of sources other than the winning contractor to satisfy the government's requirements or whether specifications were unnecessarily restrictive.

We also agreed to report on several other issues based on more limited audit work:

- Competition advocacy. We identified, primarily through interviews with the procuring activity competition advocates or their representatives, (1) what competition advocacy personnel were doing at these activities, including what they were doing to remove systemic barriers to competition and (2) what these officials' opinions were concerning their activities' progress and problems in relation to the goal of promoting competition in contracting. (See ch. 5.)
- Procurement office methods of operations. We obtained data at each procurement office visited regarding procurement administrative lead time (PALT)⁵ and interviewed selected officials at each location to determine in what ways procurements are handled differently under the competition act than they were before it was implemented and whether procurement procedures have been streamlined. (See ch. 6.)
- Agency reported data on competition in contracting. We obtained data on (1) trends in the competitiveness of contract awards, including results before and after the competition act was implemented, although key definitions of terms had changed and (2) the frequency of use of the act's seven exceptions to full and open competition. (See app. I.)

⁵PALT is generally defined as the interval between (1) receipt by the procurement office of a purchase request and (2) contract award to fulfill the requirement.

- Bid protests filed and resolved. We compiled information relating to bid protests filed with our office under the competition act and their resolution⁹ and tried to obtain centrally available data on the number of bid protests to contracting officers and their resolution at the locations visited. (See app. II.)

In addressing these other issues, we interviewed agency officials, including competition advocacy and procurement officials at the seven locations visited. We also obtained and analyzed data on (1) the organization and staffing of competition advocacy offices, (2) the duties competition advocacy staff performed, (3) the views of competition advocacy officials on various matters, (4) procurement processing times, including PALT, (5) changes in the procurement offices' methods of operations, and (6) bid protests. In addition, we reviewed the six agencies' reports on competition prepared in response to competition act requirements. Regarding the issue of data on competition, we analyzed agencies' computer tapes relating to the Federal Procurement Data System and discussed the results with agency officials.

Our field work was primarily performed between January and June 1986. In accordance with the requesters' wishes, we did not obtain the views of agency officials on our conclusions and recommendations, nor did we request official agency comments on a draft of this report. We discussed our findings with agency officials and included their comments where appropriate. We performed our review in accordance with generally accepted government auditing standards.

Financial Integrity Act

Chapters 2 through 5 of this report discuss various problems for which stronger internal or management control policies or procedures are needed. Agencies are required to report to the Congress and the President on material internal control weaknesses under the Federal Manager's Financial Integrity Act. Appendix XI provides more information on this subject.

⁹This included summarizing information from another of our office's reports to the Congress covering our bid protest activity (OGC/B-158766, Jan. 31, 1987). It also included reporting available information concerning the number of bid protest cases we received during each of the last 2 fiscal years under which the procurement was stayed and the number for which the stay provision was overridden, in accordance with the act's provisions.

Assurance Was Often Lacking That Agencies' Decisions Not to Provide for Full and Open Competition Were Appropriate

The competition act requires the use of certain procedures to provide agency officials and others with assurance that agency decisions not to award contracts over \$25,000 based on full and open competition are appropriate. Our projected sample results showed that the procedures the agencies used often provided less assurance than the act intended that all sources capable of meeting the government's needs were allowed to compete whenever appropriate. However, we also found that most of the decisions either were or probably were appropriate. In addition, some of the decisions were questionable and a few were clearly inappropriate. The lack of assurance was primarily because of management control weaknesses relating to notices of proposed awards (preaward notices) that agency officials were statutorily required to publish in the Commerce Business Daily.¹ Compliance problems relating to written justifications for other than full and open competition were also widespread and need to be corrected.

We believe that a major underlying cause of the inappropriate or questionable decisions was agency officials' lack of knowledge regarding (1) what constitutes a valid justification for not basing awards on full and open competition and (2) the required use of the Commerce Business Daily.

Decisions to Base Awards on Other Than Full and Open Competition Were Not Always Appropriate

Some degree of assurance was lacking that a projected 79.3 percent of the decisions not to provide for full and open competition in our universe were appropriate. Because procedures agency officials used in making these decisions were not consistent with the act's requirements, less assurance existed than the act intended that all sources capable of meeting the government's needs were allowed to compete.

We have serious problems with the agencies' decisions not to provide for full and open competition on 19 of the 104 sample awards we reviewed. We believe that in four cases the reasons agency officials claimed to support the decisions clearly did not meet the requirements of the competition act, and the officials inappropriately awarded the contracts based

¹The Commerce Business Daily is the means for public notification which federal agencies use for proposed as well as actual contract awards. It is published by the Department of Commerce five or six times a week, excluding holidays.

**Chapter 2
Assurance Was Often Lacking That Agencies'
Decisions Not to Provide for Full and Open
Competition Were Appropriate**

on other than full and open competition. These four sample awards represent less than 1 percent of the awards in our universe, originally obligating \$200,000 (.05 percent of the value of our universe).² In another 15 sample cases, we (1) could not determine whether the decisions were appropriate and (2) categorized them as questionable because of substantial flaws in the agencies' statutorily required efforts relating to use of the Commerce Business Daily. These 15 awards represent a projected 22.8 percent of the awards in our universe, originally obligating \$94.9 million (21.9 percent of the value of our universe).³ (Table 2.1 shows the distribution of the 19 awards by procuring activity).

Table 2.1: Contract Awards for Which the Decision Not to Provide for Full and Open Competition Was Inappropriate or Questionable

Procuring activity	Number of awards		Number of awards reviewed ^a	Percentage inappropriate or questionable
	Inappropriate	Questionable		
Army Aviation Systems Command	0	5	20	25
Navy Aviation Supply Office	0	5	20	25
Naval Sea Systems Command Headquarters	3	2	16	31
San Antonio Air Logistics Center	0	1	20	5
Defense General Supply Center	0	0	3	0
Department of Energy Headquarters	0	2	20 ^a	10
Marshall Space Flight Center	1	0	5	20
Total	4	15	104	18

^aTwenty of the 104 contracts, including 15 at Energy's Office of Procurement Operations, were awarded under section 8(a) of the Small Business Act. Such awards are statutorily exempted from the competition act's requirements. The Administrator of the Small Business Administration is authorized under section 8(a) of the Small Business Act (15 U.S.C. 637), as amended, to help small businesses which are owned and controlled by socially and economically disadvantaged persons. This agency enters into procurement contracts with other federal agencies and subcontracts the work to disadvantaged small businesses

In another 34 of the 104 sample cases, although the decisions were probably appropriate, assurance was lacking because of flaws in the agencies' market survey efforts. These flaws were less serious than those in the previous category. In 31 (91 percent) of these cases, the statutorily

²These are actual, rather than projected, amounts because we reviewed all of the contracts in our universe at the Naval Sea Systems Command headquarters and Marshall Space Flight Center where these four contracts were awarded. (See tables III.2 and III.3 in app. III.)

³See table III.6 in app. III for the confidence and precision estimates relating to our projections in chapters 2 and 3.

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required public notices of the proposed awards, published in the Commerce Business Daily, referred to footnotes which may have discouraged competition. (See pp. 39 and 40.) These 34 awards represent a projected 55.9 percent of the awards in our universe, originally obligating \$257.6 million (59.5 percent of the value of our universe). We believe that the decisions were appropriate in the remaining 51 sample cases, representing a projected 20.7 percent of the awards in our universe, originally obligating \$81.2 million (18.8 percent of the value of our universe.)⁴

Table 2.2 shows the distribution of these 85 awards by procuring activity.

Table 2.2: Contract Awards for Which the Decision Not to Provide for Full and Open Competition Was or Probably Was Appropriate

Procuring activity	Number of awards reviewed ^a	Number of awards		Percentage	
		Probably appropriate	Appropriate	Probably appropriate	Appropriate
Army Aviation Systems Command	20	9	6	45	30
Navy Aviation Supply Office	20	14	1	70	5
Naval Sea Systems Command Headquarters	16	6	5	38	31
San Antonio Air Logistics Center	20	3	16	15	80
Defense General Supply Center	3	0	3	0	100
Department of Energy Headquarters	20 ^a	2	16	10	80
Marshall Space Flight Center	5	0	4	0	80
Total	104	34	51	33	49

^aSee footnote a, table 2.1.

⁴Although these projections might appear erroneous, they merely reflect the different weights used to project the sample results (based on the number of awards included in our universe) at each of the seven locations. (See app. III.)

The Act's First Exception to Full and Open Competition Was Used Most Frequently

The competition act requires executive agencies to base their contract awards on full and open competition, unless at least one of seven specified circumstances, or exceptions, is met. (All seven exceptions are shown in app. IX.) Agency officials did not cite three of the seven exceptions for any of the 104 sample contracts. Each of the remaining four was cited for one or more of the sample awards:

- Exception 1: property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy its needs.⁵
- Exception 2: the agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits offers.
- Exception 5: a statute expressly authorizes or requires procurement through another agency or from a specified source, or the agency's need is for a brand name commercial item for authorized resale.
- Exception 6: disclosure of the agency's needs would compromise national security unless the number of sources solicited is limited.

The competition act also provides that under the second and sixth exceptions offers shall be requested from as many potential sources as is practicable. Table 2.3 shows the frequency of the exceptions used for the 104 sample contract awards.

Table 2.3: Frequency of Use of the Exceptions to Full and Open Competition

Exceptions	Number of contract awards
1 - Only one responsible source/no other product or service will satisfy the need	59
2 - Unusual and compelling urgency	24
5 - Authorized or required by statute	20 ^a
6 - National security	1
Total	104

^aThese 20 contracts were awarded under the authority of section 8(a) of the Small Business Act and were, therefore, exempt from competitive requirements. Fifteen of these contracts were awarded by the Department of Energy's Office of Procurement Operations, two by NASA's Marshall Space Flight Center, two by Naval Sea Systems Command Headquarters, and one by the Army Aviation Systems Command

⁵The Defense Acquisition Improvement Act (Public Law 99-500) has amended this exception to full and open competition for DOD and NASA to also include procurements for requirements available "only from a limited number of responsible sources." This change took effect with respect to contracts for which solicitations were issued by these agencies on or after April 16, 1987.

For details on each of the seven procuring activity's use of the exceptions for the 104 awards, see table IV.1, app. IV.

Agency officials stated that complete and accurate technical data needed for full and open competition were unavailable for 50 sample awards, including 40 (68 percent) of the 59 first exception awards and 10 (42 percent) of the 24 second exception awards. Our review showed that the lack of sufficient technical data was a major barrier to increasing competition.

Sixteen (67 percent) of the 24 sample awards based on the second (urgency) exception were awarded at the San Antonio Air Logistics Center.⁶ We concluded that these 16 award decisions not to provide for full and open competition were appropriate in the circumstances.

Agencies Inappropriately Awarded Four Sample Contracts

Agencies inappropriately awarded four of the contracts included in our sample. Agency officials stated that two of these awards met the competition act's first exception to full and open competition and the other two awards met the second exception. We determined that the exceptions claimed did not apply to these awards and either agency market survey efforts were seriously flawed or agency actions otherwise improperly restricted full and open competition. Three of these four awards originally obligated less than \$50,000. The following is an example of one of these awards.

- The Naval Sea Systems Command Headquarters awarded a firm fixed-price contract to develop technical manuals for two different submarine batteries. Contracting officials told us that although the agency had officially claimed that the contractor was the sole responsible source, the contractor was not uniquely qualified and a competitive solicitation could have been developed for the procurement if they had expended the resources to do so. However, they stated that they decided not to use full and open competition, because the contract award was initially valued at only about \$38,000. This is contrary to the competition act's requirements for contracts that exceed \$25,000.

For another example of a contract inappropriately awarded based on other than full and open competition, see example 1, appendix V.

⁶In addition to the San Antonio Center's use of the urgency exception, the Defense General Supply Center and the Army Aviation Systems Command each claimed the urgency exception twice and each of the remaining four procuring activities visited claimed this exception once.

**Fifteen Decisions to Award
Sample Contracts Based on
Other Than Full and Open
Competition Were
Questionable**

Agency officials cited the first exception for 14 of the 15 questionable decisions. The competition act provides that the first exception may normally be used only if a preaward notice is published in the Commerce Business Daily encouraging competition. The results of this effort are intended to demonstrate whether use of the first exception is appropriate. However, this purpose was thwarted in these 14 cases because agency officials did not publish a notice that reasonably complied with statutory requirements.

On the remaining award, agency officials incorrectly cited the sixth (national security) exception to full and open competition. As a result, a preaward notice was not published in the Commerce Business Daily and reasonable assurance was lacking that basing the award on other than full and open competition was appropriate.

The required preaward notice was not published in the Commerce Business Daily for 8 of the 15 questionable cases. For the remaining seven awards, there were serious problems with the notices that were published and the market survey efforts made. Following is an example of one of these awards.

- The Army Aviation Systems Command awarded an unpriced order with an estimated value of about \$270,000 under a basic ordering agreement on September 4, 1985.⁷ The award, which was based on other than full and open competition, was for overhaul of pump module assemblies for the UH-60 helicopter. Although a preaward notice was published in the Commerce Business Daily, the notice inaccurately described the requirement as the procurement of new equipment instead of the overhaul of existing equipment. In addition, because the notice the Command submitted for publication was coded as procurement of equipment, it was published in the wrong section of the Commerce Business Daily. (See pp. 35 and 36.) The contracting officer's supervisor attributed the problem to an oversight. Agency officials did not make any other market survey efforts for this procurement. Agency officials justified the decision not to provide for full and open competition on the basis that only one responsible source existed to satisfy the requirement. Because of the market survey problems, agency officials did not have a sufficient basis for the decision. (See example 2, app. V, for another example of a questionable decision not to provide for full and open competition.)

⁷Unpriced orders or unpriced contracts authorize contractors to start work and incur costs before final agreement on terms and conditions, including price. Basic ordering agreements are written agreements that include contract provisions which will apply to orders subsequently issued under them. Each issued order is a separate contract.

Some of these questionable awards based on other than full and open competition may have been demonstrated to be appropriate, if the requirements relating to preaward notices had been met. For example, according to agency officials, these contracts were often not awarded based on full and open competition because the government did not possess sufficient technical data to obtain competition. However, at a minimum, a sufficient preaward notice was required to be published in the Commerce Business Daily for these contracts to verify that no other source (1) owned the data needed to manufacture the required item, (2) had purchased a license from the original equipment manufacturer to produce it, or (3) was able to provide some other item which would fulfill the government's need.

Most of the Sample Awards Were or Probably Were Appropriately Based on Other Than Full and Open Competition

As previously indicated, we concluded that agency officials' decisions to award 85 sample contracts based on other than full and open competition either were appropriate (51 cases) or were probably appropriate (34 cases). Taken together, these sample awards represent a projected 76.6 percent of the awards in our universe.

The following is an example of a contract award appropriately based on other than full and open competition.

- NASA's Marshall Space Flight Center awarded a firm fixed-price contract, originally obligating \$32,340, to produce and deliver test specimens of a material known as katiflex. This material had been developed by the awardee and the testing was required to determine the material's suitability for use in propulsion systems. The justification prepared by the agency cited the first exception to full and open competition and stated that any other potential supplier would have to develop and produce the katiflex material before it could be tested. The agency also noted that no other material was suitable for testing since only the katiflex material possessed the required technical characteristics. We reviewed the agency's minimum requirement and found no indication that the solicitation was unnecessarily restrictive.

This procurement was published in the Commerce Business Daily several months before award. The notice accurately described the agency's need, identified the agency's request for proposals, and invited interested parties to respond or submit a proposal. However, the agency received no responses.

Lack of Knowledge Appeared to Be a Cause of the Inappropriate or Questionable Decisions

Agency officials' lack of knowledge about what constitutes a valid justification for not basing awards on full and open competition appeared to be a primary reason for the 19 inappropriate or questionable decisions. In keeping with the competition act, FAR requires that each justification contain sufficient facts and rationale to justify use of the exception cited. That is, agency officials must demonstrate in the justification that the proposed contractor's unique qualifications or the nature of the acquisition require use of the claimed exception. We found that lack of knowledge regarding this requirement, usually as it related to the first exception, was a probable cause of the inappropriate or questionable decision for the 19 awards.

For 15 of these 19 awards (almost all of which were awarded under the first exception), agency officials did not comply with important requirements of the act relating to publication of preaward notices in the Commerce Business Daily, which prevented them from demonstrating in the justifications that awarding a contract based on other than full and open competition was appropriate. In these cases we did not have any reason to believe officials understood that under the act compliance with those requirements was necessary to make such a demonstration. Therefore, we concluded that a lack of knowledge concerning required use of the Commerce Business Daily was also a probable cause of the inappropriate or questionable decision for 15 awards.

Requirements for Justifying and Approving Decisions Were Often Not Met

Written justifications were required for 84 of the 104 sample contract awards based on other than full and open competition. The remaining 20 were awarded under section 8(a) of the Small Business Act. We identified justification-related problems, indicating management control weaknesses, on 59 (70 percent) of the 84 awards. These 59 awards represent a projected \$269.2 million in original obligations (63.9 percent of the value of our universe required to have written justifications). (Table IV.3 in app. IV shows the distribution of these 59 awards among the 7 procuring activities.)

Justifications are required to be approved by designated officials, as determined by the dollar value of the proposed contract. (See p. 29.) Regarding the approval levels described in FAR and applicable to the 84 awards that were required to be justified in writing,

- 26 (81 percent) of the 32 sample awards valued at more than \$25,000 but not exceeding \$100,000 had justification-related problems;

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- 22 (61 percent) of the 36 awards valued at more than \$100,000 but not exceeding \$1 million had such problems; and
- 11 (69 percent) of the 16 awards valued at more than \$1 million but not exceeding \$10 million had such problems.

These results indicate that justification-related problems occurred slightly less frequently for awards at the second approval level (those valued at more than \$100,000 but not exceeding \$1 million), than for awards at the first and third approval levels. (Table IV.4 in app. IV shows these results by procuring activity.) Awards at the second approval level are required to be reviewed by the competition advocate for the procuring activity.

Before the competition act, we reported that executive agencies were frequently not providing legitimate justifications for awarding sole-source contracts.⁸ The competition act and FAR require agencies to justify in writing contract awards not based on full and open competition. They also state requirements regarding the content of justifications and the certifications and approvals by agency officials.

The justification, prepared by procurement and technical personnel, should clearly demonstrate why full and open competition is not required. For example, if agency officials claim only one source is available that can meet the government's needs, the justification must explain how this is known and what efforts have been made to identify potential competitors.

The competition act and subsequently enacted legislation exempt several types of procurements from these justification requirements.⁹ In addition, the competition act provides that the justification may be prepared and approved after contract award for a contract awarded under the urgency exception to full and open competition. FAR limits the use of

⁸Less Sole-Source, More Competition Needed on Federal Civil Agencies' Contracting (GAO/PLRD-82-40, Apr. 7, 1982) and DOD Loses Many Competitive Procurement Opportunities (GAO/PLRD-81-45, July 29, 1981).

⁹Awards made under the following conditions are exempt: (1) section 8(a) of the Small Business Act, (2) procurements from qualified nonprofit agencies for the blind or severely handicapped under the Wagner-O'Day Act, (3) when a statute requires that the procurement be made from a specified source, (4) when the agency's need is for a brand name commercial item for authorized resale, and (5) when an agency head, based on the act's seventh exception, determines that full and open competition is not in the public interest and notifies the Congress in writing of such determination at least 30 days before contract award.

this provision to cases for which preparation and approval of the justification before award would unreasonably delay the acquisition.¹⁰

Required Justifications Were Not Prepared in Two Cases

Justifications were prepared for 82 of the 84 sample awards for which they were required. Regarding the remaining two contracts we found that:

- One was a \$65,000 contract awarded at Army Aviation Systems Command using the urgency exception. The contracting officer said that at that time she did not believe a justification was required because a limited competition was conducted among four firms, including the firm which received the award.
- The other was an automated order valued at \$29,000 issued under a basic ordering agreement at the Navy Aviation Supply Office. Contracting officials told us that the justification was not prepared because the Supply Office's automated ordering system had not yet been modified to incorporate the competition act's justification requirements.

Elements Required to Be Included in the Justifications Often Did Not Meet Competition Act or FAR Requirements

FAR 6.303-2 requires each justification to contain sufficient facts and rationale to justify the cited exception to full and open competition. This FAR provision also requires each justification to include 13 specific elements.¹¹

We found that for 38 (45 percent) of the sample awards requiring written justifications the requirements of the competition act or FAR relating to one or more of the elements were not met. (Table IV.5 in app. IV shows the distribution of the 38 awards by procuring activity.) Most of the 38 justifications had more than 1 problem. Common problems were that, contrary to requirements, the justifications for

- 19 contracts did not demonstrate that the proposed contractor's unique qualifications or the nature of the acquisition required use of the cited exception,
- 19 contracts (1) did not describe the efforts made to ensure that offers were solicited from as many potential sources as was practicable or (2)

¹⁰See FAR 6.303-1(e) and FAR 6.302-2(c).

¹¹Seven of the 13 elements are required by the act and FAR added the other 6. (App VI lists the 13 elements.)

described efforts made but the efforts actually made were inconsistent with the act's provisions, and

- 20 contracts did not accurately describe the market survey performed and its results or did not provide a statement of the reasons why one was not done.

In addition, for five contracts, contracting officials did not comply with the requirement to certify that the justifications were accurate and complete to the best of their knowledge and belief.

Many Justifications Were Certified Prematurely

We found that justifications for 35 sample awards were certified by contracting officials prematurely. In these cases, contracting officials certified to the accuracy and completeness of the justifications "to the best of (their) knowledge and belief." The competition act and FAR require each justification to (1) describe the market survey done and the results¹² or (2) state the reasons a market survey was not done. All 35 certifications were inconsistent with the requirements of the act and FAR. (Table IV.6 in app. IV shows the distribution of the 35 awards by procuring activity.)

