
BY THE COMPTROLLER GENERAL
Report To The Honorable Stephen Solarz
House Of Representatives
OF THE UNITED STATES

DOD Loses Many Competitive Procurement Opportunities

DOD awarded an estimated \$289 million in fiscal year 1979 contracts without obtaining available competition. Contracting officers often acquiesced to inappropriate noncompetitive procurement requests from headquarters or accepted, without adequate support, assertions made by technical and end-user personnel. In all cases where competition should have been obtained, contracting officers failed to follow proper contracting procedures to make sure that only one company could satisfy the procurement request.

GAO recommends that the Secretary of Defense clearly specify the factual support needed to justify noncompetitive procurements, develop service plans establishing objectives for improving competition, and implement a system for monitoring procurement office progress in achieving these goals.





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

B-203856

The Honorable Stephen Solarz
House of Representatives

Dear Mr. Solarz:

In response to your November 16, 1979, request as Chairman, Task Force on Government Efficiency, House Committee on the Budget, we reviewed a sample of fiscal year 1979 Department of Defense noncompetitive contracts to determine if they were appropriately awarded.

Our analysis showed that Defense lost many opportunities to obtain available competition. Although we found a large number of inappropriate procurements, we believe that the 8-percent decline from 1972 to 1978 in DOD competition was primarily caused by major policy, program, and funding changes. This report contains recommendations to the Secretary of Defense which, if implemented, can help control inappropriate noncompetitive procurements.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of the report. Then, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Rowland".

Acting Comptroller General
of the United States

D I G E S T

Both the Congress and the Department of Defense (DOD) are concerned about the continuing and worsening trend in noncompetitive DOD procurements. In past studies, GAO reviewed noncompetitive procurements of items, such as spare parts, that are bought repetitively from the original manufacturer of the end item. GAO usually found that the Government lacked or had not taken the time to develop purchase descriptions needed to invite competitive bids and that opportunities existed to develop these descriptions to obtain competition. GAO plans to continue studying competitive opportunities in this large universe of repeat noncompetitive procurements.

In response to Congressman Solarz' November 16, 1979, request as Chairman, Task Force on Government Efficiency, House Committee on the Budget, GAO studied other opportunities for introducing competition in DOD procurements. After discussions with the Chairman's office, GAO focused on noncompetitive procurements of goods and services which had not been previously purchased. This universe represents \$5.3 billion of a total \$39.5 billion in fiscal year 1979 noncompetitive procurements. GAO analyzed a random sample of goods and services purchased by DOD agencies for the first time in fiscal year 1979 and studied the decision process which led to noncompetitive buying. GAO concluded that 25 of the 109 contracts in its sample had been inappropriately awarded noncompetitively. Each of the 25 contracts was valued at less than \$1 million. On the basis of this study, GAO estimates that about \$289 million of the noncompetitive procurements of items bought for the first time in fiscal year 1979 could have been competitive. Because adequate statistical information was unavailable, GAO could not determine how much could have been saved through the additional competition. However, several studies have indicated that as much as 25 percent can be saved through increased competition. (See p. 5.)

Although GAO found that a large number of noncompetitive contracts could have been competitive, this was not in itself a significant cause of the fiscal years 1972 to 1978 decline in price competitive spending as a percentage of DOD's procurement budget. The primary reasons for this decline were

- increased spending on and a concurrent loss of competition for petroleum and nuclear submarines,
- increased use of design and technical competition for major weapon systems, and
- greater emphasis on "set asides" for businesses owned and controlled by socially or economically disadvantaged persons. (See pp. 11 to 14.)

Contracting officers are responsible for maximizing competition. However, in all 25 procurements where GAO determined that competition should have been obtained, contracting officers failed to follow sound contracting procedures to ensure that only one company could satisfy the procurement requirements. In over 70 percent of these cases, contracting officers acquiesced to specific procurement requests from headquarters, or accepted, without adequate support, assertions made by technical and end-user personnel that justified noncompetitive procurements. Major processing deficiencies included

- improper use of the public exigency exception,
- inadequate performance of market research,
- insufficient development of data package to ensure competition, and
- use of procurement specifications which did not represent the Government's minimum needs. (See pp. 4 to 10.)

