

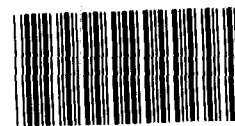
GAO

Report to the Chairman, Committee on
Post Office and Civil Service, House of
Representatives

August 1991

PROCUREMENT REFORM

New Concepts Being Cautiously Applied at the Postal Service



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General Government Division

B-237269

August 6, 1991

The Honorable William L. Clay
Chairman, Committee on Post
Office and Civil Service
House of Representatives

Dear Mr. Chairman:

This report is in response to your predecessor's request that we review the procurement practices of the United States Postal Service (USPS). It addresses USPS' implementation of new procurement rules adopted in 1988 as part of an overall program to improve postal procurement. The Committee asked us to monitor and review the status of USPS' efforts to improve its purchasing.

As agreed with the Committee, our objectives were to (1) compare and contrast federal¹ and USPS procurement rules, (2) determine how USPS has used its authority to exercise more discretionary judgment than federal agencies when making purchases, and (3) determine the effects when USPS made purchases using the new rules.

We also obtained information on USPS' bid protest process and the extent contracts were awarded to small and minority business firms. We were concerned that allowing contracting officers to exercise more discretion could affect these areas.

Background

To support its mission of swift and reliable mail delivery, USPS procured \$4.2 billion in goods and services in fiscal year 1990. Under the Postal Reorganization Act of 1970, USPS is permitted to establish its own procurement rules and regulations, operating like a private business when it is advantageous to do so. Consequently, USPS is exempt from many of the laws, regulations, and executive orders pertaining to procurement that apply to executive branch entities. The Competition in Contracting Act, which establishes the federal policy of "full and open competition," is included in these exemptions.

¹Rules contained in the Federal Acquisition Regulation that govern purchases of the executive branch.

For many years USPS did little to take advantage of the procurement flexibility allowed by the Postal Reorganization Act. The Postal Contracting Manual—issued in 1972—adhered to federal practices prevailing at the time. But in 1988, on the basis of a number of recommendations by consultants and internal study groups to improve postal procurement, USPS issued a new procurement manual designed to take advantage of the best of private and public practices. The new manual set forth policies and procedures controlling contracting by each of USPS' three procurement organizations—the Procurement and Supply Department, the Facilities Department, and the Office of Transportation and International Services.

The development and use of unique procurement rules are an important part of an overall program to improve USPS procurement that began in 1987 and will continue for several years. USPS designed the new procurement rules to (1) incorporate the most advantageous aspects of both federal and commercial purchasing practices and (2) provide contracting officers greater discretion to exercise business judgment when making procurement decisions.

The new rules were hailed by many procurement experts, including top procurement officials at the Department of Defense, General Services Administration (GSA), and National Aeronautics and Space Administration, as an encouraging initiative offering the opportunity to test alternative approaches that could affect the course of procurement regulation and reform throughout the government. There was also a certain amount of skepticism and concern about the new rules, however, because their adoption coincided with a controversial sole-source and shared savings contract with Perot Systems Corporation to study postal operations and identify opportunities for reducing costs and improving customer service. The contract was cancelled in December 1988 following considerable criticism in Congress, the press, and our testimony.²

Results in Brief

We found no major problems arising from USPS' adoption of the new procurement rules. However, the cautious and limited use of the added procurement discretion by postal procurement officials to date is insufficient to declare the new policy a success. Overall, USPS' purchasing practices more closely resembled those of federal agencies

²The Postal Service's Sole-Source Contract With Perot Systems Corporation (GAO/T-GGD-88-50, Aug. 10, 1988).

than might have been expected from the differences in discretionary judgment permitted by their respective rules.

The contracts we examined and information we gathered showed that USPS' use of the increased discretionary judgment permitted by the procurement manual resulted in competitive procurements that satisfied the department that requested the goods or services. The policy of restricting competition to prequalified contractors focused competition on capable contractors. Procurement organizations used restricted competition sparingly because, for the most part, they continued to seek all available competition and did not develop the approved sources or products lists needed to limit competition. Facilities, the department that regularly prequalified contractors, found it required intensive use of scarce professional resources to carry out the prequalification reviews of potential contractors. At the time of our review, Facilities was reevaluating how often this method will be used in the future.

Each of the three USPS purchasing organizations used the increased discretion provided by the procurement manual differently. The Procurement and Supply Department eliminated the use of sealed bids and used competitive negotiation to award its contracts. The Facilities Department primarily used the new authority to restrict the bidders on less than 2 percent of its construction contracts to prequalified contractors. The Office of Transportation generally did not change its contracting practices for procurement of highway transportation and continued awarding contracts to the low bidder at public bid openings. However, the Office did use competitive negotiation to award air and rail transportation contracts.