The justifications for 13 sample awards were certified before the dates the required notices of the proposed awards were actually published in the Commerce Business Daily. Nine of the 13 contracts were awarded by the Navy Aviation Supply Office, 2 by the San Antonio Air Logistics Center, 1 by the Army Aviation Systems Command, and 1 by the Department of Energy headquarters. Moreover, for all 9 of the awards made by the Navy Aviation Supply Office, the justifications incorrectly stated that the notices had already been published in the Commerce Business Daily.

On 22 other sample awards, contracting officials certified the justification after the required notice was published but before the statutorily required response time had elapsed.

Certifying these 35 justifications before actual publication of the notices or before consideration of the results of such market survey efforts shows that agency officials need to place more emphasis on notice publication, consideration of responses, and justification preparation. The

¹²Potential competitors are required to be allowed at least 30 days, and usually 45 days, from the date of publication of the notice to respond. See p. 37.

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following example illustrates an award based on a justification approved before publication of the Commerce Business Daily notice.

- On September 11, 1985, the Navy Aviation Supply Office issued an unpriced order under a basic ordering agreement without providing for full and open competition. The award initially obligated about \$2.2 million to obtain parts for the P-3 aircraft. The justification, which was approved on July 11, 1985, stated that a notice of the proposed contract award had been synopsisized in the Commerce Business Daily. However, a Commerce Business Daily notice was not published until August 3, 1985, 23 days after the justification was approved. Therefore, the justification (1) did not include an accurate description of the market survey done and its results and (2) was approved by reviewing officials on the basis of this inaccurate information.

Some Justifications Were
Not Properly Approved

Based on the competition act, FAR 6.304 requires that justifications for other than full and open competition on proposed contracts exceeding \$100,000 be approved by specified agency officials. In addition, FAR contains approval requirements for contracts of \$100,000 or less. Justifications must be approved in writing for contracts

- over \$25,000 but not exceeding \$100,000 at a level above the contracting officer,¹³
- over \$100,000 but not exceeding \$1 million by the competition advocate for the procuring activity,¹⁴
- over \$1 million but not exceeding \$10 million by the head of the procuring activity,¹⁵ and
- over \$10 million by the senior procurement executive.¹⁶

The approval process is intended to ensure that contract awards are based on full and open competition whenever required.

¹³Contracts are exempt from this requirement if they are (1) for certain utility services and available from only one source, (2) for education services from nonprofit institutions, or (3) awarded based on the fourth or fifth exceptions to full and open competition.

¹⁴The competition advocate may not delegate this authority.

¹⁵The head of the procuring activity may delegate this authority to a military officer of general or flag rank or to a civilian government official at the GS-16 grade level or higher.

¹⁶The senior procurement executive may not delegate this authority. Each executive agency head is required by the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) to designate a senior procurement executive.

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Of the 82 sample contract awards with written justifications, 13 (16 percent) had not received the approval required.¹⁷ We found that

- five justifications had been approved but not by the appropriate officials and
- the remaining eight justifications, including four based on the urgency exception, had not been approved as of March 1986, approximately 6 months after the contract award dates.

(Table IV.7 in app. IV shows the distribution by procuring activity of these awards, as well as the two for which no written justification was prepared.) As previously noted, for certain awards based on the urgency exception, preparation and approval of the justification is permitted after the award is made. However, we believe (1) the Congress intended some reasonable time limitation on this provision and (2) FAR should establish such a limitation. It seems to us that 30 days would be a reasonable time limit.

Some Justifications Were
Made on a Class Basis

FAR 6.303-1(c) allows agencies to prepare justifications for an individual procurement or a class of procurements. However, our previous report on implementation of the competition act¹⁸ concluded that class justifications were inconsistent with the act's congressional intent and we recommended that FAR be revised to preclude them. This recommendation has not been adopted but FAR has been revised to require contracting officers to (1) ensure that each contract action taken under a class justification is properly within its scope and (2) document the contract file accordingly.¹⁹

We found that 8 of the 84 required written justifications were prepared and approved on a class basis (4 at the Army Aviation Systems Command and 4 at the Naval Sea Systems Command Headquarters). We also found that one of these eight decisions not to provide for full and open competition was questionable. (See example 2, app. V.) In addition, for six of these eight awards, we found other justification-related problems, as previously discussed in this chapter.

¹⁷Of the 13 awards not receiving the approval required, 5 (17 percent of 30 awards requiring written justification) were at the lowest dollar level, 5 (14 percent of 36 awards) were at the next higher level, and the remaining 3 (19 percent of 16 awards) were at the next to the highest level.

¹⁸Federal Regulations Need to Be Revised to Fully Realize the Purposes of the Competition in Contracting Act of 1984 (GAO/OGC-85-14, Aug. 21, 1985. See pp. 19, 27, and 29.)

¹⁹See Federal Acquisition Circular 84-13, which took effect on February 3, 1986.

We continue to believe that (1) the use of class justifications and approvals does not provide the management control safeguards afforded by individual justifications and approvals and (2) such safeguards are needed to ensure that awards are based on full and open competition whenever required.

Conclusions

Agency officials' decisions not to provide for full and open competition were inappropriate or questionable for some sample contract awards and for many others we could not be sure the decisions were appropriate. In addition, management controls were weak in that most of the required written justifications did not fully comply with competition act and FAR requirements, and in two cases the justifications were not prepared.

Many of the problems we identified related to inappropriate use of the Commerce Business Daily. Some contracting officials need to be more aware of the requirements relating to publicizing proposed contract awards. In addition, contracting officials' lack of knowledge regarding valid justifications and the high frequency of justification-related problems indicate that better understanding and more effective management controls are needed to ensure the appropriate preparation and approval of justifications.

Recommendations

We recommend that the Secretaries of Defense and Energy and the Administrator of NASA take actions, such as those involving formal or informal training, written instruction, better supervision, and/or other improved management controls, to ensure that all personnel involved in awarding contracts of more than \$25,000 understand and comply with the requirements of the competition act and FAR relating to written justifications for decisions not to provide for full and open competition. Such compliance should include (1) demonstrating that use of any exception to full and open competition cited is appropriate, (2) properly preparing and certifying the justifications so that they include all the required elements, (3) preparing the justifications after the market survey efforts have been completed and their results considered, and (4) properly approving them.

We recommend that the Secretary of Defense and the Administrators of General Services, NASA, and the Office of Federal Procurement Policy amend FAR 6.303-1(e) and 6.302-2(c) to provide that justifications for contract awards based on the second (urgency) exception to full and

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open competition shall be prepared and approved no later than 30 days after the date of contract award if the current FAR criteria for preparation and approval after award are met.

Better Market Survey Efforts Are Needed to Ensure That Awards Are Based on Competition Whenever Appropriate

The competition act includes a number of requirements concerning procurement planning and market surveys. The most important of these requirements relate to use of the Commerce Business Daily. Complying with these market survey requirements helps ensure that the act's basic requirement for full and open competition is met whenever appropriate.

However, our sample results relating to awards based on other than full and open competition show that agency officials often did not fully comply with these market survey requirements. This includes not publishing some required notices of proposed contract awards in the Commerce Business Daily and publishing many of the notices with inaccurate or incomplete information. In several cases, officials issued the solicitation too early or did not allow the required time for responses to the notices. In addition, many of the notices referred to Commerce Business Daily footnotes which may have discouraged competition. Some of the footnotes either conflicted with requirements of the act or their use was otherwise inappropriate.

In addition, required post award notices, which are intended to benefit potential subcontractors and encourage competition in subcontracting, were often either not published or the available evidence did not show whether they had been published.

Market Survey Efforts for Awards Not Based on Full and Open Competition Were Often Limited

A market survey is an attempt by agency officials to determine whether qualified sources capable of satisfying the government's requirement exist. This testing of the marketplace may include contacting knowledgeable experts within the government or industry regarding similar requirements, publishing announcements in pertinent publications (including the Commerce Business Daily as well as technical journals or local newspapers), or soliciting for information or planning purposes.

Based on the competition act and subsequent legislation,¹ FAR subpart 5.2 requires agencies to submit notices of proposed contract awards of \$10,000² and above for publication in the Commerce Business Daily,

¹The competition act amended the Office of Federal Procurement Policy Act regarding requirements to publicize notices of proposed awards in the Commerce Business Daily. However, because there were some discrepancies between these requirements and the requirements of the Small Business Act (15 U.S.C. 637 (e)), as amended by Public Law 98-72, provisions were included in the Small Business and Federal Procurement Competition Enhancement Act of 1984 to amend both the Office of Federal Procurement Policy and the Small Business Acts and eliminate the discrepancies.

²For proposed contracts other than sole-source contracts, this threshold has been changed to \$25,000 for all executive agencies by the Defense Acquisition Improvement Act of 1986, Public Law 99-500, enacted on October 18, 1986.

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except in several specified circumstances.³ The Commerce Business Daily provides industry with notice of, and information concerning, government contracting and subcontracting opportunities. Publicizing contract actions is intended to (1) increase competition, (2) broaden industry participation in meeting government requirements, and (3) assist small businesses and certain others in obtaining contracts and subcontracts. FAR also provides requirements regarding the content and timing of the notices.

In addition, the competition act contains other provisions relating to market survey efforts. For example, the act requires agencies to use advance procurement planning when preparing to procure property or services. The act also requires each written justification for other than full and open competition to describe the market survey done or state the reasons a market survey was not done.

Based on our sample, the publication of preaward notices in the Commerce Business Daily was often the only effort agency officials made to search the marketplace for competition. For the 84 sample contract awards not statutorily exempted from provisions of the competition act,⁴ agency officials

- did not perform any type of market survey effort for 19 awards and
- submitted a preaward notice to the Commerce Business Daily but performed no other market survey efforts for 44 (68 percent) of the remaining 65 awards. (Table IV.8 in app. IV shows the distribution of the 19 and the 44 awards by procuring activity.)

Agency officials (1) did not submit a preaward notice but made other market survey efforts for 12 awards and (2) submitted a preaward notice and made other market survey efforts for 9 awards.

³See FAR 5.202.

⁴See footnote a, table 2.1, ch. 2.

Agencies Often Did Not Fully Comply With Certain Requirements Relating to Commerce Business Daily Preaward Notices

Agency officials did not fully comply with certain requirements relating to preaward notices published in the Commerce Business Daily for 56 (90 percent) of the 62 sample contract awards for which such notices were required. These 56 awards represent a projected \$344.4 million in original obligations (94.1 percent of the estimated dollar value of our universe that was required to have the preaward notices published). Officials did not provide the required notices for publication for 10 of the contract awards. Among the problems identified for the other 46 awards were (1) notices for all 46 awards included inaccurate information or did not provide required information and (2) after publishing the notices for 9 awards, agency officials issued the solicitation too early and/or did not allow potential competitors the required number of days to respond. In addition, notices for three awards were published in inappropriate sections of the Commerce Business Daily and notices for two awards covered only some of the items agency officials were proposing to procure on a sole-source basis.

The Requirement to Publish a Preaward Notice Was Not Met for Some Contracts

Although agency officials were required to submit preaward notices for publication in the Commerce Business Daily for 62 of the 104 sample contracts,⁵ they did not submit the notices for 10 (16 percent) of the 62 awards. (Table IV.9 in app. IV shows the distribution of these 10 awards among the 5 procuring activities that awarded them.) (Chapter 4 discusses this same problem on awards reported as based on full and open competition.)

Various explanations were given as to why these notices were not submitted. Contracting officials said that the urgency of the requirement (for three contracts) and national security reasons (for another contract) did not permit publication, but these reasons were not supported by the evidence. We were told that notices were not published because of administrative oversight in four cases and because the awards were orders under basic ordering agreements in two cases. Contrary to requirements, contracting officials in these two cases did not believe the notices were required for each order, especially when the overall agreement had been publicized.

In addition to these 10 cases, the requirement to publish a preaward notice was not fully met in 5 other cases, all of which were awarded by

⁵Such notices were not required for 22 awards that met both the urgency exception to full and open competition and the related time-period criteria in FAR 5.202(a)(2) and for another 20 awards made under section 8(a) of the Small Business Act.

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the Army Aviation Systems Command. Command officials submitted three preaward notices which inaccurately described the requirements as new equipment procurements, although the requirements were for services (overhauls of existing equipment). Also, because Aviation Systems Command personnel coded the notices they submitted as equipment procurements, the notices were inappropriately placed in the equipment section of the Commerce Business Daily. Such errors reduce the assurance intended by the competition act that all potential responsible sources were given an opportunity to compete. (See p. 23 for an example of this problem.)

In the two remaining cases, personnel at this Command submitted notices which described only part of the agency's requirement. For example, based on our analysis of the individual items procured which had a unit cost of \$1,000 or more, the notices published did not mention five (14 percent) of the items procured for one award and six (12 percent) of the items procured for the other.

Required Content of the
Notices Was Often
Incomplete or Inaccurate

The competition act requires preaward notices to include: (1) a description of the property or services to be contracted for which is both accurate and not unnecessarily restrictive of competition, (2) the name, business address, and telephone number of the contracting officer, (3) a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the executive agency, and (4) in the case of a procurement using other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.⁶

Regarding these 4 provisions, the preaward notices for 46 (87 percent) of the 53 sample awards that had such notices published⁷ contained either inaccurate or incomplete information. Most of these 46 awards were made by the Navy Aviation Supply Office (17), the Naval Sea Systems Command Headquarters (11), and the Army Aviation Systems Command (9). (Table IV.10 in app. IV shows the distribution of all 46 awards among the 7 procuring activities.)

⁶Although the competition act also required the notice to include the name, business address, and telephone number of an individual in the executive agency who could be contacted to obtain a copy of the solicitation, the Small Business and Federal Procurement Competition Enhancement Act (Public Law 98-577) subsequently deleted this provision as a statutory requirement.

⁷A preaward notice was not required, but was published, for one of these 53 awards.

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Table 3.1 shows how frequently the required elements of the notices were inaccurate, incomplete, or missing. Many of the notices lacked more than one of the required elements.

Table 3.1: Awards That Had Inaccurate, Incomplete, or Missing Elements in Their Published Preaward Notices

Required elements	Number of awards with problems
(1) An accurate description of the property or services	3
(2) The name, address, and phone number of the contracting officer	38
(3) A statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency ^a	7
(4) A statement of the reason justifying the use of other than competitive procedures and the identity of the intended source	33

^aFAR 5.207(c)(2)(xvi) instructs agencies to include this statement in the notice, as required by the competition act. FAR 5.207(d)(3) requires agencies to refer to numbered note 22 if the proposed contract is intended to be awarded on a sole-source basis. Agencies' notices did not refer to numbered note 22 or include the statement for seven awards. See pp. 41 to 43 for more information on numbered note 22

(Chapter 4 discusses some of these same problems on awards reported as based on full and open competition.)

Solicitation Issuance and Response Time Requirements Were Not Met for Nine Awards

Based on the competition act and the Small Business and Federal Competition Enhancement Act,⁸ FAR 5.203 states time requirements which agencies must follow when publishing notices of proposed contract awards in the Commerce Business Daily. FAR states that required notices must be published at least 15 days before solicitation issuance. This requirement should help ensure that some potential offerors are not given unfair advantage through early access to the solicitation. In addition, FAR requires agencies to allow at least a

- 30-day response time for receipt of bids or proposals from the date of solicitation issuance,
- 30-day response time from the date the notice is published in the Commerce Business Daily for architect-engineer services or before issuing a sole-source order under a basic ordering agreement or similar arrangement, or
- 45-day response time for receipt of bids or proposals from the date of issuance of the notice for research and development contracts.

These requirements are intended to provide enough time for potential offerors to express their interest in competing.

⁸See footnote 1 of this chapter.

We found that agency officials did not meet these timing requirements for 9 (17 percent) of the 53 sample awards for which a preaward notice was published. Seven of these nine contracts were awarded by the Naval Sea Systems Command Headquarters. Agency officials issued solicitations too early for eight contracts and did not allow the appropriate response times for six contracts. We found both of these problems for five contracts. (Table IV.11 in app. IV shows the distribution of these problems among the procuring activities.) (Chapter 4 discusses similar problems on some awards reported as based on full and open competition.)

Following is an example of a contract award for which the agency issued the solicitation too early and did not provide the appropriate response time.

- The Naval Sea Systems Command Headquarters awarded a cost plus fixed-fee contract, initially obligating \$125,000, for updating instructional material to train naval shipyard personnel in submitting proposals for competitive contracts to overhaul submarines. The award was based on other than full and open competition. A preaward notice was published in the Commerce Business Daily on September 4, 1985. The solicitation was issued to the proposed contractor only 9 days later, on September 13, 1985, and the Command awarded the contract on this same date.

The Use of Certain Footnotes in Preaward Notices May Have Discouraged Competition

Agencies' use of two footnotes, called "numbered notes," in their Commerce Business Daily notices of proposed awards may have discouraged competition because the wording of the notes conflicted with the competition act's requirement that all responsible sources be invited to submit a bid, proposal, or quotation. In addition, agencies' use of two other footnotes was questionable. These conflicting or questionable practices were used for 38 (72 percent) of the 53 sample contract awards for which agencies submitted the preaward notices. These 38 awards represented a projected \$310 million in original obligations (94.5 percent of the estimated dollar value of our universe for which agencies submitted the preaward notices). (Chapter 4 discusses similar practices that were also being used on some awards reported as based on full and open competition.)

We discussed these practices with the Chairman of the Civilian Agency Acquisition Council and a member of the Small Business Committee, Defense Acquisition Regulatory Council. They told us an effort was

underway to review and possibly modify or delete some of these footnotes.

Numbered notes and symbols are used in the Commerce Business Daily notices of proposed awards to provide standard information concisely to prospective contractors and subcontractors on various matters.⁹ For example, some notes provide information relating to the restriction of the proposed award to small businesses. Other notes say that proposals are not being solicited or that solicitations or specifications are not available.

Conflicting Footnotes Were Often Used

The competition act requires that notices of proposed awards under the first exception to full and open competition invite all responsible sources to submit a bid, proposal, or quotation which shall be considered by the agency. Agencies' preaward notices for 25 (47 percent) of the 53 sample contracts for which such notices were submitted referred to footnotes which conflicted with this requirement.¹⁰ Seventeen (68 percent) of these 25 contracts were awarded by the Navy Aviation Supply Office. (Table IV.12 in app. IV shows the distribution of these awards by procuring activity.)

Commerce Business Daily numbered note 40 was used for 24 of the 25 awards and numbered note 41 was used for the remaining award.¹¹ These two footnotes are:

"40. This notice does not solicit additional proposals but is issued for the benefit of prospective subcontractors."

"41. This notice does not solicit proposals but is issued for the benefit of prospective above firm(s) for subcontracting opportunities."¹²

⁹The Commerce Business Daily lists all current numbered notes and symbols at the beginning of each week.

¹⁰Four of these 25 awards were not included in the 56 awards found not to be in full compliance with certain requirements, as discussed on p. 35. Therefore, in total, 60 (97 percent) of the 62 sample awards for which preaward notices were required did not have notices that fully complied with statutory requirements.

¹¹Numbered note 22, which is discussed later in this chapter, was also referred to in notices for 21 of these 25 awards.

¹²"Prospective above firm(s)" refers to those specifically mentioned in the notice.

Agency records showed that often competitive solicitations had not been prepared for proposed awards based on the first exception to full and open competition and that sometimes the technical or other data needed to do so were not available. Therefore, officials did not solicit bids or proposals in these cases and it would be difficult for potential offerors to prepare bids or proposals in the absence of such solicitations. Although we agree that agencies should not be required to expend resources preparing competitive solicitations when they can reasonably show that use of the first exception is appropriate, we believe a proper preaward notice, when required, is necessary under the competition act to make such a demonstration.

Even when competitive solicitations have not been prepared, required preaward notices should encourage potential competitors to respond to the government by expressing their interest and demonstrating their capability to fulfill the government's needs.¹³ When a potential source demonstrates to government officials that it can meet those needs, competitive solicitations are required to be prepared. Therefore, it is important that required preaward notices not discourage responses relating to government prime contracts.

We believe that the wording of numbered notes 40 and 41 may discourage prospective offerors from expressing their interest in competing for agency requirements. We do not object to the use of preaward notices to alert subcontractors to potential subcontracting opportunities.¹⁴ However, the wording of these footnotes, disclaiming solicitation of proposals and emphasizing subcontracting opportunities, tells prospective offerors that contracting opportunities may exist at the subcontract, but not at the prime contract level. Required notices of proposed awards under the first exception to full and open competition should not refer to these footnotes or otherwise include wording that conflicts with competition act requirements.

¹³However, as discussed later in this chapter, numbered note 22 provides an acceptable way to tell prospective competitors that the government currently anticipates awarding a sole-source contract. This information may be useful to businesses in deciding how best to use their resources.

¹⁴However, the competition act also specifically requires the publication of post award notices for this purpose. See p. 43 and FAR 5.301 for more information on post award notices.

**Use of Two Other
Footnotes Was
Questionable**

Agencies used numbered note 46 or the symbol “*” in Commerce Business Daily preaward notices for 21 sample contract awards. Numbered note 46, referred to in notices for 17 awards, and the symbol “*”, referred to in notices for 4 awards, state:

“46. Synopsis published for informational purposes only. Solicitation documents are not available.”

“* This synopsis is published for information purposes to alert potential subcontractors and/or suppliers of the proposed procurement. Additional proposals are not solicited.”

Notices for 4 of the 17 contract awards that referred to numbered note 46 and the notices for all 4 awards that referred to the symbol “*” also referred to numbered note 40.¹⁵

Twelve (71 percent) of the 17 contracts with notices referring to numbered note 46 were awarded at the Army Aviation Systems Command. The Naval Sea Systems Command Headquarters and the Department of Energy Headquarters referred to this note in notices for three and two awards, respectively. The symbol “*” was referred to in notices for one award by the San Antonio Air Logistics Center and for three awards by the Navy Aviation Supply Office.