GAO also determined that the Defense Nuclear Agency's use of early starts and unsolicited proposals inhibited competition. (See pp. 15 to 18.)

DOD recently required the services to develop plans to improve their competitive performances. These plans, however, do not specifically

address the contracting problems identified in this report. (See p. 10.)

RECOMMENDATIONS

To reduce inappropriate noncompetitive procurements, GAO recommends that the Secretary of Defense:

- Provide to contracting officers and program personnel more specific guidance on the factual support needed to justify noncompetitive procurements.
- Require the services to establish percentage improvement goals and address contracting problems discussed in this report in their plans for improving competition.
- Establish a systematic approach for monitoring procurement office goals and reviewing selected contracts and documentation to assure they were appropriately awarded.
- Require the Defense Nuclear Agency to justify its use of early starts and unsolicited proposals as a way of contracting. (See pp. 20 and 21.)

AGENCY COMMENTS

DOD agreed with the thrust of GAO's recommendations concerning the need to justify noncompetitive procurements and the need for the Defense Nuclear Agency to strengthen its contracting procedures. However, DOD did not believe that contracting officers and program personnel required more specific guidance on the factual support needed to justify noncompetitive procurements. DOD also disagreed with GAO's recommendations which relate to establishing and monitoring percentage goals for improving competition. GAO continues to believe that providing specific guidance and establishing competitive goals are necessary because GAO's findings demonstrated that DOD's current guidance and review procedures did not adequately ensure competitive procurement whenever feasible. (See pp. 21 and 22.)

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ABBREVIATIONS

AFB	Air Force Base
DNA	Defense Nuclear Agency
DOD	Department of Defense
GAO	General Accounting Office
MAC	Military Airlift Command

CHAPTER 1

INTRODUCTION

Although competitive solicitations are the preferred method for obtaining offers to supply Government needs, currently, about two-thirds of the value for all Department of Defense (DOD) procurements are noncompetitive. Out of a total of \$62.1 billion awarded by DOD in fiscal year 1979, \$22.6 billion was awarded competitively and \$39.5 billion was negotiated without competition. This level of noncompetitive awards represents a 5.1-percent increase since 1972 in noncompetitive awards as a proportion of all DOD awards. Both DOD and the Congress are concerned about the continuing and worsening trend in noncompetitive procurements.

DOD uses formal advertising and negotiation as the two basic procedures for purchasing goods and services. The Armed Services Procurement Act of 1947 requires DOD to procure by formal advertising whenever it is feasible and practical. According to the act, when a procurement is formally advertised, contracting officers should award the resultant contract without negotiation to "that responsive and responsible bidder, whose bid will be most advantageous to the Government, price and other factors considered."

The law also establishes 17 exceptions to the use of formal advertising, which provide Government contracting officers with the authority to negotiate. Generally, contracting officers must develop written justifications supporting a decision to negotiate rather than to formally advertise.

While formal advertising is always competitive, negotiated awards may be either competitive or noncompetitive. In cases where formal advertising is neither feasible nor practical, contracting officers may negotiate to obtain competition for the best price or the best design and/or technology within an acceptable price range. The following chart shows the distribution of DOD's fiscal year 1979 competitive awards.

Competitive Awards

<u>Total</u>	<u>Formally advertised</u>	<u>Competitive negotiations</u>	
		<u>Price</u>	<u>Design & technical</u>
- - - - - (billions) - - - - -			
\$22.6	\$4.1	\$12.7	\$5.7

Note: Total does not add due to rounding.

Although the Congress has consistently advocated maximum use of competition, negotiated awards made without competition have historically represented a much larger portion of the total DOD procurement dollar. A large portion of these noncompetitive awards--called follow-on contracts--are the result of subsequent procurements from original contractors where past decisions have dictated contracting with particular firms. Follow-on contracts to ones awarded competitively are recorded separately by DOD as follow-on after price competition and follow-on after design and technical competition. The remainder of DOD's noncompetitive awards and the largest group--called other-one-source-- are neither competitive nor follow-on after competition. The following chart depicts the distribution of DOD fiscal year 1979 noncompetitive procurements.