The views of buyers, customers, and contractors as well as the contracts we examined indicated that procurements were fair when USPS restricted competition and when USPS used simplified procedures to make large dollar purchases.

USPS has not collected data that show the extent to which procurement personnel have used the added discretion permitted by the new rules. USPS also has not kept track of the specific advantages and disadvantages of using increased discretionary judgment. USPS awarded a contract in April 1991 to study this matter in the Procurement and Supply Department.

Objectives, Scope, and Methodology

To compare USPS and federal procurement rules, we examined two areas—competition and simplified purchasing—that are cornerstones of the USPS effort to improve procurement. The use of a different standard for competition and the authority to make greater use of simplified purchasing procedures are two areas where key differences exist between USPS' procurement rules and those governing federal agencies.

To determine how USPS has used its authority, we interviewed USPS procurement officials at headquarters and in two of the five USPS regional offices. We selected San Bruno, CA, and Philadelphia because USPS officials said these regions were representative of the effort to implement the new rules outside of Washington, D.C. We asked USPS to identify contracts that benefited from using the new rules and to provide information on the extent to which the greater discretion provided by the new rules was used.

We reviewed 22 contracts that USPS officials identified as having directly benefited from the new rules, including 5 that were awarded after USPS limited competition by requiring prequalification. Our selection process was not random, and the results are in no way projectable to the universe of USPS purchases.

We also interviewed six private attorneys who had represented contractors in protests at USPS to obtain their views on the USPS protest process.

To determine the effects when USPS made purchases using the new rules, we examined contract files and discussed specific contracts with appropriate contracting officials, customer personnel, and competing contractors. We also held five focus group meetings to obtain the views of contracting officials and customers on the merits and problems of using the new rules. Three of the meetings were held in San Bruno, CA, and were comprised of (1) contracting personnel from Procurement and Supply, (2) contracting personnel from the Facility Service Center, and (3) regional procurement customers. The other two meetings were held in Washington, D.C., and were comprised of contracting officers from Procurement and Supply and their customers.

We discussed our findings with USPS officials and incorporated their comments where appropriate. We did our work from February 1989 through September 1990 in accordance with generally accepted government auditing standards.

USPS' Rules Permit More Options Than Federal Rules

The USPS policy of "adequate competition" from qualified sources contrasts with the federal policy of "full and open competition" emphasized in the Competition in Contracting Act. USPS believes the federal policy can be cumbersome and time consuming, and thus prevent it from operating in a businesslike way.

Competitive procurement has long been the preferred method in government acquisition. As far back as the early Continental Congress, competition through sealed bidding was sought to ensure the government received fair prices. The 1984 Competition in Contracting Act established the current federal policy—to obtain "full and open competition" whenever possible. The act also provided standards and formalized the appeal process to protect the rights of prospective or actual competitors. USPS' policy, however, focuses on the business objective of meeting the needs of operating customers and permits striking a somewhat different balance between customer needs and access of competitors to postal business. The key difference is that USPS' policy allows the contracting officer discretion to determine the measures taken to obtain competition, including limiting competition to those contractors or items of known capability.

Each of the three USPS purchasing organizations used the increased discretionary judgment provided by the procurement manual differently. The Procurement and Supply Department eliminated the use of sealed bids and used competitive negotiation to award its contracts. However, the Department seldom used the authority to limit competition or to make large purchases of commercial items using simplified procedures. The Facilities Department primarily used the added authority to limit competition by requiring construction contractors to prequalify before they were eligible to submit bids. The Office of Transportation continued to award highway transportation contracts using sealed bids but started using competitive negotiation to award air and rail transportation contracts.

USPS' procurement rules allow using simplified procedures for purchases of commercial items up to \$1 million (up to \$50,000 for all other items). These procedures are similar to federal methods that can be used on purchases up to \$25,000. Simplified procedures use streamlined methods, such as telephone price quotes from a minimum of three suppliers documented by a brief written record in the contract file.

USPS' Authority to Limit Competition Seldom Used

Overall, USPS officials said that prequalification has been used in only a small portion of Facilities and Procurement and Supply contracts. In fiscal year 1989, for example, Facilities estimated that prequalification was used on 60 contracts valued at \$280,500,000, representing less than 2 percent of the number of contracts awarded and about 26 percent of the contract value for that year. Procurement and Supply officials said prequalification was only occasionally used, but they were unable to estimate the amount or extent of use. Transportation did not use prequalification; it awarded highway contracts using sealed bids and competitively negotiated rail and air contracts.