Although the meaning of these footnotes is open to interpretation and they do not conflict as directly with the competition act as numbered notes 40 and 41, we believe their use is questionable and may discourage prospective offerors from expressing interest in competing for agency requirements. Therefore, as in the case of numbered notes 40 and 41, we believe that required notices of proposed awards under the first exception to full and open competition should not refer to these footnotes.

**Numbered Note 22 Meets
the Act’s Requirements but
Can Be Improved**

As previously mentioned, the competition act states that all required preaward notices must include a specific statement encouraging competition. FAR 5.207 requires the notices (1) to include this statement and (2) when the agency intends to award a contract on a sole-source basis, to refer to numbered note 22. Numbered note 22 states:

¹⁵Numbered note 22 was also cited in each of the notices that referred to numbered note 46. Numbered note 22 was not cited for any of the notices referring to the symbol “*”.

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“This contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or to submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days after the date of publication of this synopsis will be considered by the Government. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.”

Officials of the Civilian Agency Acquisition Council and a subcommittee of the Defense Acquisition Regulatory Council told us that when agencies' notices relating to proposed sole-source awards refer to numbered note 22, the competition act's requirement for a statement encouraging competition is met. However, according to these officials, FAR requires the statement encouraging competition to be used in addition to numbered note 22 because (1) the competition act requires the statement and (2) the councils do not have sufficient control over the use of note 22 to ensure that it will always be used appropriately. These officials explained that officials of the contracting activity and the Commerce Business Daily coordinate use of the notes in individual notices.

Numbered note 22 was referred to in notices for 46 (87 percent) of the 53 sample awards for which notices were submitted. A separate statement encouraging competition was also included in the notices for 5 of these 46 awards. (As shown in table 3.1 in this chapter, agencies' notices did not include such a statement or refer to numbered note 22 for the remaining seven contracts.)

Based on the competition act, we believe that use of numbered note 22 is minimally acceptable for proposed sole-source awards when the available evidence indicates that such an award is probably appropriate and a competitive solicitation has not been prepared. (Also, see FAR 15.402 (g).) However, we believe that some of the wording in note 22 needs to be revised to better (1) encourage responses from prospective offerors and (2) implement the act's objective of limiting unnecessary sole-source procurements. That is, its wording should state that:

- An award is expected to be based on other than full and open competition unless the market survey results show that the use of full and open competition is appropriate. All interested sources may submit a response and such responses shall be considered.

- This market survey effort is intended to (1) find out whether any additional source(s) are available that are capable of satisfying the government's needs, (2) verify that no other types of supplies or services are available that can satisfy those needs, and (3) help identify potential sources for future requirements if applicable.
- If a competitive procurement is held, solicitations will be sent to all sources that have demonstrated they are capable of satisfying the government's needs as well as others that express an interest in the procurement.

Post Award Notices Were Not Always Published When Required

Based on the competition act, FAR 5.301 requires contracting officers to submit notices of contract awards exceeding \$25,000 to the Commerce Business Daily for publication if (1) the contracts are not classified and (2) subcontracting opportunities exist. Publishing these notices accomplishes several purposes. (See p. 34.) For the 84 sample awards not statutorily exempt from competition,

- post award notices were published in the Commerce Business Daily for 31 (37 percent),
- such notices were not published for 13 awards (15 percent) because contracting officials stated either that the awards did not offer any subcontracting opportunities or the contracts were classified,
- such notices were required but not published for 22 awards (26 percent), and
- for the remaining 18 awards (21 percent), we found no evidence in the contract file which indicated either that the post award notices had been published or that the proposed awards were classified or did not provide subcontracting opportunities. Agency officials said they were uncertain if the notices had been published for these 18 awards. They also stated that post award notices were generally published at their activities.

(See table IV.13 in app. IV for detailed information. Chapter 4 discusses similar problems on several awards reported as based on full and open competition.)

Conclusions

Agency officials often did not fully comply with one or more statutory market survey requirements relating to use of the Commerce Business Daily. The requirement to publish a preaward notice was not met for some contracts and many of the required notices were published with inaccurate or incomplete information. In some cases, the proper time was not allowed for responses to the notices or the solicitations were

issued too soon after the notice publication date. In addition, the use of certain footnotes in some preaward notices either conflicted with requirements of the act or were questionable and may have discouraged competition. The use of numbered note 22 is minimally acceptable, although its wording needs to be improved to encourage responses from potential offerors and better implement the act's objective of limiting unnecessary sole-source procurements. FAR requirements need to be clarified and strengthened to correct these problems and increase the assurance that full and open competition is obtained whenever appropriate.

Better management controls are also needed to ensure that required post award notices are published in the Commerce Business Daily.

Recommendations

We recommend that the Secretary of Defense and the Administrators of General Services, NASA, and the Office of Federal Procurement Policy revise FAR to:

- Preclude any required Commerce Business Daily notices of proposed awards, regardless of whether or not the award is expected to be based on full and open competition, from (1) referring to numbered notes 40, 41, 46 or footnote symbol * or (2) otherwise including wording that conflicts with statutory requirements or unnecessarily discourages responses from potential offerors.
- Improve the wording of Commerce Business Daily numbered note 22 so it indicates that (1) an award is expected to be based on other than full and open competition unless the market survey results show that the use of full and open competition is appropriate, (2) all interested sources may submit a response which shall be considered, (3) this market survey effort is intended to find out whether any additional source(s) are available that are capable of satisfying the government's needs, verify that no other types of supplies or services are available that can satisfy those needs, and help identify potential sources for future requirements, if applicable, and (4) if a competitive procurement is held, competitive solicitations will be sent to all sources that have demonstrated they are capable of satisfying the government's needs as well as others that express an interest in the procurement.
- State that for written justifications based on the first exception to full and open competition, contracting officers may not certify and approving officials may not sign a required justification until: (1) any required notice of the proposed award has been published in the appropriate section of the Commerce Business Daily and, whenever feasible, a copy of the actual published notice demonstrating this fact has been attached to

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the justification, (2) the contents of all Commerce Business Daily footnotes referred to in the notice have been disclosed as part of the justification, (3) information (such as the dates the preaward notice was actually published, the solicitation was issued, and offers or other responses were no longer accepted) has been provided showing that the requirements of FAR 5.203 have been met, and (4) the results of all market survey efforts made have been considered and described in the justification.

We recommend that the Secretary of Defense and the Administrators of General Services, NASA, and the Office of Federal Procurement Policy take action in coordination with the Secretary of Commerce to ensure that the wording of Commerce Business Daily notices and related footnotes comply with FAR and the competition act.

Based on the problems discussed in chapters 2 through 4, we also recommend that the Secretaries of Defense and Energy and the Administrator of NASA take actions, such as those involving formal or informal training, written instruction, better supervision and/or other improved management controls, to ensure that all personnel involved in awarding contracts of more than \$25,000 understand and comply with the requirements of the competition act and FAR relating to use of the Commerce Business Daily, such as:

- The publication and content of notices of proposed awards.
- Solicitation issuance and response time in relation to the publication dates of such notices.
- The publication of post award notices, regardless of whether or not the award was based on full and open competition. Such action should also ensure that the contract file is documented to show whether the notices were published and, if not, why not.

Improvements Are Needed on One-Offer Awards Reported as Based on Full and Open Competition

Our review of a sample of 25 contracts, which the agencies reported as awarded based on (1) full and open competition and (2) the submission of only one offer, showed that

- 9 (36 percent) of the contracts were awarded using practices that were inconsistent with full and open competition and
- 24 (96 percent) of the awards did not fully meet the statutory requirements relating to use of the Commerce Business Daily.

FAR needs to be revised to correct some of the management control problems involved. Agency officials need to take action to resolve the others.

Full and open competition, as defined by the competition act, focuses on the procedures used in awarding contracts rather than the result of the procedures (the number of offers submitted). However, the act also requires agencies to (1) identify in their procurement reporting systems procurements resulting in the submission of an offer by only one responsible source and (2) designate such procurements as "noncompetitive procurements using competitive procedures."¹ The 25 sample contracts discussed in this chapter fall into this category. (Appendix I provides information on the value of such awards by all agencies that report to the Federal Procurement Data System.)

In addition to the competition act's previously discussed requirements which are intended to ensure that all responsible sources are allowed to compete for proposed awards over \$25,000,² the act requires agency officials to specify their needs and solicit offers in a manner designed to achieve full and open competition.

¹The competition act defines competitive procedures as procedures under which an executive agency enters into a contract pursuant to full and open competition.

²App. IX also explains these requirements.

Nine Contracts Were Awarded Using Practices Inconsistent With Full and Open Competition

Four of the DOD procuring activities we reviewed awarded 18 (72 percent) of the 25 sample contracts. We found that 9 (50 percent) of those 18 awards were not based on full and open competition. (Table VII.1 in app. VII shows the distribution of these nine awards by procuring activity and identifies their dollar values.) In effect, these nine contracts were inappropriately awarded without obtaining the required written justification, certification, and approval.³ Because these management control safeguards were not used, assurance was less than intended under the competition act that opportunities for competition were not missed.

The nine contract awards were not based on full and open competition because:

- In four cases, the procuring activity's solicitation was restricted to a particular product manufactured by only one contractor.
- In three cases, the solicitation was restricted to a particular product of one manufacturer or alternate products meeting the agency's requirement, but it did not describe the essential features of the agency's requirement so that potential offerors of alternate products could know what would be acceptable to the agency. Moreover, in each of these cases the agency did not have in its possession the data needed to evaluate whether an alternate product offered by a potential competitor met the agency's needs.
- In two cases, the agency did not publicize the required notice of the proposed award in the Commerce Business Daily.

Procurement Restricted to a Specific Make and Model

A "specific make and model" solicitation is one which is restricted to a particular product of one manufacturer, irrespective of the number of distributors or other suppliers that might be able to furnish that product.

We believe that the restriction of a procurement to a specific make and model does not fulfill the competition act's requirement for full and open competition.⁴ Because any such procurement under the competition

³Chapter 2 discusses these requirements.

⁴See p. 40 of our report *Federal Regulations Need to Be Revised to Fully Realize the Purposes of the Competition in Contracting Act of 1984* (GAO/OGC-85-14, Aug. 21, 1985). Although our position as expressed in the report was in the context of automatic data processing requirements covered by the Federal Information Resources Management Regulation, the same principle applies to the use of specific make and model specifications for products covered by FAR and not by the Federal Information Resources Management Regulation.

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act is based on other than full and open competition, written justification, certification, and approval in accordance with the act is required. However, FAR does not state that restricting a procurement to a specific make and model constitutes other than full and open competition.

We recognize that an active third party market, involving dealers, licensees, or sellers of used equipment, may exist for some products.⁵ Thus, in some situations agencies may be able to obtain some level of competition when they specify only the product of one manufacturer. However, when an agency's solicitation is restricted to a particular product of one manufacturer, that manufacturer generally is the ultimate beneficiary of such a restriction regardless of who actually sells the product to the government. In an instance where the product has only one ultimate source, a specific make and model procurement would not be consistent with what the Congress intended when it required that full and open competition be used. Therefore, the procurement should be considered as other than fully competitive.

Four of the 10 contract awards we reviewed at 2 procuring activities were not based on full and open competition because the solicitation required a specific make and model. We believe that the lack of FAR coverage on soliciting only a specific make and model was a major factor contributing to the award of these contracts without written justification, certification, and approval as the act requires. Three of these four contracts were awarded by the San Antonio Air Logistics Center and one was awarded by the Navy Aviation Supply Office. The following is an example of one of those purchases.

- The San Antonio Air Logistics Center procurement office had a preaward notice of a request for proposal published in the Commerce Business Daily on July 3, 1985, and issued the solicitation on July 19, 1985. The solicitation (1) requested a price for 20,086 baffles for turbine blades, which are used by the Air Logistics Center to repair the J-85-21 jet engine, and (2) specified a certain manufacturer's part number. This manufacturer was the only firm that submitted a proposal and the Center awarded it a \$94,404 contract on September 11, 1985. According to the Center, the award was based on full and open competition.

⁵See *Le Prix Electrical Distributors, Ltd.*, B-212078, Nov. 15, 1983, 83-2 CPD 562. *Comdisco, Inc.*, B-181956, Feb. 13, 1975, 75-1 CPD 96, *aff'd*, May 13, 1975, 75-1 CPD 289.

There were two approved sources for the item. One was the contractor eventually awarded this contract and the other was the prime contractor for the J-85-21 jet engine. The procurement office solicited both the approved sources, but the engine prime contractor did not submit an offer. We found that although this contractor had used these baffles in the jet engine that it manufactured for the government, it had never previously supplied them to the government as spare parts and it was not the manufacturer of these parts. Rather, it purchased these parts from the contract awardee, the sole manufacturer which owned the specifications and drawings for the part.

Although more than one firm was solicited, this award was not based on full and open competition. In reality, it was a sole-source award based on a specific make and model specification. Under the requirements of the competition act, the safeguards (written justification, certification, and approval) that are required before making such awards were not, but should have been, employed.

Full and Open Competition
Restricted Due to
Inadequate Description of
the Agency's Needs

Based on the competition act, FAR requires agencies to include specifications and purchase descriptions in their solicitations that (1) permit full and open competition and (2) have restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency. (Also, see p. 50.)

We found that three of the five sample contracts at the Defense General Supply Center were awarded based on solicitations that asked for a particular product of a named manufacturer or alternate products satisfying the government's requirement; however, the solicitations did not describe the essential features of the requirement so that potential offerors of alternate products could know what would be acceptable to the government. Moreover, the Supply Center did not have the data needed to evaluate any alternate products offered for the purpose of determining whether they met the government's needs.

Our review of the contract files for the three awards also showed that (1) the items to be procured were manufactured by only one source and (2) the descriptions of the items provided in the Commerce Business Daily notices of the proposed awards and in the solicitations were based on one manufacturer's part numbers. In addition, the Commerce Business Daily notices for these procurements indicated that competitive descriptions of the items were not available and included reference to numbered note 73, which states that "Specifications, plans or drawings

relating to the procurement described are not available and cannot be furnished by the government." Following is an example of one of those purchases.

- The Defense General Supply Center procurement office had a preaward notice of the proposed award published in the Commerce Business Daily on May 7, 1985. The item description was: "Motor, Direct Current;" national stock number 6105-00-669-6199; the contractor's (i.e. manufacturer's) name and the part number for the item; 26 volts, direct current; and 1,800 revolutions per minute. The solicitation was issued on May 28, 1985. The item description was: "Motor, Direct Current;" national stock number 6105-00-669-6199; the contractor's (manufacturer's) name and federal code number; and the part number for the item.

Such descriptions fall short of FAR 10.004 (b)(1), which states:

"... An adequate purchase description should set forth the essential physical and functional characteristics of the materials or services required. As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

- (i) Common nomenclature.
- (ii) Kind of material; i.e., type, grade, alternatives, etc.
- (iii) Electrical data, if any.
- (iv) Dimensions, size, or capacity.
- (v) Principles of operation.
- (vi) Restrictive environmental conditions.
- (vii) Intended use, including—
 - (A) location within an assembly and
 - (B) essential operating condition.
- (viii) Equipment with which the item is to be used.
- (xi) Other pertinent information that further describes the item, material, or service required."

Procurement personnel at the Supply Center told us that they knew the motor was for use in an aircraft, but did not know what aircraft or what it was used for. Technical personnel at the Supply Center told us that the technical data they had for this item (1) did not contain adequate information to enable another manufacturer to build the item for the government and (2) was not sufficient for determining whether an alternate product met the government's needs, if such were offered.

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The contractor, which was the sole manufacturer of this item, submitted a proposal on July 23, 1985, and the Supply Center awarded it a \$170,000 contract on September 10, 1985. The Center reported that the award was based on full and open competition. Although no other offers were submitted, five other contractors expressed interest in the procurement by requesting solicitations from the agency. We contacted all of those contractors to determine their reasons for not submitting offers. One said it did not have time to consider making an offer. Another said that, although it did not manufacture the item, once in the past it had obtained 18 of these items as surplus and supplied them to the government as resale items. The remaining three contractors told us that the item descriptions in the Commerce Business Daily and the solicitation were not adequate to determine the agency's requirements and prepare an offer. They also said that without access to any drawings and technical data, they did not know if they had the capability to produce the item and meet the government's requirements. Two of the contractors also stated that on previous awards they had experienced difficulty in obtaining sample items from the government needed to develop technical data.

Defense Logistics Agency Headquarters officials told us they recognize that the lack of technical data is one of the biggest barriers to obtaining full and open competition. The Director of Technical Operations, Defense General Supply Center, stated that the Center's main problems in obtaining competition are the lack of technical data and the proprietary rights claimed by manufacturers on available technical data. Defense General Supply Center's Director of Contracting and Production said that of the approximate 240,000 line items actively procured by the Supply Center, 180,000 (75 percent) are sole-source or historically single source items, and that for about 160,000 (89 percent) of those 180,000 items, the agency lacks the technical data to conduct a competitive procurement.

According to Defense General Supply Center officials, because of the magnitude of this problem, their approach is not to seek to provide additional technical data for each planned procurement, but to systematically identify items for which the agency lacks technical data and to obtain the missing data. One Defense General Supply Center official stated that (1) the data provided to potential contractors for proposed procurements are limited to what are available in contract technical data files, (2) the Supply Center does not have adequate resources (staff

and travel funds) to do the research necessary to obtain adequate technical data in response to individual procurement requests, and (3) performing research to obtain more data at the time of the procurement is not practical because of insufficient time before the data are to be furnished to the contracting division.

Although we recognize these difficulties, the three awards and others like them should not be categorized as based on full and open competition. Instead, the use of other than full and open competition should be justified in writing, certified, and approved to provide the assurance the Congress intended that opportunities for competition are not missed.

**Full and Open Competition
Restricted Because
Proposed Contract Awards
Not Publicized**

Both the competition act and FAR provide that, except under certain specified circumstances, notices of proposed contract actions in amounts of \$10,000 and above be synopsised in the Commerce Business Daily.⁶ Publishing such notices is intended to increase competition for government contract awards by inviting all prospective contractors to compete. It is important for this requirement to be carried out if the competition act's requirement for full and open competition is to be met.

We found two instances, one at the Navy Aviation Supply Office and one at the Army Aviation Systems Command, for which procurement officials considered awards to be based on full and open competition, but did not publicize the proposed contract actions in the Commerce Business Daily as required. In addition, except for sending one other contractor a copy of the solicitation for one of the awards and sending the local Small Business Administration office a notice of intent to issue a solicitation for the other award, officials did not take any other actions to identify or solicit additional sources for these awards. We concluded that agency officials awarded these two contracts without providing for full and open competition. Following is an example of one of these cases.

- The Navy Aviation Supply Office's procurement office received a purchase request on April 18, 1985, for 10 electric magnetic actuators, which are used on the F-14 aircraft. The procurement office did not publish a notice of the proposed contract action in the Commerce Business Daily as required. Furthermore, no market survey efforts were made, except for sending the solicitation to the two firms that were the approved sources for the part: (1) the original manufacturer, which was

⁶See footnote 2, ch.3.

also the government's previous supplier of the part and (2) the government's prime contractor for the aircraft, which had purchased the part in the past from the original manufacturer. The only offer was submitted on August 8, 1985, by the original manufacturer, and the agency awarded that firm a \$103,000 contract on September 10, 1985. Because the proposed contract action was not publicized, agency officials and others lack assurance about whether other potential competitors would have expressed interest in responding to the solicitation.

Only 1 of the 25 Awards Fully Met the Statutory Requirements Relating to Use of the Commerce Business Daily

We found that one or more of the same problems relating to use of the Commerce Business Daily, which are discussed in chapter 3, also existed on 24 of our 25 sample contract awards reported as based on full and open competition for which 1 offer was received.⁷ As previously mentioned, for two of the awards, the required notice should have been but was not published in the Commerce Business Daily. For the remaining 22 awards, we found that:

- The preaward notices for 19 awards (83 percent) contained either inaccurate or incomplete information. More specifically, the notices (1) for all 19 of these awards did not include the required statement encouraging competition and (2) for 12 of the awards also did not meet the requirement to provide the name, address, and telephone number of the contracting officer.⁸
- The preaward notices for nine awards (39 percent) referred to footnotes which may discourage responses from potential competitors. This included references to numbered note 40 (for three awards), numbered note 40 and "" (for another four awards), numbered note 46 and "" (for one award), and numbered notes 40 and 22 (for one award).
- Agency officials issued the solicitations too early in relation to the notice publication dates for eight awards (35 percent) and did not allow the proper time for responses to the notices for two awards (9 percent). Both of these problems existed on two awards.

Tables VII.2 and VII.3 in appendix VII show the distribution by procuring activity of these problems relating to preaward notices.

In addition, for the 25 sample awards, we found that post award notices were (1) published for 16 awards (64 percent), (2) not published for 4

⁷The one remaining contract, awarded by the Defense General Supply Center, was previously discussed because the agency's need was inadequately described.

⁸See footnote 6, ch. 3.

awards (16 percent) because contracting officials stated either that the awards did not offer any subcontracting opportunities or the contracts were classified, and (3) required but not published for 2 awards (8 percent). We were unable to find any evidence that the notices either had been or should not have been published for the remaining three awards (12 percent).

Conclusions

Nine of 25 sample contracts were awarded using practices that were inconsistent with full and open competition. These practices included:

- Limiting the solicitation to a particular product of one manufacturer.
- Limiting the solicitation to a particular product of one manufacturer or alternate products meeting the agency's requirement, but not specifying the essential features of the agency's requirement so that potential offerors of alternate products could know what would be acceptable. Moreover, the agency did not have in its possession the data needed to evaluate whether an alternate product offered met the agency's needs.
- Not publicizing the required notice of proposed award in the Commerce Business Daily.

By treating these nine awards as full and open competition when they were not, agency officials avoided using the management control safeguards the act requires: written justification, certification, and approval for other than full and open competition. As a result, assurance is less than intended under the act that opportunities for competition were not missed.