Noncompetitive Awards

<u>Total</u>	Follow-on after price & after design & technical <u>competition</u>	<u>Other-one-source</u>
- - - - - (billions) - - - - -		
\$39.5	\$10.8	\$28.7

All procurement actions are either new procurements or actions under existing contracts, such as modifications. These later actions are generally given the same competitive classification as the original contract. Thus, after discussions with the Chairman's staff, we agreed to focus on those new procurement actions that were neither competitive nor follow-on after competition. The total dollar value of all new fiscal year 1979 contracts was \$5.3 billion. Many other noncompetitive areas of the DOD procurement budget need reviewing. We therefore will be conducting future studies to identify additional competitive opportunities.

OBJECTIVES, SCOPE, AND METHODOLOGY

This report is in response to Congressman Solarz' November 16, 1979, request as Chairman, Task Force on Government Efficiency, House Committee on the Budget (see app. III). He wanted us to assess whether DOD obtained competition whenever feasible. We reviewed a random statistical sample of 109 new noncompetitive fiscal year 1979 contracts valued at \$941 million. We analyzed Army, Navy, Air Force, Defense Logistics Agency, Defense Nuclear Agency, and National Security Agency contracts to determine whether

--competition could have been obtained;

--DOD had adequate management controls to minimize noncompetitive procurements; and

--improvements were needed in regulations, policies, and/or practices to maximize competition.

We are 95-percent confident that our projectable results are accurate to within \$143 million; that is, the actual value of noncompetitive procurements which could have been competed may be \$143 million higher or lower than the projection. (See app. I for sampling strategy.) Specific examples used in the report are representative of the types of situations inhibiting competition. Our analysis does not project potential dollars that could be saved through the additional competition because accurate statistical information was unavailable. 1/ In addition, for convenience of presentation, most dollars and percentages were rounded. We limited our universe to new definitive noncompetitive contracts over \$10,000 because (1) we had a greater chance of identifying competitive opportunities for this contract type and (2) the data base does not include contracts under \$10,000. In addition, we separately reviewed the reasons for the 8-percent decline in competition between fiscal years 1972 and 1978.

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

CHAPTER 2

POOR CONTRACTING PROCEDURES RESULT IN LOST OPPORTUNITIES TO OBTAIN COMPETITION

In 25 of the 109 noncompetitive contracts reviewed, we found that contracting officials did not follow sound contracting procedures and thus lost the opportunity to obtain competition even though it was available. The Defense Acquisition Regulation requires contracting officers to take certain steps to maximize competition. When the officers do not take these steps, they risk paying too much for goods and services. In total, our statistical projection shows that \$289 million (or a range between \$146 and \$432 million) in new noncompetitive contracts awarded by DOD in fiscal year 1979 could have been competitive. In over 70 percent of the cases where competition should have been obtained, contracting officers relied upon procurement requests for sole-source procurements from headquarters or accepted, without adequate support, technical and end-user personnel assertions that only one source was available.

In 1979 the services and the Defense Logistics Agency developed plans to improve competition. Except for the Defense Logistics Agency's plans, however, none of the plans address the contracting problems identified in this chapter.

CONTRACTING OFFICERS ARE REQUIRED TO OBTAIN COMPETITION WHENEVER POSSIBLE

The Defense Acquisition Regulation specifically directs DOD contracting officers to maximize competition in buying goods and services through formal advertising and negotiated price competition.

Contracting officers should assure themselves that

- all procurements, whether by formal advertising or by negotiation, are made on a competitive basis to the maximum practicable extent;
- if the use of formal advertising is not feasible and practicable, contracts for goods and services are properly justified and negotiated under 1 of 17 specific exceptions to formal advertising; and
- if the use of formal advertising is feasible and practicable, contracts for goods and services are to be awarded by formal advertising, even if specific exceptions might otherwise allow a purchase to be negotiated.

When a proposed procurement appears to be noncompetitive, the contracting officer is responsible not only for assuring that competition is not feasible but also for taking those actions needed to avoid subsequent noncompetitive procurements. Such actions should include examining the reasons for the procurement being noncompetitive and identifying steps to foster competitive conditions for future procurements. Thus, buying noncompetitively should be used only when all attempts to obtain competition have failed.