Facilities used the prequalification technique in areas where local staff determined that there were a sufficient number of capable contractors to provide adequate competition. Facilities staff in both headquarters and the field said they found that the prequalification evaluation process often was time consuming for USPS' professional resources. Prequalification requires convening a panel of architects, engineers, and technicians to evaluate the packages submitted by all the contractors to determine what contractors are eligible to submit bids, rather than just the low bidder. Consequently, Facilities, after some preliminary experience, is reevaluating how frequently this method will be used in the future. Facilities expects to use the technique only on large construction projects, such as those over \$10,000,000, in the future.

USPS managers said that outside of the Facilities Department they rarely use their authority under the procurement manual to limit competition. The manual says that the prequalifying method should be used when it best serves the interests of USPS. Procurement managers we spoke to did not have a good understanding of what meets this criterion. They were reluctant to use this authority unless there was a clearly defined benefit to USPS or another compelling reason to limit competition.

USPS officials said that another reason why USPS has rarely attempted to limit competition is that for most commodities and services, approved sources or products lists have not been developed. We found that USPS buyers normally solicit all interested competitors through such public notice methods as the Commerce Business Daily, trade publications, or local announcements.

Contractors Said That USPS' Restricted Competition Was Fair

We discussed USPS' authority to restrict competition with 16 contractors—8 winners and 8 who competed and were not selected. In general, both winning and losing contractors said USPS' competition was fair.

The contractors we interviewed included the eight who competed for the five contracts we reviewed that were awarded after USPS limited competition by requiring prequalification. Four of these contracts were for facility construction or renovation while the other was for travel services. The contractors said that, overall, the process was fair and that USPS encouraged them to compete. However, some of the contractors did have specific complaints. The two contractors who failed to prequalify said that USPS could have provided better explanations for their determinations. Three of the eight contractors said that the prequalification process was burdensome or that they did not understand why certain information was needed. Another contractor said that prequalification documents were bothersome to assemble and submit but acknowledged that the process closely approximated methods used in private industry.

Simplified Procurement Procedures Not Widely Used for Large Dollar Purchases

USPS may use simplified procedures to buy up to \$1 million worth of commercial items and up to \$50,000 for any other purchase. Federal rules generally limit the use of these procedures to purchases of \$25,000 or less for all types of items. While both procurement and operating customers said that using simplified procedures provided timely acquisitions of quality products, the procedures were not widely used because USPS buyers were not sure which items qualified as commercial. Also, until November 1990, the Assistant Postmaster General for Procurement and Supply was required to approve purchases over \$50,000 that were awarded using simplified procedures.

USPS officials pointed out that headquarters has used simplified procedures to contract for printing services. The Assistant Postmaster General for Procurement and Supply granted special approval to use simplified procedures to purchase printing services because many print orders are needed in a short time frame. Procurement officials said that use of this authority has allowed the printing procurement group to quickly complete purchases. For example, USPS was able to purchase and send out to customers about 110 million notices of a first class postage rate increase to 29 cents within 1 week after approval of the new rate by the Board of Governors.

Better Feedback Needed on USPS' Experiences Using Authority Provided by the New Rules

USPS was not collecting data on the use of its new rules. A critical element of management is the feedback and evaluation of the relative success of policy changes affecting operations. Currently, USPS lacks a system to promote the use of rules that appear to be benefiting USPS and to identify those that should be modified because they are not working well. To maximize the potential benefits available from the procurement rule changes, USPS should identify (1) areas of success and encourage the use of those practices and (2) areas that need attention and initiate corrective actions.

For example, to address the extent to which prequalification was used in fiscal year 1989, Facilities had to request information from each of its regional operations, and Procurement and Supply was unable to provide an estimate of the extent it had used the flexibility granted by the new rules. USPS also did not collect data on the extent and results of its use of other new methods, such as simplified purchases of high value commercial items.

New Rules Have Not Hindered USPS' Small Business Contracting

While USPS' new procurement rules changed some procurement methods, USPS continued to emphasize the importance of contracting with small and minority business firms. We examined this area because we were concerned that allowing contracting officers to exercise more discretion could affect the awards to these firms.

USPS' new procurement rules have had little effect on the volume of contracts awarded to small and minority firms. USPS' policy commitment to this area is through goals established for contracting officers and prime contractors. In fiscal years 1987 through 1990, 47 to 56 percent of USPS' procurement dollars were awarded to small business firms (between \$1.6 and \$2.3 billion annually). Awards to minority firms ranged from 4.6 percent to over 6 percent of procurement dollars during this period. USPS' performance in both of these areas compared favorably to the awards made by federal agencies that were about 15 percent for small business and about 4 percent for minority business during fiscal years 1987 and 1988 (the last 2 years for which overall federal data were available).