FAR needs to be revised to correct certain practices relating to soliciting (1) only a specific make and model and (2) a specific make and model or equal substitute product. In addition, to fulfill statutory requirements and ensure that competition is properly encouraged, agency officials need to take action to correct several problems relating to use of the Commerce Business Daily, including: (1) preaward notices containing inaccurate or incomplete information, (2) preaward notices referring to footnotes which may discourage responses from potential competitors, (3) solicitations issued too early and insufficient time allowed for responses in relation to the notice publication date, and (4) post award notices not published as required and the lack of documents on whether they were required to be or were published.

Recommendations

We recommend that the Secretary of Defense and the Administrators of General Services, NASA, and the Office of Federal Procurement Policy revise FAR to:

- State that restricting a solicitation to a specific make and model (1) does not meet the requirement for full and open competition and (2) requires written justification, certification, and approval for other than full and open competition in accordance with the act.
- State that if a proposed procurement for a specific make and model is justified, certified, and approved as other than full and open competition, offers are required to be solicited from as many other sources, such as dealers, licensees, and sellers of used equipment, as is practicable in the circumstances.
- Preclude limiting the solicitation to a particular product of one manufacturer and alternate products meeting the agency's requirement under procedures providing for full and open competition, unless the solicitation describes the essential features of the agency's requirement so that potential offerors of alternate products may know what is acceptable to the agency.

Information on the Competition Advocacy Programs at the Seven Procuring Activities

The competition act amended the Office of Federal Procurement Policy Act to require the head of each executive agency to designate a competition advocate for the agency and one for each of the agency's procuring activities. The competition act and FAR subpart 6.5 implementing the act state that procuring activity competition advocates (1) shall be responsible for promoting full and open competition and challenging barriers to such competition in their procuring activities, including unnecessarily detailed specifications and unnecessarily restrictive statements of need and (2) may not be assigned any duties or responsibilities inconsistent with those of the competition advocates.¹

Based on the information provided to us by the competition advocacy officials, the size and organization of the competition advocacy programs at the seven activities visited varied widely and the duties and responsibilities performed by competition advocacy staff also varied. Some of the duties and responsibilities assigned to the competition advocacy staff at one of the seven activities appeared to be inconsistent with those of the competition advocates. The present FAR coverage needs to be revised to clarify this matter.

Officials at a majority of the competition advocacy offices visited indicated that at least half of their competition advocacy efforts were being devoted to overcoming systemic barriers to full and open competition. Officials at all seven of the offices indicated that progress was being made in increasing the use of full and open competition, but that certain problems still existed.

Competition Advocacy Programs Varied

The size and organization of the competition advocacy offices varied widely at the seven locations we visited. For example, assigned personnel ranged from 1 individual at the Department of Energy's Office of Procurement Operations to over 300 individuals at the Air Force's San Antonio Air Logistics Center. Table 5.1 provides information on the staff sizes of each of the seven activities' competition advocacy programs and procurement offices. General background information on the seven activities is included in appendix VIII.

¹The competition act also provides that these competition advocates are to be provided "with such staff or assistance as may be necessary" to carry out their duties and responsibilities, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and the utilization of small and disadvantaged business concerns.

**Chapter 5
Information on the Competition Advocacy
Programs at the Seven Procuring Activities**

Table 5.1: Information on the Sizes of the Seven Procuring Activities' Procurement Offices and Competition Advocacy Programs During Fiscal Year 1985

Procuring activity	Number of staff ^a		Number of contract actions ^b	Dollars obligated ^b
	Procurement	Competition advocacy		
Army Aviation Systems Command	700	13	2,966	\$3,792,323
Navy Aviation Supply Office	310	137	14,243	3,642,659
Naval Sea Systems Command Headquarters	333	22	4,157	15,204,717
San Antonio Air Logistics Center	335	315 ^c	6,264	2,424,053
Defense General Supply Center ^d	640	13	5,460	550,415
Department of Energy Headquarters	104	1	630 ^e	269,672 ^e
Marshall Space Flight Center	166	5	1,093 ^e	1,985,190 ^e

^aCompetition advocacy program and procurement office staff sizes varied at the seven locations partly because of differences in the way they were organized. For example, some engineering and buying support positions, which were included within the program but were outside the procurement office at the San Antonio Air Logistics Center and the Navy Aviation Supply Office, were located outside the program but within the procurement office at other locations.

^bThis information, which is based on the Federal Procurement Data System and DOD's related DD Form 350 system, includes only contract actions valued at more than \$25,000.

^cAfter we had completed our fieldwork, officials at this activity told us that the number of competition advocacy staff had been reduced and would be further reduced. They added, however, that the functions no longer performed by competition advocacy staff would be performed by others at the activity.

^dMost contract awards at this activity are for \$25,000 or less.

^eThis does not include deobligations.

The competition advocacy programs were generally larger in terms of staff size at the DOD than the civilian locations visited, consistent with the generally larger total dollar values and greater number of contract actions at these DOD purchasing offices.

In addition, DOD has more experience in competition advocacy than the civilian agencies we reviewed. DOD initiated several major programs to increase competition in contracting, including establishing some competition advocate positions, before the competition act took effect. For example, enhancing competition was one of the key initiatives in the 1981 DOD Acquisition Improvement Program.² In addition, in 1981 the Under Secretary of Defense for Research and Engineering required DOD

²See our report, *Acquisition: DOD's Defense Acquisition Improvement Program: A Status Report* (NSIAD-86-148, July 23, 1986).

components to designate competition advocates and to establish competition goals. In 1983, DOD developed and implemented 35 initiatives which formed the basis for the Spares Management Improvement Program, and established an interservice high level working group on competition. These competition reform efforts have stressed the importance of promoting competition in the defense acquisition process.

At three of the seven procuring activities we visited, the Army Aviation Systems Command, the Navy Aviation Supply Office, and the San Antonio Air Logistics Center, the competition advocate offices were outside the procurement organization and procurement chain of command. However, at the other four procuring activities, at least some competition advocacy program staff were located within the procurement organization.

At two procuring activities, the Department of Energy's Office of Procurement Operations and the Defense General Supply Center, the competition advocacy offices were placed within the procurement organization.³ At two other procuring activities, some, but not all, of the competition advocacy staff were procurement organization personnel. A Naval Sea Systems Command Headquarters official told us that this procuring activity's competition advocate program (1) includes engineers, program managers, attorneys, and acquisition managers, (2) is not centralized but is spread throughout the Command, and (3) has components both within and outside the procurement organization. At NASA's Marshall Space Flight Center, the competition advocate, who was also the Center's Deputy Director, and the Assistant Director for Policy and Review were outside the procurement organization. However, three other competition advocacy staff members were procurement office personnel.

At the Department of Energy's Office of Procurement Operations, the competition advocate said that 60 percent of her time was spent as the Director of the Office's Operations Review and Analysis Division. However, she said her duties as division director complemented many of her competition advocate duties.

At the Defense General Supply Center, the acting branch chief in the competition advocacy office expressed concern about how the office's staff members were generally detailed to a buying unit for large and

³The Deputy Competition Advocate for the Department of Energy told us that the Department had placed competition advocates within the procurement organization at only 2 of its 16 buying offices.

small procurements. He stated that the competition advocacy office is viewed as a regulatory office with oversight functions and should remain independent of the contracting function. The acting branch chief also added that shifting staff out of the competition advocacy office in this manner is inconsistent with competition advocacy objectives and goals because of conflicting job responsibilities and results in staff working only on immediate rather than long-term competition advocacy goals. The Supply Center was the only procuring activity for which we found evidence that competition advocacy staff members were also awarding contracts.

We believe that assigning competition advocacy staff members contract award duties tends to conflict with the competition act's requirements that procuring activity competition advocates (1) challenge barriers to full and open competition and (2) not be assigned any duties or responsibilities inconsistent with those of the competition advocates. FAR basically restates the competition act's provision that agency and procuring activity competition advocates not be assigned duties or responsibilities inconsistent with those of the competition advocate. However, FAR does not provide more specific guidance on whether and to what extent competition advocacy staff may or may not perform contract award duties. We believe FAR coverage of this matter needs to be clarified.

Except for the Defense General Supply Center, the information obtained from officials at the other procuring activities we visited did not indicate that the duties and responsibilities being performed by the competition advocacy personnel were inconsistent with the duties and responsibilities of the competition advocate.

The duties and responsibilities of the competition advocacy staff varied at the seven procuring activities. The following sections describe what competition advocacy program officials at each location told us their duties and responsibilities were and the time they devoted to them.

Army Aviation Systems Command

The Competition Advocate Spares Management Office had 13 of its 18 authorized positions filled at the time of our review. Approximately 65 to 75 percent of these staff members' time was devoted to reviewing justifications and approvals for the use of other than competitive procedures. Another 15 to 20 percent of their time was devoted to challenging prices that may have been too high. Other duties included (1) establishing plans for future procurements, (2) ensuring that follow-on procurements of spare parts were awarded competitively, and (3) preparing

competition advocacy “shopping lists” for informing potential competitive contractors of intended future procurements.

**Navy Aviation Supply
Office**

Of the Supply Office's 137 competition advocacy program staff members, 100 were in the Breakout Division, 35 were in the Buy Our Spares Smart/Competition Program Management Division, and 2 were in the Competition Advocate Office. Based on the information provided by the competition advocate, we estimate that slightly over half of the program's staff time was spent doing full screening and other breakout program reviews⁴ while the remainder was spent reviewing justifications and approvals for the use of other than competitive procedures, analyzing prices, and managing the Buy Our Spares Smart Program.⁵

**Naval Sea Systems
Command Headquarters**

The Command headquarters' competition advocacy program was made up of a decentralized group of approximately 22 staff members responsible for reviewing and approving justifications and approvals for the use of other than competitive procedures, participating in the Buy Our Spares Smart Program, and assessing alternatives to other than competitive contracts. Two of the staff members devoted full time to the competition advocacy program. The remainder dedicated between one-third and one-half of their time to the program. The Naval Sea Systems Command Headquarters competition advocate and staff were unable to provide more specific information on the staff members' duties or the percentage of their time devoted to specific duties.

**San Antonio Air Logistics
Center**

Of the 315 staff members within the Competition Advocacy Directorate, 190 were in engineering data management, 90 were in price appraisal, 25 were in source development, and 10 were in resource management.⁶ Officials at this activity said that competition advocacy staff performed

⁴DOD's breakout program involves reviewing parts formerly procured noncompetitively for possible purchase either competitively or from the actual manufacturer. A full screening review is a comprehensive examination and cost-benefit analysis of the reasons a replenishment spare part is not fully competitive and should either result in the assignment of a competitive acquisition method code to the item or provide a detailed record documenting why restrictive procurement is still required. Full screening also requires attempting to resolve any restrictions to breakout or competition. Resolving breakout or competition restrictions may include attempting to acquire data that is not currently available, challenging contractor claims to proprietary rights or other restrictions, or determining if reverse engineering is feasible.

⁵The Department of the Navy's Buy Our Spares Smart Program was initiated in 1983, in response to the Secretary of Defense's guidelines to improve spare parts procurement practices.

⁶See footnote c, table 5.1.

the following duties (and devoted the amount of time indicated): price analyses (about one-third), screening reviews (about one-fourth), and acquisition and review of engineering data (more than one-tenth). Lesser amounts of time were devoted to management support, review of justifications and approvals for the use of other than competitive procedures, and source approvals. Other duties and responsibilities included coordinating purchase requests, reverse engineering, developing second sources, performing value analyses of spare parts prices, and monitoring and assessing competition advocacy performance and plans.

**Defense General Supply
Center**

The Competition Advocate Branch within the Competition and Pricing Office had 13 of the 15 authorized positions filled at the time of our review. Approximately 60 to 70 percent of the staff's time was spent on reviewing proposed awards and solicitations, and another 5 to 10 percent was spent reviewing contracts that had been awarded. Other duties were to (1) coordinate competition initiatives, (2) do market surveys, (3) identify procedures that hinder competition, (4) review justifications and approvals for the use of other than competitive procedures, and (5) participate in advance planning.

**Energy's Office of
Procurement Operations**

The procuring activity's competition advocate did not have any assigned staff, but had access to staff within her division, as needed. Approximately 40 percent of the advocate's time was spent on competition advocacy duties broken out as follows: 25 percent on contract reviews and approvals, another 10 percent on procurement reports to management, and the remaining 5 percent on competition act training, competition act reports, and recommendations to the Department of Energy competition advocate. According to the competition advocate, she also (1) promoted competition, challenged competition barriers, and made recommendations concerning noncompetitive procurement plans and requests, (2) acted as liaison with agency management, communicating contracting principles, (3) prepared competition goals and plans for addressing competition barriers and provided guidance to implement them, and (4) performed independent contract reviews.

**NASA's Marshall Space
Flight Center**

The competition advocacy office consisted of the competition advocate and four other staff members. However, no staff members spent 100 percent of their time on competition advocacy duties. Competition advocacy staff members reported spending the following percentages of their time on these duties: the competition advocate, who was also the

Center's Deputy Director (1 percent or less); the Center's Assistant Director of Policy and Review within the Office of the Director (5 percent or less); the Procurement Director (8 to 12 percent); the Chief of Planning, Analysis and Review within the Procurement Office (75 percent); and a procurement analyst within the Procurement Office (15 percent).

Competition advocacy officials told us they (1) reviewed and approved justifications for the use of other than competitive procedures, (2) prepared, reviewed, and approved the competition advocate report, (3) established and implemented procurement policy, and (4) provided training on the competition act. The Procurement Director told us that more of the activity's competition advocacy staff time was spent reviewing and approving justifications for the use of other than competitive procedures than on the other competition advocate duties.

Several Efforts Are Underway to Remove Systemic Barriers to Competitive Contracting

We interviewed competition advocacy officials at the seven locations visited concerning what they are doing to remove systemic barriers to competition.⁷ Several of the DOD competition advocates we spoke with said the biggest systemic barriers to full and open competition were (1) the unavailability of a complete and accurate technical data package and (2) proprietary rights to the data claimed by manufacturers. DOD's breakout program and full screening reviews are intended to reduce these problems. According to competition advocacy officials, specific actions being taken to remove systemic barriers included

- reviewing justifications and approvals for the use of other than competitive procedures,
- identifying original equipment manufacturers,
- planning early in the acquisition cycle to procure the data rights needed for competitive reprourement of equipment,
- inserting clauses in contracts to preclude contractors from retaining data rights,
- writing letters asking manufacturers to voluntarily eliminate or delete their proprietary legends,
- using reverse engineering to develop needed data packages,
- requiring contractors to use simplified parts that can be made by more than one manufacturer,

⁷We use the term systemic barriers to mean problems or factors that (1) limit competition unnecessarily and (2) are relatively common rather than unique or unusual for the locations being reviewed

- preparing and publicizing a “competition advocate shopping list” to better inform potential competitive contractors of intended future procurements,
- challenging the need for certain qualified product lists,⁸ and
- establishing a competition investigation team to (1) review all planned procurements exceeding \$2 million using other than competitive procedures and (2) make observations and recommendations to overcome barriers to competition.

Competition advocacy officials at a majority of the procuring activities visited indicated that at least half of their competition advocacy efforts were being directed toward overcoming systemic barriers to full and open competition. However, at some of the locations, officials we interviewed could only make rough estimates concerning the time devoted to identifying and challenging systemic barriers to competition. For example, the Navy Aviation Supply Office’s Competition Advocate said he could not precisely estimate the time spent working on systemic barriers at that location. However, he said that all of the breakout program efforts, which represent 75 percent of the total competition advocacy staff efforts, addressed systemic concerns.

Some other comments regarding time devoted to identifying and removing systemic barriers follow.

- The competition advocate at the Army Aviation Systems Command said that all of that program’s efforts were related to breaking down systemic barriers to competition.
- The Naval Sea Systems Command Headquarters Competition Advocate said that when competition advocate staff are working on competition related activities, which is one-third to one-half of the time, 90 percent of their time is devoted to identifying and challenging systemic problems. He explained that this is done mostly by reviewing contracts on a case-by-case basis.
- The San Antonio Air Logistics Center Competition Advocate said that all of his program’s efforts were devoted to resolving the effects of systemic barriers, but he was unable to resolve the causes of these barriers. He said (1) he was at the working level, (2) policy, legislative, regulatory, and resource allocation decisions have a significant bearing on

⁸According to FAR 9.201 (1) qualified product means an item that has been examined and tested for compliance with specification requirements and has been qualified for inclusion in a qualified product list and (2) qualified products list means a list that identifies the qualified item(s) by specification, government designation, part or model number or trade name, test or qualification reference, manufacturer’s name and address, and place of manufacture

actions to remove systemic barriers to competition, (3) decisions in these areas are made at a much higher level than the working level, and (4) he could only remove systemic barriers by working on a case-by-case basis.

- A Department of Energy Competition Advocate representative said that equal time is generally devoted to challenging systemic and non-systemic barriers. However, the Office of Procurement Operations' Competition Advocate did not believe that the distinction between systemic and non-systemic activities was clear.

Progress Has Been Reported in Increasing Competition, but Problems Still Exist

Competition advocacy officials at all seven procuring activities visited indicated that progress was being made but problems still existed at their locations in achieving their goal of increasing the use of full and open competition. Perhaps because DOD organizations have had competition advocacy programs for some time, and because of their greater resources involved, DOD was better able to report measurable results from its efforts than the civilian agencies we reviewed. For example, in its annual competition report for 1985,⁹ DOD stated that (1) its spare parts initiatives resulted in savings or cost avoidances of over \$2.5 billion in fiscal years 1984 and 1985 and (2) increased competition was the single most important factor.

DOD's breakout program is a major competition advocate responsibility for which encouraging results have been reported. DOD reported that in fiscal year 1985 it did breakout reviews of 250,000 items and designated 54,000 for full and open competition and another 51,000 for purchase from the actual manufacturer.

Recognizing that problems exist regarding the availability of complete and accurate technical data needed for competition, DOD reported to the Congress that its technical data repositories were wholly inadequate. According to DOD's first annual competition report, often the only reason DOD could not compete an item was the lack of data due to deficiencies in those repositories. Competition advocacy or other officials at all five DOD activities we visited cited technical data availability as a problem area.

Conclusions

Information provided by competition advocacy officials at the seven procuring activities visited indicated that (1) the size and organization as well as the duties performed by competition advocacy staff varied

⁹DOD's Annual Competition Report, dated February 7, 1986. We did not independently verify these or the other statements of progress or problems reported in this chapter.

among these activities, (2) efforts were being made to overcome systemic barriers to full and open competition, and (3) progress was being made in increasing the use of full and open competition, but problems still existed at each procuring activity.

Assigning contract award duties to competition advocacy staff members, which was done at one of the seven procuring activities, appears to be inconsistent with the competition advocates' responsibility for challenging barriers to full and open competition and, therefore, contrary to the competition act's requirement. FAR is unclear concerning whether and to what extent competition advocacy staff may also perform contract award duties. FAR 6.5 needs to be clarified to better inform agency officials as to the duties and responsibilities which are inconsistent with those of the competition advocates.

Recommendation

We recommend that the Secretary of Defense and the Administrators of General Services, NASA, and the Office of Federal Procurement Policy amend FAR subpart 6.5 to better inform agency officials regarding the duties and responsibilities, such as those closely related to the award of contracts, which should not be performed by competition advocacy staff because they are inconsistent with those the act has assigned to the competition advocates.

The Act's Effect on Procurement Processing Times Is Not Yet Clear, but It Has Changed Some Operating Procedures

We found that procurement processing times had generally increased at the seven locations visited. Agency officials generally said it was too early to determine the competition act's effect on processing time. However, officials at several activities either attributed recent increases, at least in part, to the act or expressed concern that future increases would result because of the act. Officials at three of the five DOD activities said they believed increases reflected in their activities' data were at least partly the result of initiatives undertaken to correct problems related to procurement of military spare parts.

Officials at the procuring activities said that the competition act's provisions which had the greatest effect on their procurement procedures and operating methods related to (1) use of the Commerce Business Daily, (2) use of full and open competition, (3) written justifications for the use of other than full and open competition, and (4) contractor submission of cost and pricing data. According to some procurement officials, the competition act has given contracting officers more authority or influence to ensure that contracting procedures are followed. Procuring activity officials also described actions that had been taken or were being taken to streamline the procurement process and reduce procurement processing time or otherwise increase the efficiency of the procurement process.

Procurement Processing Times Have Increased

We obtained readily available data at each of the seven procuring activities visited to determine whether PALT¹ had increased over the past few years. Where possible, we tried to compare post-competition act with pre-competition act data. For example, at the five DOD offices visited, we compared PALT data for fiscal years 1983, 1984, and 1985.^{2, 3}

Although we found the available data to be limited, the data indicate that PALT had increased at all seven activities since fiscal years 1983 or

¹See footnote 8, ch. 1, for a definition of PALT

²Implementation of DOD's spare parts improvement initiatives began in response to memorandums issued by the Secretary of Defense toward the end of fiscal year 1983. (See footnote 5 in this chapter.) The competition act took effect on solicitations issued during the last 6 months of fiscal year 1985. Therefore, in terms of fiscal years: (1) 1983 can be considered both pre-competition act and pre-spare parts initiatives, (2) 1984 can be considered pre-competition act, but post-spare parts initiatives, and (3) 1985 can be considered at least to some extent post-competition act. However, it is important to note the delay in the initial effect of competition act awards on PALT data. This occurs because there is usually at least a 1-month delay, often much longer, between issuance of the solicitation and contract award.

³Information showing PALT for competitive versus noncompetitive (or other than competitive) procurements for the few activities that maintained such data is included in app. X

1984. We also found that screening time⁴ had generally increased at the two locations for which we were able to obtain such data.

PALT Increased at the Activities Reviewed

Our analysis of data provided by the procuring activities indicates that PALT had increased at all seven activities since fiscal years 1983 or 1984. Agency procurement officials at a majority of the activities (1) did not attribute the recent PALT increases to any one specific cause and (2) said it was too early to measure the competition act's effect on PALT. However, procurement officials at the two civil agency activities and one of the five DOD activities reviewed said that recent increases were or might have been caused at least partly by the competition act. Officials at another of the DOD activities expressed concern that the competition act would increase procurement processing times in the future.