DOD AWARDED SEVERAL HUNDRED MILLION
DOLLARS IN FISCAL YEAR 1979 CONTRACTS
WITHOUT OBTAINING AVAILABLE COMPETITION

DOD lost opportunities to obtain available competition on an average of \$289 million in new noncompetitive contracts in fiscal year 1979. We based this projection on our determination that 25 of the 109 contracts analyzed should have been competed. Since this figure represents a statistical projection, the actual dollar value of inappropriate noncompetitive procurements may be more or less than this amount. Although we could not determine the actual dollars that could have been saved through competition, several studies have indicated that as much as 25 percent can be saved through competition.

A common element among all the inappropriate procurements was their relatively small dollar value. All the inappropriate procurements involved contracts under \$1 million. These smaller procurements represented a large portion of DOD's new noncompetitive contract awards. The following table shows the relationship of small procurements to total procurements.

FY 1979 New Definitive Noncompetitive
Contract Awards Over \$10,000

<u>Contract value</u>	<u>No. of contracts</u>	<u>Percent of total contracts</u>	<u>Total dollars</u>	<u>Percent of total dollars</u>
			(billions)	
less than \$1 million	17,041	97	\$1.1	21
more than \$1 million	441	3	4.2	79

REQUESTS FOR SPECIFIC GOODS AND SERVICES
PREEMPT COMPETITIVE PROCUREMENT PROCESSES

Contracting officers are responsible for ensuring competition when buying goods and services. However, we found instances where headquarters commands, technical personnel, and end users of these goods and services specifically directed or influenced contracting officers to buy certain items noncompetitively.

Headquarters commands influence procurement practices

Requests from headquarters commands or high-ranking DOD officials for the purchase of specific goods or services accounted for 4 of the 25 inappropriate noncompetitive procurements in our review. These requests represent a direct type of pressure since the requestors are in a higher position within the organization than the contracting officers. This boss-employee relationship naturally inhibits or prevents contracting officers from strongly objecting to inappropriately directed noncompetitive procurements.

For example, in September 1978, the Military Airlift Command (MAC) headquarters found that the design plan for a new building at Charleston Air Force Base (AFB), South Carolina, had not included provisions for a floor sealer. MAC directed base contracting officials to remedy the problem by purchasing a polyurethane concrete floor sealer from a particular company noncompetitively and to use the public exigency exception to justify negotiating. The contract was valued at \$15,000.

Although the Defense Acquisition Regulation states that the public exigency exception should be used only when the Government may suffer serious injury through delays resulting from formal advertising, the negotiation justification did not elaborate on the nature and extent of this injury. The contracting office bought the sealer as directed, without performing a market analysis to determine whether qualified suppliers were available.

We identified at least four other companies that marketed floor sealers which would have met the base's needs. Two of these companies had contracts with the General Services Administration and were listed in the agency's Industrial Products Catalog. In addition, Warner Robins AFB had used formal advertising in March 1978--7 months before the MAC contract was signed--to obtain a comparable sealer from a different manufacturer. Because the contracting officials did not challenge the sole-source directive from MAC, the contract was inappropriately awarded noncompetitively. Other suppliers were available and enough time existed to formally advertise.

Inappropriate reliance on technical personnel

Although the Defense Acquisition Regulation does not prohibit technicians, scientists, and other specialists from assisting contracting officers by recommending certain products or companies, contracting officers ultimately are responsible for ensuring that competitive procurements are maximized. Despite this, 10 of the 25 contracts which should have been competitive resulted from contracting officers relying totally on inappropriate noncompetitive procurement recommendations from technical personnel.

We were told that contracting officers did not believe they were qualified to question noncompetitive procurement recommendations. They assumed, for example, that technical personnel were more aware of markets corresponding to their specialties. Further, the contracting officers believed that they lacked the technical background to question recommended noncompetitive procurements. Neither of these reasons, however, justifies the contracting officers accepting noncompetitive procurement recommendations without doing market analyses or without using proper competitive procurement processes.