USPS has used a number of approaches to encourage small and minority business contracting. Under the old rules, USPS could pay minority firms up to 10 percent over the contract estimate for contracts awarded to them. The new manual eliminated this practice. Under the new rules, USPS has other approaches to encourage small and minority contracting.

These other approaches include establishing small and minority contracting goals, requiring prime contractors to submit subcontracting plans, and encouraging buyers to limit competition to minority firms.

First, USPS' purchasing organizations are required to establish and routinely monitor small business and minority contracting goals. Both USPS procurement managers and procurement staff said the goals were an effective way to implement the program. One theme raised in our Washington and San Bruno focus group meetings was that USPS' goals were more effective than the federal approach where, in addition to using goals, special programs are dedicated to award contracts to targeted groups.

We found that goals were being used in the field activities we reviewed. For example, in the San Bruno office, the minority contracting goal in fiscal year 1990 was 10 percent of awards and 5 percent of dollars. In the first half of 1990, the region awarded 16.7 percent of awards and 6.1 percent of dollars to minority firms. The branch manager said that the region had no trouble achieving these goals through its normal contracting activities.

Second, like federal agencies, USPS requires prime contractors on large contracts to consider subcontracting with small and minority firms. A standard contract clause required USPS prime contractors to submit acceptable subcontract plans that emphasize this area. Additionally, one of the elements in evaluating prospective contractors under prequalification is their commitment to small and minority subcontracting. In the five contracts we reviewed that used prequalification, subcontracting plans were required as part of the process.

Finally, USPS encourages its buyers to target acquisitions that are suitable for competition among minority-owned firms and limit the competition on these purchases to these firms.

USPS' Bid Protest Process

Protests of USPS' procurements are handled by a group within its Office of General Counsel. This group has about 16 attorneys divided into three sections to handle all property and contract law except for facilities work awarded by field offices. Attorneys from this group provide legal assistance to USPS procurement staffs in all aspects of contracting from proposal review to litigating contractor claims. In an effort to provide impartiality, the Associate General Counsel said he assigns an

attorney who was not previously involved with the solicitation to analyze any protests arising from the contract action.

Protest resolution at USPS offers a simplified, inexpensive, and expedient means to respond to contractor complaints about USPS' procurement practices. It provides contractors who believe they were treated unfairly the opportunity to challenge contracting officer decisions without going to court. One problem, however, is that the system is open to criticism from competitors who perceive, correctly, that the structure of the USPS protest process is not as independent as that governing protests of federal agency procurements.

Under federal rules, contractors who believe they have been treated unfairly can take their complaints to independent units in GAO or in the case of automated data processing procurements, either GAO or the GSA Board of Contract Appeals. The most frequent complaint from private attorneys we interviewed who were involved with the USPS bid protest process was that the process did not provide for an independent protest unit.

Our work was not designed to determine whether the comparatively reduced level of independence for the USPS bid protest function had actually resulted in a lack of fairness to protestors, nor did we address the feasibility of more independent alternatives to the present system.

Conclusions

While contracts we examined as well as customer, contractor, and user views on the use of the new procurement rules were encouraging, the additional discretionary judgment has not been used enough for us to conclude that the policy changes have proven their worth and warrant broader application in other contexts.

USPS did not collect data that show the extent to which procurement personnel have used the added discretion permitted by the new rules. USPS also did not keep track of the specific advantages and disadvantages when contracting officers used increased discretionary judgment. This data would be of use not only to USPS but also to other members of the federal procurement community who are considering the adoption of similar techniques.

Recommendation

We recommend that the Postmaster General systematically develop data on the extent of use and the specific advantages and disadvantages that

have resulted from using USPS' more flexible procurement procedures, such as prequalification and large dollar commercial item purchases.

Agency Comments

We discussed the contents of this report with responsible USPS officials, who generally agreed with its accuracy. They suggested several specific changes of a technical nature that were incorporated into the report where appropriate. USPS officials pointed out that in April 1991 a contract was awarded to study implementation of the procurement manual by the Procurement and Supply Department. While results of this effort were not yet available, initiating the study was consistent with our recommendation. They also said that training the procurement work force is critical to maximizing the use of the discretion the new manual provides. They explained that while training of procurement personnel has been given high priority it has not been completed and will continue to be emphasized by USPS management.

As arranged with your office, we are sending copies of this report to the Postal Service Board of Governors; the Postmaster General; the Postal Rate Commission; the Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Committee on Governmental Affairs, United States Senate; and other interested parties. Copies will be made available to others upon request.

Major contributors are listed in the appendix. If you have any questions concerning the report, please call me on (202) 275-8676.

Sincerely yours,

for William F Engel

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