Because of the number of events underway during the fiscal years 1983 to 1985 period which may have affected PALT, the specific causes for increases reflected in the PALT data collected were not determinable. In addition to enactment of the competition act, these events included (1) implementation of DOD's spare parts improvement initiatives, (2) implementation of FAR, which replaced previously existing regulations, (3) issuance of Executive Order 12352 which provided guidance on numerous matters, such as enhancing competition, improving procurement system management, improving small purchases, simplifying the procurement process, and automating procurement tasks, and (4) enactment of other procurement reform legislation, such as Public Laws 98-72 (amending the Small Business Act public notice provisions), 98-525 (the Defense Procurement Reform Act of 1984), and 98-577 (the Small Business and Federal Procurement Competition Enhancement Act).

Table 6.1 summarizes the PALT data obtained at the seven activities. Appendix X provides further information on our work relating to PALT at each of the seven activities.

⁴In this report we use the term screening time to mean the time agency personnel spend in efforts to obtain or increase competition or otherwise ensure reasonable prices for a contract award, but only time that is not included in PALT at each of the seven locations visited.

Chapter 6
The Act's Effect on Procurement Processing
Times Is Not Yet Clear, but It Has Changed
Some Operating Procedures

Table 6.1: Average PALT in Days^a

Procuring activity	Fiscal Years						
	1980	1981	1982	1983	1984	1985	1986 ^b
Army Aviation Systems Command	c	c	c	c	146	140	210
Navy Aviation Supply Office	51	53	81	56	77	94	79
Naval Sea Systems Command Headquarters	c	117	110	87	101 ^d	119	115
San Antonio Air Logistics Center	70	69	66	78	125	111	104
Defense General Supply Center	109	119	112	98	106	119	133
Department of Energy Headquarters	c	c	c	c	25	35	c
Marshall Space Flight Center	92	105	100	101	119	172	131

^aInformation shown for the various procuring activities is not comparable because different types and categories of data were maintained at each activity (See app. X for details.)

^bInformation shown in this column is based on only the first few months of fiscal year 1986.

^cInformation for this period was not maintained by the procuring activity or was not readily available.

^dThis number is based on the first 11 months of the fiscal year.

At three of the DOD activities, procurement officials expressed the opinion that increases in PALT data at their locations were the result of the spare parts initiatives.⁵ A Navy Aviation Supply Office procurement official stated that PALT increases in fiscal years 1984 and 1985 were related to the Navy's spare parts initiatives, called the Buy Our Spares Smart Program, which was implemented in late 1983. An Army Aviation Systems Command procurement official expressed the opinion that the PALT increase from fiscal year 1984 to the first quarter of fiscal year 1986 was due to the spare parts initiatives. According to the Chairman of the Center's Contracts Committee, the San Antonio Air Logistics Center's fiscal year 1984 increase in PALT, which totaled about 60 percent, was partly a result of DOD and Air Force initiatives intended to improve spare parts pricing.

Procurement officials at the Navy Aviation Supply Office also stated that they expected PALT to increase as a result of the competition act, but

⁵In response to reports of waste and overpricing of military spare parts, DOD developed 35 initiatives in 1983 which formed the basis for the Spares Management Improvement Program. In its annual competition report for 1986, dated March 14, 1987, DOD states that it achieved cost savings of \$3.8 billion during fiscal years 1984 to 1986 from the spare parts initiatives, including increased competition.

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that the increase would not be reflected in PALT data until sometime in the future.

According to procurement officials at the Defense General Supply Center, PALT increased in fiscal year 1984 for two primary reasons: (1) the contracting work force consisted of 75 percent trainees and (2) FAR initially took effect, which resulted in buyers soliciting offers using FAR provisions while they were still awarding many contracts based on previously existing regulations. These officials attributed the fiscal year 1985 increase in PALT to (1) the relative inexperience of many personnel hired in fiscal year 1984, (2) the awarding of "aging contracts" that had not been awarded due to problems in 1984, and (3) the initial implementation of the competition act. According to these officials, the competition act increased PALT because it required that more time be given to potential competitors to respond to notices of proposed awards published in the Commerce Business Daily and it lowered the dollar threshold for required contractor submissions of cost and pricing data from \$500,000 to \$100,000.

Procurement officials for the Naval Sea Systems Command noted that there were many possible reasons for changes to PALT, but could not attribute increases or decreases to any specific factor.

According to officials at Energy's Office of Procurement Operations and the agency-wide Deputy Competition Advocate, the increase in PALT at that procuring activity was a "direct result" of the competition act because of (1) increased response time required to be given to potentially competitive sources after publishing notices of proposed contracts in the Commerce Business Daily, (2) better work statements being prepared, (3) better evaluation of offers, and (4) bid protest possibilities being explored more fully before contract awards.

At Marshall Space Flight Center, average PALT increased about 45 percent between fiscal year 1984 and 1985. According to the Director of Procurement, many factors could have caused the increase. Such factors include (1) the competition act, which has increased the number of proposals for competitive awards and (2) an increase in the number of contract awards of \$100,000 or greater, which take longer to process. He added, however, that because the act had taken effect so recently, it was too early at the time of our review to analyze available data in terms of the act's effect on PALT.

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Screening Time Is Increasing

Screening time data was available from only two procurement activities, the Army Aviation Systems Command and the Navy Aviation Supply Office. The data at both activities indicated that screening time was generally increasing.

Average screening time data obtained from the Army Aviation Systems Command generally showed an increase from fiscal years 1984 to 1986, as shown in table 6.2. However, a procurement official said it was too early for the available data to reflect any significant effect based on the competition act.

Table 6.2: Average Screening Times at the Army Aviation Systems Command

Contract value	Fiscal Years		
	1984	1985	1986 ^a
(average days)			
\$25,000 or less:			
Competitive negotiation	55	64	105
Noncompetitive negotiation	26	28	72
Greater than \$25,000:			
Sealed bidding	79	70	69
Competitive negotiation	60	64	69
Noncompetitive negotiation	31	23	51

^aInformation shown in this column is based on only the first 3 months of fiscal year 1986

The Navy Aviation Supply Office's monthly screening time data covered about 84 percent of the total purchase requests processed and shows a generally upward trend, as indicated in table 6.3.

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Table 6.3: Monthly Screening Time Data for the Navy Aviation Supply Office

Month	Fiscal year 1984		Fiscal year 1985		Fiscal year 1986	
	Number of purchase requests	Average number of days	Number of purchase requests	Average number of days	Number of purchase requests	Average number of days
Oct	1,359	51.4	1,097	45.5	1,881	76.4
Nov.	215	64.4	2,265	58.0	2,891	73.6
Dec	457	64.6	3,179	64.1	2,290	90.1
Jan.	594	72.6	2,271	57.0	1,999	94.7
Feb.	1,147	69.1	2,432	63.2	•	•
Mar.	1,286	57.5	2,288	63.9	•	•
Apr.	1,505	59.4	2,842	64.4	•	•
May	938	56.4	2,117	64.3	•	•
June	2,569	55.2	3,016	66.2	•	•
July	2,548	50.1	2,326	65.7	•	•
Aug.	2,768	63.9	4,682	65.2	•	•
Sept	3,474	59.9	3,617	69.5	•	•

Procurement officials said they could not directly attribute increases in screening time to the competition act, although they expect the act to increase screening time in the future. Some of the increase between fiscal years 1984 and 1985 may have been due to the spare parts initiatives implemented in late fiscal year 1983. One official said that this increase was partly due to the increased volume of procurements—valued at \$2.1 billion in fiscal year 1984 and \$3.6 billion in fiscal year 1985.

Some Changes Have Been Made in Procurement Operations

The competition act amended the Armed Services Procurement Act (10 U.S.C. 2301 (b)(3)), governing DOD and NASA, to adopt as congressional policy that agency procurement policies and procedures promote responsiveness of the procurement system to agency needs by simplifying and streamlining procurement processes. During our discussions with top procurement officials or their representatives at each of the seven procuring activities, we discussed (1) in what ways procurements were handled differently under the competition act than they were before it was implemented and (2) whether steps had been taken to streamline procurement operations.

Procurement officials at the seven activities stated that some of their procedures and methods of operation had been changed based on competition act requirements. Specific provisions of the act cited by officials

as having the greatest effect on their procurement procedures and methods of operations included:

- Provisions relating to publishing notices of proposed contract awards in the Commerce Business Daily, including provisions which require a specified number of days after publication before (1) agencies may issue solicitations and (2) the deadline for the submission of offers by potential contractors.⁶ Procurement officials stated that notices of proposed awards are required to be published more frequently, with more technical data included, and more time allowed for responses.
- Provisions requiring the use of full and open competition (instead of either sole-source procurements or limited competition, which may be used only in specified circumstances).
- Provisions requiring written justification, which must include specified information, for the use of other than full and open competition and its approval by a specified individual, depending on the dollar amount of the award, at a higher organizational level than the contracting officer.
- Provisions requiring contractors to submit certified cost and pricing data before the award of certain contracts expected to exceed \$100,000 (instead of the previously existing \$500,000 threshold in the Armed Services Procurement Act).

Procurement officials also stated that implementation of the competition act has (1) given contracting officers more authority or influence to ensure that contracting procedures are followed, (2) made the procurement process more competitive and reduced potential procurement abuses by providing a legislative basis for and formalizing many aspects of the contracting process, (3) established better criteria for limiting the use of noncompetitive procurements, and (4) tightened up some FAR provisions, making them easier to administer.

Officials we interviewed at all seven of the procuring activities cited actions they were taking or had taken to streamline the procurement process. Such actions were intended to reduce procurement processing time or otherwise increase the efficiency of the procurement process. The streamlining actions cited can be divided into three categories: administrative, procedural, and contractual.

⁶See p. 37 and footnote 1, ch. 3. The revised requirements, based on the competition act and the other statutory changes, have (1) tightened previously existing exemptions and loopholes relating to the publication of notices, so that fewer proposed awards may escape from these requirements and (2) strengthened requirements for inviting offers or other responses to the notices

Most of the streamlining actions were either administrative or procedural changes. However, an official at one activity said that options for additional production quantities were being included in competitive contracts when appropriate. This contractual change was intended to reduce PALT. Among the administrative actions to streamline procurement operations cited by officials at these activities were:

- Using standardized language for solicitations and contracts.
- Developing a computerized system that will automatically prepare requests for proposals and contracts based on user responses to specific questions.
- Reducing processing times relating to written justifications for the use of other than full and open competition by developing a system to allow specific parts of the document to be worked on simultaneously, instead of sequentially, by the various offices involved.
- Conducting training in competitive acquisition.
- Developing systems to identify and monitor procurement lead time.

Among the procedural actions officials cited as streamlining the procurement process were:

- Obtaining advance copies of purchase requests in the procurement office to allow earlier publication of Commerce Business Daily notices of proposed awards, thereby shortening procurement processing time.
- Preparing and transmitting the notices to the Commerce Business Daily before, rather than after, solicitation preparation.
- Advising contracting officers to do a more thorough job of specifying the government's requirements.
- Discouraging firms from submitting "marketing brochures" in place of well thought out proposals.
- Implementing the use of a "short contract," which eliminates certain repetitive processes required of contractors. For example, the use of this procedure eliminates the need for contractors to certify more than once a year to small business, equal employment opportunity, and Clean Air and Water Act requirements.
- Requiring item managers to issue all contractual work orders, such as those modifying existing contracts before March 31 to avoid the fiscal year-end spending rush.

Conclusions

The limited data available indicated that procurement award processing times had generally increased at the seven activities reviewed. At most of the DOD activities reviewed, the increases may have been at least

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partly the result of the initiatives undertaken to correct problems in procuring military spare parts. Based on the data reviewed, the competition act's effect on procurement award processing times was not yet clear. However, the act has resulted in some changes in operating procedures.

Data on the Competitiveness of Federal Agencies' Contract Awards

According to the Federal Procurement Data System, federal procurement totaled

- \$199.8 billion, of which \$88.7 billion (44.4 percent) was competitive, in fiscal year 1985 and
- \$200 billion, of which \$101.7 billion (50.9 percent) was competitive, in fiscal year 1986.

Through fiscal year 1986, most federal procurement dollars were awarded based on pre-competition act requirements. (Contract awards based on solicitations issued before April 1, 1985, are not subject to the requirements of the competition act.)

- For fiscal year 1985, awards in excess of \$25,000 accounted for \$182.5 billion, according to the Federal Procurement Data System and DOD. Of that total, \$15.8 billion (less than 9 percent) was awarded based on the requirements of the competition act, compared to \$166.7 billion (91 percent) awarded based on other (mostly previously existing) requirements.
- For fiscal year 1986, awards in excess of \$25,000 accounted for \$182.4 billion, according to the Federal Procurement Data System and DOD. Of that total, \$73.6 billion (over 40 percent) was awarded based on the requirements of the competition act.

Contracts subject to the competition act can be classified into three categories: (1) competitive procedures used, more than one offer submitted, (2) competitive procedures used, only one offer submitted,¹ and (3) other than competitive procedures used.²

- For the \$15.8 billion awarded based on the competition act in fiscal year 1985, \$8.1 billion (51 percent) was awarded to contracts in the first category. About \$1.1 billion (7 percent) was awarded to contracts in the second category and about \$6.6 billion (42 percent) was awarded to contracts in the third category.
- For the \$73.6 billion awarded based on the competition act during fiscal year 1986, about \$40.4 billion (54.9 percent) was awarded to contracts in the first category. About \$3.9 billion (5.3 percent) was awarded to contracts in the second category and about \$29.4 billion (39.9 percent) was awarded to contracts in the third category.

¹Chapter 4 discusses the results of our work relating to this category.

²Chapters 2 and 3 discuss the results of our work relating to this category.

Historical data regarding trends in competition show the following:

- According to the Federal Procurement Data System and DOD data, the following percentages of the value of federal agency awards were made competitively during the fiscal years indicated: 50.9 percent (1986), 44.4 percent (1985), 39.7 percent (1984), 36.1 percent (1983), and 38.6 percent (1982).³
- Federal agencies' annual reports to the Congress on their rates of competition exclude certain categories of contract awards as not available for competition. For instance, for fiscal year 1985, DOD reported that 48.4 percent of the value of its procurements was awarded competitively, but DOD calculated this percentage after excluding about \$24 billion (almost 15 percent of its \$163.7 billion in total procurement) as not available for competition.
- Using DOD's data base we calculated that, for awards over \$25,000, 40.5 percent of DOD procurement dollars was awarded competitively in fiscal year 1985 because we included the dollars excluded from DOD's report.
- According to DOD reported data covering fiscal years 1974 through 1986: (1) the levels of competition achieved in fiscal year 1974 (43.5 percent) and 1976 (42.6 percent) were not exceeded until the last few years, (2) the level of competition declined during fiscal years 1977 to 1980 from 37.7 percent to 35.7 percent, and (3) the fiscal year 1980 level was the lowest achieved during the entire 13-year period.
- Among civil agencies, the Department of Energy has reported the highest percentage of dollars obligated noncompetitively for pre-competition act awards. The percent of dollars the Department of Energy awarded noncompetitively for the indicated fiscal years was: 80 percent (1982), 78 percent (1983), 71 percent (1984), 71 percent (1985), and 82 percent (1986).
- For contracts subject to the competition act, the Department of Energy's reports to the Federal Procurement Data System indicate that it has reversed this trend. The percentage of its dollars based on other than competitive procedures was 26 percent for fiscal year 1986, and 19 percent for fiscal year 1985.

When federal agencies have not provided for full and open competition in awarding contracts over \$25,000, the competition act's first exception has been the reason most often cited. (Tables I.1 and I.2 provide Federal

³In commenting on the results of our compliance reviews (chs. 2 through 4), agency officials emphasized that the efforts to increase competitive contracting have resulted in a positive trend during the last few years. The upward trend is reflected in these percentages. Even higher percentages were reported just for fiscal years 1985 and 1986 contracts awarded under the competition act, as previously discussed in this appendix.

**Appendix I
Data on the Competitiveness of Federal
Agencies' Contract Awards**

Procurement Data System and DOD reported information for fiscal years 1985 and 1986, respectively, on the number of contract actions and their value awarded without providing for full and open competition based on each of the act's seven exceptions.)

Table I.1: Competition Act Exceptions Used by Federal Agencies in Fiscal Year 1985 for Contract Awards Based on Other Than Full and Open Competition

Dollars in thousands				
	Contract actions		Amount obligated	
	Number	Percent		Percent
Exception 1	7,868	62.7	\$2,220,317	55.5
Exception 2	1,716	13.7	1,077,457	26.9
Exception 3	71	0.6	124,612	3.1
Exception 4	51	0.4	21,822	0.5
Exception 5 ^a	2,432	19.4	313,508	7.8
Exception 6	392	3.1	238,708	6.0
Exception 7	14	0.0	3,121	0.0
Total	12,544	99.9^b	3,999,545	99.8^b
Otherwise authorized by statute ^c	743	36.4	86,403	18.3
8(a) ^c	1,300	63.6	386,968	81.7
Total	2,043	100.0	473,371	100.0
Total	14,587		\$4,472,916	

^aAnother \$473 million not categorized under any of the seven exceptions was obligated to contract awards based on other than full and open competition because they were otherwise authorized by law

^bThe numbers do not add to 100 percent because of rounding

^cShows the number of actions and the dollars obligated for contracts under section 8(a) of the Small Business Act and for contracts authorized by other statutes (FAR has been amended to provide that 8(a) awards are under the fifth exception)

**Appendix I
Data on the Competitiveness of Federal
Agencies' Contract Awards**

**Table I.2: Competition Act Exceptions
Used by Federal Agencies in Fiscal Year
1986 for Contract Awards Based on
Other Than Full and Open Competition**

Dollars in thousands				
	Contract actions		Amount obligated	
	Number	Percent		Percent
Exception 1	21,927	58.3	\$9,283,454	59.1
Exception 2	4,843	12.9	2,241,015	14.3
Exception 3	327	0.9	2,021,636	12.9
Exception 4	294	0.8	147,925	0.9
Exception 5 ^a	7,979	21.2	1,089,356	6.9
Exception 6	2,229	5.9	931,484	5.9
Exception 7	33	0.0	2,886	0.0
Total	37,632	100.0	15,717,756	100.0
Otherwise authorized by statute ^b	2,026	36.7	545,315	30.5
8(a) ^b	3,495	63.3	1,242,429	69.5
Total	5,521	100.0	1,787,744	100.0
Total	43,153		\$17,505,500	

^aAnother \$1.8 billion not categorized under any of the seven exceptions was obligated to contract awards based on other than full and open competition because they were otherwise authorized by law

^bShows the number of actions and the dollars obligated for contracts under section 8(a) of the Small Business Act and for contracts authorized by other statutes (FAR has been amended to provide that 8(a) awards are under the fifth exception.)

Information on Bid Protests

Since the competition act's bid protest provisions took effect, we have experienced a significant increase in the number of protests received. However, our average disposition time has decreased substantially, and no case filed under the competition act's bid protest provisions has exceeded the statutory processing time limits.

Based on the limited data available at two of the procuring activities we visited, the volume of protests to contracting officers also increased over the past few years. However, contracting officers at these two activities had not resolved these cases in favor of the protesters more frequently than before the effective date of the act's bid protest provisions. This finding is contrary to some expectations that contracting officers might do so to avoid the filing of protests under the competition act.

Bid Protest Authority

The competition act established an express statutory basis for our Office to decide bid protests. It established strict time limits for issuing such decisions and required agencies in many cases to suspend or stay a protested procurement action until the decision is issued.¹ The act also authorized us to declare whether successful protesters are entitled to reimbursement for their costs of pursuing a protest as well as their costs of preparing bids and proposals. (See app. IX for details on the act's provisions.)

Bid Protests Filed With Our Office

We have experienced an increase in the number of bid protests received under the competition act compared to fiscal years prior to the act. Because the act's bid protest provisions took effect on January 15, 1985, fiscal year 1985 was a transition year and fiscal year 1986 represents the first full fiscal year of operation of our bid protest function under the act. As table II.1 shows, 2,891 bid protest cases were filed with us during fiscal year 1986. This represents a 10-percent increase over the 2,639 cases filed during fiscal year 1983 and a 40-percent increase over the 2,071 cases filed in fiscal year 1984. We closed 2,884 cases during fiscal year 1986. Table II.1 provides information on (1) the number of

¹The Budget and Accounting Act of 1921—the basic legislation establishing our Office—grants us the authority to determine the legality of public expenditures. Based on this authority, for many years we decided protests filed by interested parties concerning solicitations, proposed awards, or contracts for property or services. However, before the competition act, no statutory authority existed for the suspension or staying of a protested procurement action until the Comptroller General issued a decision.

**Appendix II
Information on Bid Protests**

bid protest cases we received and (2) the number we closed under the act's provisions during fiscal years 1985 and 1986.

Table II.1: Bid Protest Cases Received and Closed by Our Office Under the Competition Act

Cases received	Fiscal Years	
	1985a	1986
Initial protests	1,760	2,552
Reconsideration requests	251	339
Total	2,011	2,891
Initial protest cases closed		
Withdrawn:		
Due to corrective action taken	141	273
For other known reasons	31	55
For unknown reasons	64	208
Total	236	536
Closed by decision on the merits		
Denied	187	630
Sustained ^b	43	101
Total	230	731
Cases otherwise closed:		
Due to corrective action taken	34	65
Without known corrective action ^c	924	1,188
Total	958	1,253
Total initial protest cases closed	1,424	2,520
Reconsideration requests closed		
Prior decision reversed (sustained or denied)	4	8
Otherwise closed	203	356
Total	207	364

^aBecause the act's bid protest provisions took effect on January 15, 1985, this column shows bid protest activity for only an 8-1/2 month period

^bThe rate of protests sustained as a percent of merit decisions was 18.7 percent and 13.8 percent for fiscal years 1985 and 1986, respectively. We attribute this decline to an increase in the percentage of cases considered on their merits and to greater willingness by contracting activities to voluntarily correct problems that have led to protests

^cThis category primarily includes cases dismissed as frivolous, untimely filed, or outside our jurisdiction

Of the cases we received during fiscal year 1986, we sustained a higher percentage than we had in years before the act took effect.² That is, of

²However, under the competition act some cases are dismissed that we would have previously categorized as denials and this has increased our sustained rate. We cannot determine, based on our case tracking system, the extent to which the sustained rate has been affected.

the 731 fully developed cases closed by decision on their merits for this period which resulted in a decision either to sustain or deny, we sustained 101, or 13.8 percent. In comparison, the rates of fully developed cases sustained for fiscal years 1983 and 1984, respectively, were 9.9 percent (62 of 627 cases) and 12.2 percent (70 of 572 cases).³

A considerable number of cases do not result in decisions on their merits because they are either (1) withdrawn by the protester, usually due to the contracting activity taking corrective action voluntarily or (2) dismissed by our Office as academic because corrective action was taken. During fiscal year 1986, 601 (24 percent of the 2,520 initial protests closed) were closed as a result of withdrawal or because corrective action was taken that rendered the protest academic. Before the competition act was implemented, our case tracking system did not include information on protests closed due to corrective action. Therefore, we do not have similar figures for past fiscal years.

We calculated a protester effectiveness rate of 24.3 percent for cases received during fiscal year 1986.⁴ The rate for fiscal year 1985 cases is about 19 percent. Information is not available to calculate a protester effectiveness rate for fiscal years before the act took effect.

Although the competition act was intended to significantly limit the inappropriate use of sole-source contract awards, very few protests sought to overturn allegedly improper sole-source awards. Of the protests which were filed during fiscal year 1986 and not summarily dismissed, only 2.6 percent sought to overturn improper sole-source awards. However, 17.7 percent dealt with alleged solicitation defects and 42.7 percent protested either the improper rejection of the protester's offer or the improper acceptance of a competitor's offer.

In fiscal year 1985, we took several actions designed to improve our bid protest function in response to the competition act. These actions included reorganizing the procurement law staff of our Office of General

³These amounts do not include cases disposed of by being (1) denied in part and dismissed in part, (2) denied in part and sustained in part, (3) sustained in part and dismissed in part, and (4) denied in part, sustained in part, and dismissed in part. Because we could not determine what proportions of the entire disposition these parts represented, we did not incorporate such cases into our analysis.

⁴The protester effectiveness rate is calculated by dividing the total number of initial protest cases closed (2,520) into (612) the total of (1) the number sustained (101), (2) those dismissed due to corrective action taken (65), (3) those withdrawn due to corrective action taken (273), and (4) an estimate of those withdrawn for unknown reasons due to corrective action taken. We made this estimate by applying the proportion of (a) those withdrawn due to corrective action taken divided by (b) those withdrawn for unknown reasons plus those withdrawn due to corrective action taken.

Counsel, installing a computerized case tracking system, and developing a system providing computer generated form notices for the speedy dismissal of cases found to be frivolous, untimely filed, or beyond our jurisdiction.⁵

These changes have enabled us to meet the time frame requirements of the competition act's bid protest provisions. The competition act requires that we issue decisions within 90 working days (or 45 calendar days for "express option" cases). Thus far, no case filed under the competition act's bid protest provisions has exceeded the statutory time periods.

In addition, our average disposition time for cases filed under the act's bid protest provisions is significantly less than it was for cases closed during fiscal years 1983 and 1984. For example, cases closed during fiscal year 1986 were closed in an average of 31.3 working days, compared to about 72 and 69 days for cases closed during fiscal years 1983 and 1984, respectively.

A more specific measure is the number of days it took us to close cases that were decided on their merits after full development. For cases closed during fiscal year 1986, it took us an average of 65.9 working days to decide these kinds of cases, which is much less than the 124 working days typically required before the competition act took effect.

The competition act includes several provisions designed to enhance the likelihood that protests can be decided before contract performance reaches a stage at which corrective action is effectively precluded. In cases where a protest is filed before an award has been made, 31 U.S.C., section 3553(c) precludes award unless the head of the procuring activity finds that urgent and compelling circumstances which significantly affect interests of the United States preclude waiting for completion of the protest process.

Similarly, 31 U.S.C., section 3553(d) provides that, in cases where award has been made but an agency is notified of a protest within 10 days of the date of award, performance must be suspended unless the head of the procuring activity finds that urgent and compelling circumstances (similar to those required to justify award in the face of a protest) exist or that performance is in the best interest of the government. Where continued performance is based on a finding of best interest, we are

⁵See our January 16, 1985, letter to the Committees on this subject (B-208159.5).

Appendix II
Information on Bid Protests

required to disregard cost or disruption resulting from contract termination, in recommending corrective action, should the protest be sustained.

Of the 2,520 initial protest cases we closed during fiscal year 1986 (see table II.1), 1,272 (50 percent) were filed with us before award and 1,181 (47 percent) were filed after award. (We do not have information on the award status of the remaining 67 cases.) Of the 1,424 initial protest cases we closed during fiscal year 1985, 818 (57 percent) were preaward and 594 (42 percent) were post award. (We do not know the award status of the remaining 10 cases.) Table II.2 provides information on agency awards and continued performance in the face of protests to our Office for the known pre- and post-award cases filed with us under the act.

**Appendix II
Information on Bid Protests**

Table II.2: Information on Agency Awards and Continued Performance in the Face of Protests to Our Office Under the Act

	Fiscal Years	
	1985 ^a	1986
Preaward Cases		
Number of initial protest cases received and closed before award.		
Defense agencies	570	883
Civil agencies	212	317
Total	782	1,200
Number of initial protest cases received before but closed after award		
Defense agencies	25	52
Civil agencies	11	20
Total	36	72
Post Award Cases^b		
Number of initial protest cases received and closed after award		
Defense agencies	415	773
Civil agencies	179	408
Total	594	1,181
Number of cases for which agencies reported continued performance based on urgency		
Defense agencies	c	16
Civil agencies	c	14
Total	c	30^d
Number of cases for which agencies reported continued performance based on the government's best interest		
Defense agencies	c	7
Civil agencies	c	13
Total	c	20^e

^aSee footnote a, table II.1

^bAgencies are not required to report to us and therefore, we do not have information on the total number of cases for which performance was (1) suspended until after the protest case was closed or (2) continued based on reasons other than those provided in the competition act (urgency or the government's best interest)

^cThis information is not available

^dWe sustained 5 of these 30 cases. Three of the awards were made by defense agencies and two by civil agencies

^eWe sustained 4 of these 20 cases. One of the awards was made by a defense agency and three by civil agencies

Information Available on Bid Protests to Contracting Officers

The competition act does not address the subject of bid protests to contracting officers. However, we attempted to obtain centrally available information at each of the seven procuring activities relating to whether the competition act had affected the level of bid protests to contracting officers.

Of the seven procuring activities included in our review, only two, the San Antonio Air Logistics Center and the Defense General Supply Center, maintained centralized records of bid protests to contracting officers. Table II.3 summarizes the information available at these locations.

Table II.3: Number of Bid Protests to Contracting Officers at Two Procuring Activities

Procurement Office	Calendar years		
	1983	1984	1985
San Antonio Air Logistics Center	11	15	27 ^a
Defense General Supply Center	84	80	118 ^b
Total	95	95	145

^aTwenty-six of these 27 protests were received during the 1-year period starting January 15, 1985. The one additional protest included in the 1985 data, which was filed before January 15, was denied.

^bOne hundred and twenty protests were received during the 1-year period starting January 15, 1985.

Resolution data we received from the Air Logistic Center's bid protest data base showed that of the 27 protests received in 1985, 15 (56 percent) were denied, 1 (4 percent) was dismissed, 8 (30 percent) were withdrawn, and 3 (11 percent) were sustained.⁶ No resolution data was centrally available for 1983 and 1984. A Center official told us that 7 of the 26 protests to contracting officers in the competition act's first full year were subsequently filed with our Office by the protesters.

Of the 118 protests the Defense General Supply Center received during 1985, 67 (57 percent) were denied, 11 (9 percent) were dismissed, and 20 (17 percent) were sustained. (We were unable to determine how the remaining 20 were resolved.) Of the 80 protests received during 1984, 51 (64 percent) were denied, 12 (15 percent) were dismissed, and 15 (19 percent) were sustained. (We were unable to determine how the remaining two were resolved.) Bid protest resolution information was not centrally available for 1983 and for the period January 15, 1985, to January 14, 1986.

⁶These percentages do not add to 100 due to rounding.

Officials at the five remaining locations we reviewed told us that information on bid protests to contracting officers was not maintained centrally. However, Marshall Space Flight Center officials estimated that no protests were submitted to contracting officers in fiscal year 1983, two were submitted in fiscal year 1984 (one of which also was filed with our Office), and six were submitted between January 15, 1985, and January 14, 1986. The officials stated that contracting officers denied both protests filed in fiscal year 1984 and all six protests received since January 15, 1985. The officials added that the protesters did not file any of the six more recent protests at a higher level, such as with our Office or the GSA Board of Contract Appeals. (See app. IX for a description of the act's provisions relating to this Board.)

The Committees specifically inquired about whether bid protests to contracting officers were being resolved favorably to protesters more frequently since the competition act's bid protest provisions took effect. The intent was to determine whether contracting officers may have been influenced to treat bid protests more favorably because of (1) the act's strengthened bid protest provisions and (2) the desire to avoid protests to our Office or the GSA Board of Contract Appeals under those provisions. The information we obtained from agency officials does not indicate that contracting officers were resolving protests in favor of the protesters any more frequently than they were before the competition act.

Sampling Plans and Sampling Error Rates

We based our two random samples on computer output provided by the individual agencies (for six of the seven procuring activities) or on the individual contract action reports prepared for input to the computerized Federal Procurement Data System (for the seventh location, the San Antonio Air Logistics Center). DOD procuring activities report contract actions over \$25,000 on DD Form 350, which is used to collect data on contract placement within DOD for the Federal Procurement Data System and for DOD's own purposes. Similarly, NASA and the Department of Energy each has its own form for use by its procuring activities in collecting such data.

For each sample contract action we selected, we compared the data from the source document which indicated that the action belonged in our universe with the information in the contract file and discussed problems identified with procurement personnel as necessary to clarify or follow-up on them. We replaced sample contract actions that had been erroneously coded as being in our universe with others that belonged in the universe, whenever possible.

Based on the other than full and open competition contract actions we selected at the five DOD procuring activities, we can project the miscoding of the five key data elements we reviewed to the universe of such contract actions reported at those five locations (for September 1985). Table III.1 shows the projected miscodings (and the accompanying sampling error rates) at the 95-percent confidence level for the data elements reviewed.

Table III.1: Projected Data Element Miscodings for Contract Actions Coded as Being in Our Universe of Other Than Full and Open Competition Awards

Data elements in percent		
Data elements	Miscoded elements	Sampling error
Contracting office	1.9	3.6
Contract action date	7.9	6.9
Dollars obligated	1.9	3.6
Kind of contract action	21.2	10.3
Solicitation procedure used	28.9	11.0

Our statistical sample of 104 contract awards based on other than full and open competition involved initial obligations of \$78.4 million.¹ (See table III.3.) The universe from which the sample was drawn included

¹Of the 104 awards, 9 were for research and development, 37 were for other services, and the remaining 58 were for equipment or supplies.

**Appendix III
Sampling Plans and Sampling Error Rates**

619 awards which initially obligated an estimated \$432.9 million during September 1985. (See table III.2.) Our sample of 25 awards reportedly based on full and open competition involved initial obligations of \$4 million.² (See table III.5.) The universe included 178 contract actions which initially obligated \$79 million during September 1985. (See table III.4.)

Table III.2: Original and Adjusted Universes for Contract Awards Based on Other Than Full and Open Competition

Dollars in thousands				
Procuring activity	Original universe size	Value of actions	Adjusted universe size^a	Adjusted value of actions
Army Aviation Systems Command	189	\$131,855	180	\$72,342
Navy Aviation Supply Office	756	411,315	360	293,400
Naval Sea Systems Command Headquarters	23	34,656	16	15,982
San Antonio Air Logistics Center	33	42,321	31	40,843
Defense General Supply Center	5	657	3	261
Department of Energy Headquarters	24	7,327	24	7,327
Marshall Space Flight Center	8	3,504	5	2,732
Total	1,038	\$631,635	619	\$432,887

^aWe adjusted the size of our universe based on the number of sample contracts that did not belong in it (See the footnote on table III.3.) We are 95 percent confident that the total universe contains 619 contract awards plus or minus 112 and that the value of these awards is \$432,887,000 plus or minus \$78,321,600.

²None of the 25 awards was for research and development but 4 were for other services, and the remaining 21 were for equipment or supplies.

Appendix III
Sampling Plans and Sampling Error Rates

Table III.3: Original and Adjusted Sample Sizes for Contract Awards Based on Other Than Full and Open Competition

Dollars in thousands				
Procuring activity	Original sample size	Value of actions	Adjusted sample size^a	Adjusted value of actions
Army Aviation Systems Command	20	\$8,328	20	\$8,038
Navy Aviation Supply Office	20	16,486	20	16,299
Naval Sea Systems Command Headquarters	20	32,527	16	15,982
San Antonio Air Logistics Center	20	27,825	20	28,584
Defense General Supply Center	5	658	3	261
Department of Energy Headquarters	20	6,505	20	6,505
Marshall Space Flight Center	8	3,504	5	2,732
Total	113	\$95,833	104	\$78,401

^aThe actual sample size sometimes differed from the original sample size because agency personnel had miscoded some of the contract actions selected that did not belong in our universe. We replaced these miscoded contracts with others in our universe from the sample activity whenever possible. However, in some instances, replacement contracts were unavailable. The number (and value) of actions deleted were: 1 at the Army Aviation Systems Command (\$291,000), 22 at the Navy Aviation Supply Office (\$8,802,000), 7 at the Naval Sea Systems Command Headquarters (\$18,674,000), 1 at the San Antonio Air Logistics Center (\$161,000), 2 at the Defense General Supply Center (\$397,000) and 3 at the Marshall Space Flight Center (\$771,000). No actions were deleted at Energy's Office of Procurement Operations.

**Appendix III
Sampling Plans and Sampling Error Rates**

Table III.4: Original and Adjusted Universes for Contract Awards Reported as Based on Full and Open Competition for Which One Offer Was Received^a

Dollars in thousands				
Procuring activity	Original universe size	Value of actions	Adjusted universe size^b	Adjusted value of actions
Army Aviation Systems Command	4	\$1,344	3	\$622
Navy Aviation Supply Office	96	71,908	96	71,908
Naval Sea Systems Command Headquarters	1	407	1	407
San Antonio Air Logistics Center	10	1,330	10	1,330
Defense General Supply Center	62	3,890	62	3,890
Department of Energy Headquarters	8	1,336	4	834
Marshall Space Flight Center	3	330	2	87
Total	184	\$80,545	178	\$79,078

^aFor these awards, our sample size does not permit us to project our results to the universe. Therefore the numbers and dollar values used for these awards relate to the sample contract awards rather than to the universe.

^bWe adjusted the size of our universe based on the number of sample contracts that did not belong in it. (See the footnote on table III.5.)

Table III.5: Original and Adjusted Sample Sizes for Contract Awards Reported as Based on Full and Open Competition for Which One Offer Was Received

Dollars in thousands				
Procuring activity	Original sample size	Value of actions	Adjusted sample size^a	Adjusted value of actions
Army Aviation Systems Command	4	\$1,344	3	\$622
Navy Aviation Supply Office	5	1,439	5	1,439
Naval Sea Systems Command Headquarters	1	407	1	407
San Antonio Air Logistics Center	5	281	5	281
Defense General Supply Center	5	333	5	333
Department of Energy Headquarters	5	867	4	834
Marshall Space Flight Center	3	330	2	87
Total	28	\$5,001	25	\$4,003

^aThe actual sample size sometimes differed from the original sample size because agency personnel had miscoded some of the contract actions selected that did not belong in our universe. We replaced these miscoded contracts with others in our universe from the sample activity whenever possible. However, in some instances, replacement contracts were unavailable. The number (and value) of actions deleted were 1 at the Army Aviation Systems Command (\$722,000), 4 at Energy's Office of Procurement Operations (\$502,000), and 1 at the Marshall Space Flight Center (\$243,000). No actions were deleted at the other four locations visited.

**Appendix III
Sampling Plans and Sampling Error Rates**

The results from a statistical sample are always subject to some uncertainty or sampling error because only part of the universe is analyzed. Table III.6 shows the sampling errors for the number and dollar estimates used relating to awards based on other than full and open competition.

Table III.6: Sampling Error Rates at the 95-Percent Confidence Level for Sample Awards Based on Other Than Full and Open Competition

From page ^a	Dollars in millions			
	Number		Dollars	
	Estimate	Sampling error	Estimate	Sampling error
18 ^{b, c}	4	0	\$0.2	\$0.0
19 ^b	141	74	94.9	51.7
20 ^{b, d}	346	79	257.6	55.2
20 ^d	128	48	81.2	33.6
25	390	82	269.2	57.3
25	588	16	421.4	11.2
35	470	50	344.4	35.0
35	524	43	366.1	30.1
38	425	66	310.0	46.2
38	472	62	328.2	43.4
89	619	112	432.9	78.3

^aThe page references relate to the pages in the body of the report on which the estimates are used.

^bThe projected 79.3 percent shown on page 18 refers to these three categories.

^cThese are actual (rather than projected) amounts because we reviewed all of the contracts in our universe at the Naval Sea Systems Command Headquarters and Marshall Space Flight Center where these four contracts were awarded. (See tables III.2 and III.3).

^dThe projected 76.6 percent shown on page 24 refers to these two categories.

Additional Information by Procuring Activity Relating to Our Sample of Contract Awards Based on Other Than Full and Open Competition

**Table IV.1: Competition Act Exceptions
Used for Sample Contract Awards Based
on Other Than Full and Open
Competition**

Procuring activity	Exceptions ^a				Total
	1	2	5	6	
Army Aviation Systems Command	17	2	1	0	20
Navy Aviation Supply Office	19	1	0	0	20
Naval Sea Systems Command Headquarters	13	1	2	0	16
San Antonio Air Logistics Center	4	16	0	0	20
Defense General Supply Center	1	2	0	0	3
Department of Energy Headquarters	3	1	15	1	20
Marshall Space Flight Center	2	1	2	0	5
Total	59	24	20	1	104

^aExceptions 3, 4, and 7 were not claimed for any of our sample contracts awards. All seven exceptions are described in app. IX.

**Table IV.2: Possible Causes of
Inappropriate and Questionable
Decisions Not to Provide for Full and
Open Competition**

Procuring activity	Lack of knowledge: valid justifications ^a	Lack of knowledge: use of CBD ^b
Army Aviation Systems Command	5	2
Navy Aviation Supply Office	5	5
Naval Sea Systems Command Headquarters	5	4
San Antonio Air Logistics Center	1	1
Defense General Supply Center	0	0
Department of Energy Headquarters	2	2
Marshall Space Flight Center	1	1
Total	19	15

^aThis column also shows the total number of contracts at each location for which we determined that the decision was inappropriate or questionable. Therefore, the next column relates to 15 of these same 19 contracts.

^bCommerce Business Daily

**Appendix IV
 Additional Information by Procuring Activity
 Relating to Our Sample of Contract Awards
 Based on Other Than Full and
 Open Competition**

Table IV.3: Contract Awards Based on Other Than Full and Open Competition With Justifications Which Did Not Fully Comply With Competition Act or FAR Requirements

Procuring activity	Number of awards	Percent of awards for which justifications were required^a
Army Aviation Systems Command	15	79
Navy Aviation Supply Office	12	60
Naval Sea Systems Command Headquarters	13	93
San Antonio Air Logistics Center	10	50
Defense General Supply Center	2	67
Department of Energy Headquarters	4	80
Marshall Space Flight Center	3	100
Total	59	70

^aThe 84 awards based on exceptions 1, 2, or 6 were required to be justified in writing but the 20 awards based on exception 5 were not. Table IV.1 shows the distribution of the 84 awards by procuring activity.

**Appendix IV
Additional Information by Procuring Activity
Relating to Our Sample of Contract Awards
Based on Other Than Full and
Open Competition**

**Table IV.4: Contract Awards With
Justification Related Problems by
Required Approval Levels**

Procuring activity	Required approval levels ^a				Total
	Over \$25,000 to \$100,000 ^b	Over \$100,000 to \$1,000,000 ^c	Over \$1,000,000 to \$10,000,000 ^d	Over \$10,000,000 ^e	
Army Aviation Systems Command	5	9	1	0	15
Navy Aviation Supply Office	7	4	1	0	12
Naval Sea Systems Command Headquarters	7	3	3	0	13
San Antonio Air Logistics Center	3	2	5	0	10
Defense General Supply Center	2	0	0	0	2
Department of Energy Headquarters	0	4	0	0	4
Marshall Space Flight Center	2	0	1	0	3
Total	26	22	11	0	59

^aThe competition act or FAR require that justifications be approved in writing by certain agency officials, depending on the dollar value of the proposed award

^bRequired to be approved by an official at a level above the contracting officer

^cRequired to be approved by the competition advocate for the procuring activity

^dRequired to be approved by the head of the procuring activity

^eRequired to be approved by the agency's senior procurement executive

**Appendix IV
Additional Information by Procuring Activity
Relating to Our Sample of Contract Awards
Based on Other Than Full and
Open Competition**

Table IV.5: Contract Awards Based on Other Than Full and Open Competition With Justifications Not Including Elements Required by the Competition Act or FAR

Procuring activity	Number of awards	Percent of awards for which justifications were required^a
Army Aviation Systems Command	6	32
Navy Aviation Supply Office	10	50
Naval Sea Systems Command Headquarters	7	50
San Antonio Air Logistics Center	9	45
Defense General Supply Center	2	67
Department of Energy Headquarters	3	60
Marshall Space Flight Center	1	33
Total	38	45

^aThe 84 awards based on exceptions 1, 2, or 6 were required to be justified in writing, but the 20 awards based on exception 5 were not. Table IV.1 shows the distribution of the 84 awards by procuring activity.

Table IV.6: Contract Awards for Which Contracting Officials' Certifications of the Justifications Were Premature

Procuring activity	Number of awards	Percent of awards for which justifications were required^a
Army Aviation Systems Command	10	53
Navy Aviation Supply Office	9	45
Naval Sea Systems Command Headquarters	9	64
San Antonio Air Logistics Center	2	10
Defense General Supply Center	0	0
Department of Energy Headquarters	2	40
Marshall Space Flight Center	3	100
Total	35	42

^aThe 84 awards based on exceptions 1, 2, or 6 were required to be justified in writing, but the 20 awards based on exception 5 were not. Table IV.1 shows the distribution of the 84 awards by procuring activity.

**Appendix IV
Additional Information by Procuring Activity
Relating to Our Sample of Contract Awards
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Open Competition**

**Table IV.7: Contract Awards With
Justifications Not Properly Approved**

Procuring activity	Number of awards	Percent of awards for which justifications were required^a
Army Aviation Systems Command	2 ^b	11
Navy Aviation Supply Office	7 ^b	35
Naval Sea Systems Command Headquarters	0	0
San Antonio Air Logistics Center	5	25
Defense General Supply Center	0	0
Department of Energy Headquarters	1	20
Marshall Space Flight Center	0	0
Total	15	18

^aThe 84 awards based on exceptions 1, 2, or 6 were required to be justified in writing, but the 20 awards based on exception 5 were not. Table IV.1 shows the distribution of the 84 awards by procuring activity.

^bThe required written justification was not prepared for one of these awards.

**Table IV.8: Contract Awards Not
Statutorily Exempt From Competition but
for Which Agencies Made No Market
Survey Effort or No Market Survey Effort
Except a Preaward Notice in the
Commerce Business Daily^a**

Procuring activity	No market survey effort made	No market survey effort except a preaward notice
Army Aviation Systems Command	2	15
Navy Aviation Supply Office	2	15
Naval Sea Systems Command Headquarters	2	10
San Antonio Air Logistics Center	10	1
Defense General Supply Center	2	0
Department of Energy Headquarters	1	1
Marshall Space Flight Center	0	2
Total	19	44

^aSee Table IV.1 for the distribution among the 7 locations of the 84 awards that were not statutorily exempt from competition. The 84 awards were those based on exceptions 1, 2, or 6.

**Appendix IV
Additional Information by Procuring Activity
Relating to Our Sample of Contract Awards
Based on Other Than Full and
Open Competition**

Table IV.9: Contract Awards for Which a Required Preaward Notice Was Not Published in the Commerce Business Daily

Procuring activity	Number of contracts	Percent of those required to publish notices^a
Army Aviation Systems Command	2	12
Navy Aviation Supply Office	2	11
Naval Sea Systems Command Headquarters	3	21
San Antonio Air Logistics Center	1	25
Defense General Supply Center	0	0
Department of Energy Headquarters	2	50
Marshall Space Flight Center	0	0
Total	10	16

^aPreaward notices were required to be published for 62 of the 104 awards. The 20 awards based on section 8(a) of the Small Business Act and the 22 awards that were based on valid urgency claims were exempt from this requirement.

Table IV.10: Contract Awards for Which the Required Contents of the Preaward Notices Were Inaccurate, Incomplete, or Missing

Procuring activity	Number of contracts	Percent of those with notices published^a
Army Aviation Systems Command	9	56
Navy Aviation Supply Office	17	100
Naval Sea Systems Command Headquarters	11	100
San Antonio Air Logistics Center	3	100
Defense General Supply Center	1	100
Department of Energy Headquarters	2	100
Marshall Space Flight Center	3	100
Total	46	87

^aNotices were published for 53 awards.

Table IV.11: Number of Contract Awards for Which the Statutory Solicitation Issuance or Response Time Requirements Were Not Met

Procuring activity^a	Solicitation issued too early	Proper response time not provided	Both problems existed	Total
Naval Sea Systems Command Headquarters	6	6	5	7
Defense General Supply Center	1	0	0	1
San Antonio Air Logistics Center	1	0	0	1
Total	8	6	5	9

^aWe did not identify either of these problems at the other four procuring activities.

**Appendix IV
Additional Information by Procuring Activity
Relating to Our Sample of Contract Awards
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Open Competition**

**Table IV.12: Contract Awards for Which
Preaward Notices Were Published With
Conflicting Notes**

Procuring activity	Number of contracts	Percent of those with notices published
Army Aviation Systems Command	4	25
Navy Aviation Supply Office	17	100
Naval Sea Systems Command Headquarters	1	9
San Antonio Air Logistics Center	3	100
Defense General Supply Center	0	0
Department of Energy Headquarters	0	0
Marshall Space Flight Center	0	0
Total	25	47

**Table IV.13: Information on Publication of
Post Award Notices for the 84 Contract
Awards Not Statutorily Exempt From
Competition Requirements**

Procuring activity	Number of contracts with notices published	Number of contracts with no notices published or status unknown		
		Classified or no subcontracting opportunity	Inappropriately not published	Uncertain if published
Army Aviation Systems Command	3	1	13	2
Navy Aviation Supply Office	0	0	5	15
Naval Sea Systems Command Headquarters	9	4	1	0
San Antonio Air Logistics Center	17	1	1	1
Defense General Supply Center	1	0	2	0
Department of Energy Headquarters	0	5	0	0
Marshall Space Flight Center	1	2	0	0
Total	31	13	22	18

Additional Examples of Problems on Awards Based on Other Than Full and Open Competition

The first example illustrates a contract award for which the use of other than full and open competition was inappropriate. The second example illustrates a contract award for which we could not be certain that the agency's decision to use other than full and open competition was appropriate.

Example 1

The Naval Sea Systems Command Headquarters awarded a cost contract with no fee to a university for a study to determine the density and migratory patterns of turtles. The award was based on other than full and open competition and originally obligated \$44,840. The study was required to complete an environmental impact statement for a testing system used by the Navy in the Chesapeake Bay. Navy officials cited the first exception to full and open competition and justified the award by stating that (1) the university was considered the best qualified source, (2) the university was already performing studies in the Bay area, and (3) time limitations did not permit competing the award. However, an agency official stated that these time limitations did not meet the act's second (urgency) exception to full and open competition.

Neither "best qualified" nor the other reasons given were a valid basis for the decision not to provide for full and open competition.

In addition, the Command's market survey efforts were inadequate to assure itself that the university was the only available source that appeared to be responsible. A notice of the proposed award, which was published in the Commerce Business Daily, was insufficient and discouraged potential competition. The competition act and FAR require notices of proposed contract awards under the first exception to state that "all responsible sources may submit a bid, proposal, or quotation which shall be considered by the executive agency." They also require offers to be solicited in a manner designed to achieve full and open competition. Furthermore, FAR requires the procurement notice to include reference to numbered note 22 if the notice is for a proposed contract action intended to be awarded on a sole-source basis. The procurement notice for this award met none of the above requirements. Instead, it stated: "The proposed contract is a sole-source procurement."¹

¹ However, the notice did refer to numbered note 59 which says that interested firms may submit written requests to the Commander, Naval Sea Systems Command, for information pertaining to current requests for proposals or invitations for bids

Appendix V
Additional Examples of Problems on Awards
Based on Other Than Full and
Open Competition

In addition, agency officials did not allow the statutorily required response time for potential offerors to express their interest and demonstrate their qualifications to meet the government's needs. Although agency officials were required to provide at least a 45-day response period starting from the publication date of the Commerce Business Daily notice for the receipt of offers or responses, they (1) permitted the university to begin work 16 days after the preaward notice publication date and (2) agreed to reimburse in an amount not to exceed \$25,000 the university's costs incurred before contract award.

Despite the flaws in the Commerce Business Daily notice, four vendors responded and requested copies of the solicitation. The Navy negotiator told the three vendors we were able to contact that the proposed procurement was sole source; therefore, they did not request a copy of the solicitation. The negotiator confirmed telling the vendors that the procurement was sole source.

According to an official representing one of the vendors, the Navy negotiator informed him that (1) the Commerce Business Daily notice for this contract was intended only to provide information and announce that the work was already ongoing and (2) proposals were not being requested. The vendor representative further stated that his company would have submitted a proposal had they been given the opportunity.

We contacted three nonprofit organizations in addition to the three vendors mentioned above. The three nonprofit organizations all stated that they were qualified to perform the study. However, they added that they probably would not have responded either because they were then involved in other projects, they were not interested in the contract, or the procurement was not in their area of greatest expertise.

Because more than one source appeared to be qualified and interested in satisfying the agency's requirement, we believe Navy officials inappropriately cited the first exception to full and open competition. Navy contracting and technical officials disagreed, stating that the Navy's minimum requirement was for the most technically qualified source. We believe full and open competition among qualified sources (probably based on technical source selection factors) should have been conducted because that is the proper method to determine the best qualified source from among two or more sources that appear to be qualified.

The contracting officer and the technical representative stated that the Command would not have cited the competition act's second (urgency)

exception, even if it were applicable, because the procurement was for a study and this procuring activity had an unwritten policy of not using the urgency exception for contracts to procure services. When told of this matter, the head of the activity's procurement office denied any knowledge of such a policy and stated that he would issue guidance to clarify this matter.

Example 2

The Naval Sea Systems Command Headquarters awarded an unpriced order under a basic ordering agreement (BOA) on September 14, 1985, for an amount not to exceed the initial obligation of \$95,000. The award, which was based on other than full and open competition, was for maintenance and support of Trident submarine signal data converter equipment.

The order covered aspects of two of seven items listed in the BOA. BOA items not covered in the order included providing data, engineering services, and field engineering services. The total estimated value of all orders to be placed under this agreement was \$5,000,000. Naval Sea Systems Command officials told us they did not submit the required preaward notice relating to the order for publication in the Commerce Business Daily and they performed no other market survey efforts. However, a notice had been published for the BOA on June 7, 1985.

Navy officials justified other than full and open competition on the basis that only one responsible source existed to satisfy this requirement. The justification, prepared and approved on a class basis to cover orders under the BOA, stated:

"In order to perform the work required . . . in an efficient, reliable and timely manner, it is essential that the contractor performing this work have extensive familiarity with the equipment on which the work is to be performed and its relationship to other equipment in the system Only a contractor who is the qualified producer of the equipment has a thorough knowledge of the design, manufacture, and assembly of the equipment sufficient to disassemble the equipment, determine the nature of the problem, and accomplish the appropriate task promptly and efficiently . . . [The contractor] is the sole designer, developer, and producer of the Signal Data Converter Equipment to be supported under this BOA and is the only firm with the in-depth knowledge of the equipment requisite to satisfactorily perform the work under the orders contemplated herein."

The justification did not adequately support use of the first exception to full and open competition for award of the order. Without the required

**Appendix V
Additional Examples of Problems on Awards
Based on Other Than Full and
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public notice, agency officials' first exception claims were not sufficiently tested and validated in the marketplace. In addition, the agency did not make any other market survey efforts. Therefore, we are uncertain if the agency's decision to award this contract based on other than full and open competition was appropriate.

Elements Required to Be Included in Justifications for Other Than Full and Open Competition

FAR 6.303-2 requires each justification to contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification is required to include the following information (effective April 1, 1985):

- (1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."
- (2) Nature and/or description of the action being approved.
- (3) A description of the supplies or services required to meet the agency's needs (including the estimated value).¹
- (4) An identification of the statutory authority permitting other than full and open competition.¹
- (5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.¹
- (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.²
- (7) A determination by the contracting officer that the anticipated cost to the government will be fair and reasonable.¹
- (8) A description of the market survey conducted and the results or a statement of the reasons a market survey was not conducted.¹
- (9) Any other facts supporting the use of other than full and open competition, such as:
 - (i) Explanation of why technical data packages, specifications, engineering descriptions, statement of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

¹This element is specifically required by the competition act.

²This provision was amended by FAC-84-13, effective February 3, 1986, by adding (at the end) a comma and words: "Including whether a CBD (Commerce Business Daily) notice was or will be publicized as required by Subpart 5.2, and, if not, which exception under 5.202 applies."

**Appendix VI
Elements Required to Be Included in
Justifications for Other Than Full and
Open Competition**

- (ii) When FAR 6.302-1 is cited for follow-on acquisitions, an estimate of the cost that would be duplicated and how the estimate was derived.³
- (iii) When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the government.
- (10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.⁴
- (11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.⁴
- (12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.⁵
- (13) Evidence that any supporting data that is the responsibility of technical or requirement personnel (e.g., verifying the government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.⁶

³This provision was amended by FAC-84-13, effective February 13, 1986, by revising a FAR reference (not shown above) and adding after "an estimate of the cost" the words: "to the Government."

⁴This element is specifically required by the competition act.

⁵The competition act requires the contracting officer to certify the accuracy and completeness of the justification

⁶This item is contained in FAR 6.303-2(b).

Additional Information by Procuring Activity on Our Sample of Contract Awards Reported as Based on Full and Open Competition and the Submission of Only One Offer

Table VII.1: One-Offer Awards Reported as, but Based on Practices Inconsistent With, Full and Open Competition

Procuring activity	Total no. of awards	Awards Inconsistent With Full and Open Competition			
		Total	Specific make/model	Inadequate specs/data	Preaward notice not published
Army Aviation Systems Command	3	1	0	0	1 ^a
Navy Aviation Supply Office	5	2	1 ^b	0	1 ^c
Naval Sea Systems Command Hq.	1	0	0	0	0
San Antonio Air Logistics Center	5	3	3 ^d	0	0
Defense General Supply Center	5	3	0	3 ^e	0
Department of Energy Hq.	4	0	0	0	0
Marshall Space Flight Center	2	0	0	0	0
Total	25	9	4	3	2

^aThis award initially obligated \$87,000

^bThis award initially obligated \$964,000

^cThis award initially obligated \$103,000

^dThese three awards initially obligated \$94,000, \$52,000, and \$29,000

^eThese three awards initially obligated \$170,000, \$60,000, and \$41,000

Appendix VII
Additional Information by Procuring Activity
on Our Sample of Contract Awards Reported
as Based on Full and Open Competition and
the Submission of Only One Offer

Table VII.2: One-Offer Awards Reported as Based on Full and Open Competition That Did Not Meet Statutory Requirements Relating to the Use of Commerce Business Daily Preaward Notices

Procuring activity	Awards With		Statutory Requirement Not Met Because:			
	Notices publicized ^a	Statutory requirements not met	Notice lacked statement encouraging competition	Notice lacked adequate solicitation data	Inadequate solicitation/response time	
Army Aviation Systems Command	2	2	1	1	1	
Navy Aviation Supply Office	4	4	4	4	0	
Naval Sea Systems Command Headquarters	1	1	1	1	0	
San Antonio Air Logistics Center	5	5	5	3	2	
Defense General Supply Center	5	4	2	0	4	
Department of Energy Hq	4	4	4	1	0	
Marshall Space Flight Center	2	2	2	2	1	
Total	23	22	19	12	8	

^aPreaward notices were required but not published for two other awards, one at the Army Aviation Systems Command and one at the Navy Aviation Supply Office. See table VII.1

Table VII.3: One-Offer Awards Reported as Based on Full and Open Competition for Which Preaward Notices Referred to Conflicting or Questionable Footnotes

Procuring activity	Number with notices publicized	Number using conflicting or questionable notes ^a
Army Aviation Systems Command	2	1
Navy Aviation Supply Office	4	3
Naval Sea Systems Command Headquarters	1	0
San Antonio Air Logistics Center	5	5
Defense General Supply Center	5	0
Department of Energy Headquarters	4	0
Marshall Space Flight Center	2	0
Total	23	9

^aNote 22 was used for one award, note 46 was used for one award, note 40 was used for eight awards and the symbol "***" was used for five awards

Background Information on the Seven Procuring Activities Reviewed

Of the seven procuring activities we reviewed, five are in DOD (including two in the Navy and one each in the Army, Air Force, and Defense Logistics Agency), one is in the Department of Energy, and one is in NASA. A brief description of each activity follows. Table 5.1 in chapter 5 provides additional information on each activity.

Army Aviation Systems Command

The Army's Aviation Systems Command is located in St. Louis, Missouri, and is one of six Army commands reporting to the Army Materiel Command that is responsible for spare parts procurement support for the Army's tactical equipment. In October 1983, the previously existing Troop Support and Aviation Readiness Command was split into the Aviation Systems Command and the Army Troop Support Command, also located in St. Louis.

The Aviation Systems Command's primary mission is to provide aviation material to the Army. The Command purchases over 50,000 spare part items which support about 8,400 helicopters and 565 fixed-wing aircraft and other aviation related equipment. As of August 31, 1985, the Aviation Systems Command officials managed a spare parts inventory valued at about \$3.1 billion with another \$1.1 billion on order.

Naval Sea Systems Command Headquarters

The Naval Sea Systems Command is one of five Navy Systems Commands. It is responsible for providing material support to the Navy and Marine Corps for ships and crafts, shipboard weapon systems, and related components. It procures a range of supplies and services, including ship overhaul and maintenance, new shipbuilding, and weapons and communications systems.

The Sea Systems Command's contracts directorate includes headquarters and field activities. Our review dealt only with actions awarded by the headquarters activity, located in Washington, D.C.

Navy Aviation Supply Office

The Navy Aviation Supply Office located in Philadelphia, Pennsylvania, is responsible for worldwide acquisition and control of Navy aviation material. The Office's mission is to plan, provide, and support weapons material management for aviation weapon systems and equipment. The Office has inventory management responsibility for approximately 247,000 items with a total inventory value of \$12.3 billion.

San Antonio Air Logistics Center

The San Antonio Air Logistics Center, located in San Antonio, Texas, is one of five air logistics centers within the Air Force Logistics Command. The Center supports over half of the Air Force's engines and procures spare parts, aircraft overhaul, and modifications for 15 different types of aircraft systems, including the T-38, F-5 and C-5 aircraft, and the F-100 and TF-39 engines. The Center's Directorate of Contracting and Manufacturing is the procurement activity responsible for the acquisition of supplies, equipment, and services.

Defense General Supply Center

The Defense General Supply Center located in Richmond, Virginia, is one of six Defense Logistics Agency supply centers located in the United States. The Center's primary responsibilities include acting as (1) a national inventory control point for general military items and DOD dependent school supplies and (2) one of eight Defense Logistics Agency distribution depots. As an inventory control point, the Center manages about 278,000 items which vary widely, such as electrical hardware supplies, alarm and signal equipment, safety and rescue equipment, food service and laundry equipment, educational supplies, bottled gases, and petroleum based products.

The Center's Directorate of Contracting and Production is responsible for the purchase of materials for both the inventory control point and depot requirements.

Office of Procurement Operations, Department of Energy

The Department of Energy's Office of Procurement Operations, located in Washington, D.C., is the headquarters procuring activity for the largest civilian procuring agency in terms of fiscal year 1985 procurement dollars.¹ The Office directs, negotiates, and administers the management responsibilities for acquisitions, grants, cooperative agreements, management and operating contracts, personal property management, sales contracts, small business/small disadvantaged business/labor surplus area acquisitions, loan guarantees, and other financial assistance instruments in support of the Department's headquarters requirements.

¹The Department of Energy spent about \$16.2 billion in fiscal year 1985 in support of national security and as a catalyst for basic and applied research in a wide range of technological areas, such as nuclear, solar, geothermal, and fossil energy, civilian and defense nuclear waste management, and conservation.

Marshall Space Flight Center, NASA

The Marshall Space Flight Center located in Huntsville, Alabama, is one of NASA's primary centers for designing and developing space transportation, orbital, and other systems for present and future space exploration. It has responsibility for developing the space shuttle's main engines, solid rocket boosters, and external propellant tanks; the space telescope; the spacelab orbital research facility; and elements of the space station. The Center's principal roles include designing, developing, and procuring major propulsion oriented systems and subsystems; managing spacelab missions; and designing/developing large, complex, and specialized automated spacecraft. It has a primary role in developing and processing space science and applications experiments. In addition, it conducts a vigorous research and technology program.

Competition in Contracting Act Changes to Other Legislation

The Competition in Contracting Act of 1984 amended both the Armed Services Procurement Act and the Federal Property and Administrative Services Act to:

- Require the use of competitive procedures in order to obtain full and open competition.¹
- Limit the use of other than competitive procedures to seven specified circumstances.
- Require contracting officers to justify and to obtain approval from other specified agency officials for the use of other than competitive procedures.
- Define competitive procedures to include procurements of architectural or engineer services conducted in accordance with 40 U.S.C. 541 et. seq., competitive selection of basic research proposals, and GSA's multiple award schedule programs.
- Replace the previous strong statutory preference for formal advertising² with provisions that put competitive proposals³ (negotiation) almost on a par with sealed bids.⁴
- Eliminate the statutory exceptions justifying negotiation.⁵

The competition act requires agencies to:

- Specify agency needs and solicit bids or proposals in a manner designed to achieve full and open competition.
- Use advance procurement planning and market research.
- Develop specifications so as to obtain full and open competition.
- Require the use of sealed bids if (1) time permits solicitation, submission, and evaluation of sealed bids, (2) award will be made on the basis of price and other price-related factors, (3) it is not necessary to hold discussions, and (4) there is a reasonable expectation of receiving more than one sealed bid.

¹See footnote 5, ch. 1.

²"Formal advertising," which was replaced under the acts with the term sealed bidding, was a method of contracting that employed competitive sealed bids, public opening of bids, and awards.

³Competitive proposal is an offer submitted to the government when it is necessary to hold discussions with responding offerors. This method of contracting permits bargaining and usually affords offerors an opportunity to revise their offers before award of a contract.

⁴Sealed bidding is a method of contracting that employs competitive sealed bids, public opening of bids, and awards.

⁵Negotiation means contracting through the use of either competitive or noncompetitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract.

- Allow the head of an agency to exclude a particular source in order to establish or maintain an alternative source or sources of supply if he/she determines that it would: (1) increase or maintain competition and likely result in reduced overall costs, (2) be in the interest of national defense to have the facility available in case of national emergency or industrial mobilization, or (3) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.
- Allow the use of other than competitive procedures only if: (1) property or services are available from only one source and no other type of property or services will satisfy the needs of the agency (includes certain follow-ons and unsolicited research proposals),⁶ (2) the agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources (must still obtain maximum competition practicable), (3) it is necessary to award to a particular source(s) in order to maintain a facility in case of national emergency or to achieve industrial mobilization or to establish or maintain an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center, (4) it is required by the terms of an international agreement or treaty or by written direction of a foreign government that is reimbursing the agency for the cost of the procurement, (5) a statute expressly authorizes or requires procurement through another agency or from a specified source or the agency's need is for a brand name commercial item for authorized resale, (6) disclosure of the agency's needs would compromise national security unless the number of sources is limited (must still obtain maximum practicable competition), or (7) the head of an agency determines it is necessary in the public interest to use other than competitive procedures and gives the Congress 30-days' written notice before award (non-delegable).
- Justify in writing the use of other than competitive procedures and certify the accuracy and completeness of the justification. The justification must include (1) a description of the agency's needs, (2) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration of the reason for using that exception, (3) a determination that the anticipated cost will be fair and reasonable, (4) a description of the market survey conducted or a statement of the reasons a market survey was not conducted, (5) a listing of the sources, if any, that expressed in writing an interest in the procurement, and (6) a

⁶See footnote 5, ch. 2.

statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs. In addition, justifications for contracts over \$100,000 must be approved either by the competition advocate for the procuring activity or by certain specified agency officials at a level higher than the contracting officer, depending on the dollar value of the procurement.

- Provide a uniform threshold of \$100,000 for requiring contractors to submit certified cost and pricing data.
- Allow contracting officers to require cost or pricing data for procurement actions below the threshold.

The Office of Federal Procurement Policy Act was amended by adding sections requiring that each executive agency:

- Publish a notice in the Commerce Business Daily for each proposed contract award expected to exceed \$10,000⁷ except under specified circumstances and include in the notice a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the executive agency. Also, publish a notice of award in the Commerce Business Daily for procurement actions exceeding \$25,000, if subcontracting opportunities are likely to occur from that award.
- Allow at least 15 days from the time the notice of solicitation is published in the Commerce Business Daily to the time the solicitation is issued and at least 30 days from the time the solicitation is issued to the time proposals must be submitted.⁸
- Designate for the agency and for each procuring activity within the agency an "Advocate for Competition" who is responsible for challenging barriers to and promoting full and open competition in the agency's procurements.
- Make an annual report to the Congress, for 5 years, starting in January 1986, specifying the agency's plans to increase competition and to reduce noncompetitive contracts and summarizing the advocate for competition's accomplishments during the previous fiscal year.
- Establish and maintain a record, by fiscal year, of competitive and noncompetitive procurement actions (other than small purchases) and enter that data in the Federal Procurement Data System.

The Budget and Accounting Act was amended to:

⁷See footnote 2, ch. 3.

⁸See p. 37 and footnote 1, ch. 3.

- Codify and strengthen our Office's bid protest authority.
- Allow actual or prospective bidders or offerors whose direct economic interest would be affected by the award or failure to award to file a protest with the Comptroller General.
- Require the Comptroller General to notify the agency within 1 day of receipt of the protest. The agency has 25 working days to respond (10 working days under the "express" option) and the Comptroller General has 90 working days (45 calendar days under the "express" option) to issue an opinion.
- Require that if the protest is filed before award, an award may not be made unless the head of the procuring activity finds and reports to the Comptroller General that urgent and compelling circumstances, which significantly affect the United States' interests, will not permit awaiting a decision. This finding may be made only if award is likely to occur within 30 days.
- Require that if the agency receives notice of a protest within 10 days after award, performance must be suspended unless the head of the procuring activity makes a determination of urgent and compelling circumstances or determines that performance is in the best interest of the United States and reports this determination to the Comptroller General.
- Require, in the event that the protest is sustained, that the Comptroller General recommend corrective action and the head of the procuring activity notify the Comptroller General if the recommendations are not implemented within 60 calendar days.

Possible corrective actions include refraining from exercising any options under the contracts, immediate recompetition of the contract, issuance of a new solicitation, contract termination, reaward, or any combination of these actions or any other recommendations that the Comptroller General determines necessary. The Comptroller General also may grant reimbursement of bid or proposal preparation costs and costs incurred in making the protest. The costs must be paid from the agency's procurement funds.

The Federal Property and Administrative Services Act was amended to:

- Set up a 3-year program to allow the GSA Board of Contract Appeals (the Board) to resolve protests involving procurement of automatic data processing resources under Public Law 89-306 (the Brooks Act).
- Require the Board to hold an initial hearing within 10 days of the filing of a protest and issue a final decision within 45 days, unless the Chairman determines that specific and unique circumstances require a longer period of consideration.

- Require that if the protest is made before the contract award, the Board must suspend the GSA Administrator's automatic data processing procurement authority or delegation of authority for the procurement at issue. No award can be made unless the agency establishes that urgent and compelling circumstances which significantly affect the United States' interests require award and that award is likely to occur within 30 days.
- Require that if the Board receives notice of a protest within 10 days after contract award, the Board must suspend the authority or delegation of authority and contract performance will be suspended, unless the agency finds that compelling circumstances exist.
- Require that if the Board sustains the protest, the Board may suspend, revoke, or revise the GSA Administrator's automatic data processing procurement authority or delegation of that authority for the procurement at issue. The Board also may grant reimbursement of the costs of filing and pursuing the protest (including reasonable attorney's fees) and bid or proposal preparation costs.

Additional Information on Changes in PALT at the Seven Locations Visited

We obtained PALT data from all seven of the procuring activities we reviewed. However, the data available at these locations differed in terms of the fiscal years, number of procurement actions, and types of categories covered and not covered (for example, competitive versus noncompetitive and small versus large procurements).

Our analysis of PALT data available at the procuring activities indicates that PALT increased at each of the activities after fiscal year 1983. The data available for fiscal years 1980 through 1983 show that cumulative PALT changes were more limited. The limited data available also show that in some cases PALT decreased after fiscal years 1984 or 1985. Details on the data we obtained and the results of our review at each location follow.

Army Aviation Systems Command

PALT data for this activity were not available for periods before October 1983, when the present Command was established. Also, the earlier data covered troop support as well as aviation items and were, therefore, not comparable. We obtained PALT data on a yearly and monthly basis for fiscal years 1984 and 1985 and for the first 3 months of fiscal year 1986 showing the number of purchase requests and average PALT for purchases of (1) \$25,000 or less and (2) over \$25,000. These categories were further broken down by procurement method: sealed bidding, competitive negotiated, and noncompetitive negotiated for awards over \$25,000 and the latter two methods only for awards \$25,000 and under.

PALT for procurements in both dollar categories generally increased since fiscal year 1984. In fiscal year 1984, PALT for procurements over \$25,000 using sealed bidding averaged 154 days. PALT for the same category averaged 268 days for the first 3 months in fiscal year 1986. PALT for competitive negotiated procurements averaged 174 days in fiscal year 1984 versus 191 days for the first 3 months of fiscal year 1986. PALT for noncompetitive negotiated procurements averaged 138 days in fiscal year 1984 versus 172 days for the first 3 months in fiscal year 1986.

For procurements of \$25,000 or less, PALT also increased for the first 3 months of fiscal year 1986 compared to fiscal year 1984. For example, in fiscal year 1984 PALT averaged 99 and 120 days, respectively, for competitively negotiated and noncompetitively negotiated contracts in this dollar category compared to 119 and 144 days, respectively, for the first 3 months of fiscal year 1986.

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at the Seven Locations Visited**

It is unlikely that implementation of the competition act was a major cause of the PALT increase from fiscal year 1984 to the first 3 months of fiscal year 1986. Only contract awards based on solicitations which had been issued after March 31, 1985, were governed by the competition act. Therefore, considering that PALT ranged from 3 to 9 months (99 days to 268 days), many of the contracts that were awarded during calendar year 1985 (that is, through the end of the first quarter of fiscal year 1986) and reflected in the PALT data for that period were pre-competition act awards. For example, for September 1985, the last month of fiscal year 1985, approximately 59 percent of the contracts were pre-competition act awards. An Army Aviation Systems Command procurement official stated that the increase in PALT was due to the spare parts initiatives and it was too early to see a significant effect on the data as a result of the competition act.

Navy Aviation Supply Office

We obtained annual PALT data for fiscal years 1980 through 1985 and monthly PALT data for fiscal year 1984 through the first 3 months of fiscal year 1986, except that data for October 1985 was not available. The procuring activity's data system provided the total number of contract awards and the average PALT by days for each of these months and fiscal years, but did not provide breakdowns of PALT for large and small procurements or by procurement method.

PALT remained fairly constant from fiscal years 1980 through 1983, except for fiscal year 1982. PALT averaged 51.4, 52.5, and 55.6 days in fiscal years 1980, 1981, and 1983, respectively. However, in fiscal year 1982, PALT averaged 81.2 days. According to a procurement official at this activity, the fiscal year 1982 increase was due to severe funding constraints which delayed the processing of purchase requests until funds became available to make awards.

PALT increased substantially in fiscal years 1984 and 1985. PALT increased from 55.6 days in fiscal year 1983, to 76.5 days in fiscal year 1984, and 93.8 days in fiscal year 1985. These increases coincided with the Navy's Buy Our Spares Smart initiatives implemented by this activity in late 1983. According to procurement officials, these initiatives caused PALT to increase and various statutes and regulations implemented since fiscal year 1984 have also exerted upward pressure on PALT.

PALT increased to a new high, 113.1 days, in September 1985, but it decreased to 92.3 and 71.8 days in November and December 1985,

respectively. Procurement officials stated that it was too early to identify changes in PALT resulting from the competition act. They expected PALT to increase as a result of the competition act, but believed the increases would not be reflected in PALT data until sometime in the future.

The Aviation Supply Office reported that the lowered dollar threshold for submission and field review of cost and pricing data has exerted upward pressure on PALT. In addition, according to the Deputy Director for the Purchase Division, the competition act's requirements for more reviews, approvals, and certifications have lengthened the procurement cycle. However, the Deputy Director believes it is too early to fully assess the competition act's effect on the procurement system.

Naval Sea Systems Command Headquarters

We obtained annual PALT data, including the total number of contract awards, for fiscal years 1981 through 1985 and available monthly PALT data for fiscal year 1984 through the first 4 months of fiscal year 1986. We were not able to obtain breakdowns of PALT data based on procurement methods or large versus small procurements.

PALT decreased from an average of 117 days in fiscal year 1981 to 87 days in fiscal year 1983 at this activity, then increased to 119 days in fiscal year 1985. A procurement analyst at this activity stated that there are many possible reasons for changes to PALT, but the increases and decreases could not be attributed to any specific factor. For example, the analyst said that the following factors can influence PALT:

- Changes in staff levels or experience.
- Changes in the number and/or dollar value of procurement actions that can affect the backlog of purchase requests in procurement offices.
- Fiscal year budget constraints and funding level uncertainties.
- Learning curves involved in new procurement policies or directives, including the competition act.

Some procurement officials at this activity stated that the competition act had increased PALT, basing their statement on "intuitive reasoning and general observations." Another official stated that it is too early to measure changes in PALT data due to the competition act.

San Antonio Air Logistics Center

We obtained monthly and annual PALT data for fiscal years 1980 through 1985. The data cover (1) all contractual actions, (2) contracts of \$10,000 or less, and (3) negotiated contracts over \$10,000 and not exceeding \$100,000. However, we were not able to obtain a breakdown of the data by procurement methods (sealed bidding, competitive negotiation, and noncompetitive negotiation).

At the end of fiscal year 1980, PALT averaged 70 days for all procurements, and at the end of fiscal year 1983, PALT was still roughly the same, averaging 78 days. However, from that point PALT increased until it reached a peak of 188 days in March 1985, after which it started decreasing. As of December 1985, PALT had decreased 45 percent to 104 days.

According to the Chairman of the Center's Contracts Committee, several factors contributed to the increases in PALT and it was not possible to isolate the effect of any specific factor, such as the competition act. This official stated that PALT began to increase in 1983 and continued increasing in 1984 and 1985 as a result of DOD and Air Force initiatives intended to improve spare parts pricing as well as various public laws affecting the procurement process. The official added that PALT started decreasing in April 1985 after the procurement directorate implemented a plan, called Project 12,000, to decrease the backlog of purchase requests.¹

Defense General Supply Center

PALT data were obtained on a monthly and annual basis for fiscal year 1980 through the first 4 months of fiscal year 1986. The data included the number of contract actions and were broken down by large and small procurements, as defined below. Large procurement PALT was further broken down into negotiated and sealed bid (or formally advertised) awards.

PALT for large procurements varied considerably during fiscal year 1980 through the first 4 months of fiscal year 1986. In fiscal year 1981, large procurement PALT, then defined as awards over \$10,000, averaged 119 days. It dropped to a low in fiscal year 1983, averaging 98 days, then steadily increased through January 1986, averaging 133 days for the first 4 months of fiscal year 1986.

¹For more information on this effort, see our report Procurement: Project 12,000 at the San Antonio Air Logistics Center (GAO/NSIAD-86-119BR, June 25, 1986).

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Additional Information on Changes in PALT
at the Seven Locations Visited

According to procurement officials at this activity, the drop in large procurement PALT in fiscal year 1983 was primarily due to the redefinition of large and small procurements.² Although the redefinition of large and small procurement occurred in fiscal year 1982, officials stated that its effect on large procurement PALT did not show up until 1983. Officials said a lot of procurements, those between \$10,000 and \$25,000, that would have been considered large were shifted to small and this resulted in the award of fewer large contracts and a lower PALT.

According to the procurement officials, large procurement PALT increased in fiscal year 1984 for two primary reasons:

- The Center's contracting work force consisted of 75 percent trainees during this period and
- FAR became effective in April 1984, which resulted in buyers soliciting offers using FAR while they were awarding contracts under previously existing regulations.

These officials further stated that the sharp increase in the fiscal year 1985 large procurement PALT resulted from (1) the relative inexperience of many personnel hired in 1984, (2) the initial implementation of the competition act, and (3) the awarding of "aging contracts" that had not been awarded due to problems in fiscal year 1984 but were finally being awarded.

Procurement officials stated that the competition act has increased large procurement PALT by at least 19 days, but this effect has shown up only in the latter part of fiscal year 1985. They explained that the 19 days consisted of a 4-day waiting period from the date of transmission of the preaward notice to the Commerce Business Daily to the notice publication date, and an additional 15-days waiting period between the publication of the notice and the release of the solicitation. These officials also stated that the competition act's lowered dollar threshold (from \$500,000 to \$100,000) for required contractor submission of cost and pricing data has contributed to a longer PALT for large procurements.

²The DOD Authorization Act of 1982 (Public Law 97-86) revised 10 U.S.C. 2304 to raise the small purchase threshold from \$10,000 to \$25,000, effective December 1, 1981.

Department of Energy's Office of Procurement Operations

We obtained annual PALT data for fiscal years 1984 and 1985. The data were broken down into (1) sealed bid, (2) competitively negotiated, and (3) other than competitive contracts. No other data or categories of data were available. According to Office of Procurement Operations officials, monthly PALT data were not available; in addition, the Office had different data collection systems in place before fiscal year 1984 and, therefore, PALT data were not readily available for those periods.

PALT increased from fiscal years 1984 to 1985, except for other than competitive contracts which decreased from 27 days in fiscal year 1984 to 24 days in fiscal year 1985. PALT for competitively negotiated and sealed bid contracts awarded in fiscal year 1984 averaged 24 and 31 days, respectively, and averaged 46 and 41 days, respectively, in fiscal year 1985. This represented a 92-percent increase in PALT for competitively negotiated contracts and a 32-percent increase for sealed bid contracts.

According to the Energy Department's Deputy Competition Advocate, these increases were a direct result of the competition act's increased time requirements relating to the Commerce Business Daily. Another procurement official stated that the competition act increased PALT because (1) better work statements, which are part of solicitations and contracts, are being prepared, (2) better evaluations of offers are being done, and (3) before awards are made, bid protest possibilities are being explored more fully.

Marshall Space Flight Center

We obtained annual PALT data for fiscal years 1980 through 1985 and quarterly PALT data for fiscal years 1984 through the first quarter of fiscal year 1986. The data were (1) expressed in terms of dollar categories of less than \$100,000, \$100,000 through \$1 million, and greater than \$1 million and (2) categorized in terms of competitive versus non-competitive contract awards. Data were not categorized in terms of contracts valued at less than or greater than \$25,000, nor were the data available on a monthly basis.

Average PALT increased from 92 days to 119 days between fiscal years 1980 and 1984. It increased to 172 days for fiscal year 1985, almost 45 percent above the fiscal year 1984 level. Average PALT declined to 131

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days, however, for contracts awarded during the first quarter of fiscal year 1986.³

For fiscal year 1985, average PALT was 181 days for competitive awards and 158 days for noncompetitive awards. For the first quarter of fiscal year 1986, average PALT declined to 130 days for competitive awards and to 136 days for noncompetitive awards.

The Director of Procurement and a procurement analyst stated that many factors could have affected PALT. For example, they said that the competition act has increased the number of contractor proposals for competitive awards and each one must be considered before awarding a contract. According to these officials, there has also been an increase in the number of contract awards of \$100,000 or greater, and it takes longer to process these awards due to their complexity.

However, the procurement official responsible for PALT told us that it was probably too early to analyze the competition act's effect on PALT. According to this official, it was not until the first quarter of fiscal year 1986 that post-competition act awards constituted a majority of total contract awards at the Center.

³This first quarter fiscal year 1986 data represent the initial post-competition act data available. Ninety-six percent of the new contracts awarded at Marshall Space Flight Center during this period were under the competition act's provisions.

Internal Control Problems and the Federal Manager's Financial Integrity Act

Chapters 2 through 5 of this report discuss various internal control problems or weaknesses at the locations we reviewed. These chapters also contain our recommendations to correct the problems identified, including revising FAR. We believe these weaknesses are material in nature because corrective actions are needed to ensure that procurement practices are consistent with statutory requirements and/or because of the pervasiveness of the problems, as discussed throughout this report.

Section 2 of the Federal Managers' Financial Integrity Act of 1982 [31 U.S.C. 3512(b) and (c)] requires the heads of federal agencies to report annually on the status of internal accounting and administrative controls to the President and the Congress. This report must state whether controls fully comply with the act's requirements which are to establish controls in accordance with the Comptroller General's standards and to provide reasonable assurance that (1) obligations and costs comply with law, (2) assets are safeguarded against waste, loss, unauthorized use, or misappropriation, and (3) revenues and expenditures are properly recorded and accounted for. To the extent systems do not comply, any material control weaknesses, along with plans and schedules for their correction, must also be reported. The Office of Management and Budget issued internal control guidelines in December 1982 for agencies to use in evaluating and reporting on their internal controls.

We believe that the problems discussed in this report should be identified as material weaknesses in the DOD, NASA, and Department of Energy reports to the President and the Congress covering fiscal year 1987 and in the reports the four DOD agencies we reviewed submit to the Secretary of Defense for that period.

None of these agencies identified these kinds of problems as material weaknesses in their reports for fiscal years 1986 or 1985, except for the following:

- DOD reported in fiscal year 1985 that procurement procedures had not required contractual needs to be periodically recompeted. DOD stated that corrective actions had been taken to strengthen procedures by (1) issuing new and revising previously existing regulations and (2) establishing a requirement for an independent review of each procurement request by a competition advocate.
- DOD reported in fiscal year 1986 that one of its components (the Defense Communications Agency) needed to do additional market research to assure enhanced competition and more cost-effective acquisitions. The Defense Communications Agency's report to the Secretary of Defense

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stated that current market research procedures were inadequate to identify potential sources other than incumbent sources.

Our Selected Reports Relating to Competition and Sole-Source Contracting

	Date
Procurement: The Use of Unpriced Options and Other Practices Needs Revision (GAO/NSIAD-86-59)	Apr 23, 1986
Federal Regulations Need to be Revised to Fully Realize the Purposes of the Competition in Contracting Act of 1984 (GAO/OGC-85-14)	Aug 21, 1985
Less Sole-Source, More Competition Needed on Federal Civil Agencies' Contracting (GAO/PLRD-82-40)	Apr 7, 1982
Reporting Competition in Defense Procurements—Recent Changes Are Misleading (GAO/PLRD-82-45)	Mar. 8, 1982
Labor Needs to Better Select, Monitor, and Evaluate its Employment and Training Awardees (GAO/HRD-81-111)	Aug. 28, 1981
DOD Loses Many Competitive Procurement Opportunities (GAO/PLRD-81-45)	July 29, 1981
Controls Over DOD's Management Support Services Contracts Need Strengthening (GAO/MASAD-81-19)	Mar 31, 1981
Government Earns Low Marks on Proper Use of Consultants (GAO/FPCD-80-48)	June 5, 1980
Controls Over Consulting Service Contracts at Federal Agencies Need Tightening (GAO/PSAD-80-35)	Mar 20, 1980
The Department of Energy's Practices for Awarding and Administering Contracts Need to be Improved (GAO/EMD-80-2)	Nov. 2, 1979
Increased Competition Can Reduce Elevator Maintenance and Cleaning Service Contract Costs (GAO/PSAD-78-115)	June 14, 1978
Competition for Negotiated Government Procurement Can and Should Be Improved (GAO/PSAD-77-152)	Sept. 15, 1977
More Competition in Emergency Defense Procurement Found Possible (B-171561)	Mar 25, 1971

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