For example, the National Security Agency based an inappropriate noncompetitive procurement of tape recorder head assemblies on its engineer's statement that only one company manufactured the required assemblies. Agency contracting officials assumed that the engineer was aware of the market for tape recorder head assemblies and, on the basis of his recommendation, awarded a contract for \$19,426 to the specified company without obtaining available competition.

After this procurement, agency contracting officials identified other companies which could have manufactured tape recorder head assemblies to meet the agency's needs. In addition, we were able to locate nine companies that produced tape recorder head assemblies--including one firm which advertised that it would design and fabricate to any requirement.

Contracting officials accept end-user judgments without adequate support

Requests from end users for the purchase of specific goods or services accounted for 4 of 25 inappropriate noncompetitive procurements in our sample.

The problems associated with end-user judgments are similar to those for technical specialists; that is, contracting officers are accepting unsubstantiated judgments and comments about the qualifications of particular contractors and the availability

of competition. Contracting officers believe that the end users are in a better position to know the market and contractor capabilities. However, this perception may be inaccurate. More important, contracting officers are abrogating their responsibilities by relying totally on end-user judgments when there is no factual support. The following example demonstrates the problem.

The San Antonio Contracting Center based an inappropriate noncompetitive procurement of a heart monitoring system on a physician's request. The Center bought a heart monitoring system costing \$46,908 for the Air Force's School of Aerospace Medicine from a specific company because the school's Chief of Internal Medicine had said that only one company distributed a system with the required performance characteristics. However, we identified two additional companies which sold equipment comparable in design and price to the equipment purchased.

The written justification for this procurement stated that the desired heart monitoring system was the only known system capable of (1) performing an automatic trend analysis of arrhythmias and (2) scanning more than one channel of data at a time. These two functions were considered the minimum requirements for detecting abnormal electrocardiographic information. The Center's contracting officer said that he did not question this justification because he was not medically qualified to do so and that contracting personnel must rely on the professional judgment of medical personnel. The Chief of Internal Medicine, after contacting only two companies, concluded that only one company was capable of providing the needed system.

We contacted representatives of several medical equipment supply companies and identified two alternative sources of supply for heart monitoring systems. Both systems had functions meeting DOD's minimum requirements. We obtained performance specifications for one of the company's systems and had the Chief of Internal Medicine review them. He agreed that the system met the Government's minimum needs. Thus, because contracting officials relied solely on the end user's request for the product, they lost an opportunity to obtain available competition.

OTHER CONTRACTING PROCEDURES ARE NOT BEING FOLLOWED

In addition to demonstrating pressures on contracting officers, the above examples show the resulting failure of contracting officers to perform adequate market research and to properly use the public exigency exception. Contracting officers also did not always follow proper contracting procedures when (1) establishing a procurement's minimum requirements and (2) developing a data package sufficient to ensure competition.

The Sacramento Army Depot published product requirements exceeding minimum needs

The Sacramento Army Depot, Sacramento, California, used specifications which exceeded its minimum needs. As a result, it bought 20 closed-circuit TV systems for \$153,000 noncompetitively, even though other competitors offered products that met the Army's needs. Specifically, system requirements for camera weight and picture resolution did not necessarily represent the Army's minimum needs.

The Army established 3 pounds, plus or minus 0.5 pounds, as its minimum weight need. However, its only desire was to buy a camera that did not unnecessarily hamper a soldier's ability to do basic tasks. Army officials agreed that cameras weighing less than 2.5 pounds or more than 3.5 pounds might work as well. Thus, the camera weight, as stated on the noncompetitive certification, represented only a desired weight, not the Army's minimum needs.

On the basis of testing two cameras, one having a line resolution of 600 and the other 800, the Army determined that a 600-line resolution camera did not meet its needs. The Army then established 800 as the required line resolution. However, it did not test resolutions between 600 and 800. The possibility exists, and the Army agreed, that other cameras with resolutions of less than 800 but more than 600 probably could do the job.

Because the camera weight and line resolution appeared as fixed requirements, the Army contracted noncompetitively despite the availability of other cameras that might have done the job.

The Defense Construction Supply Center, Columbus, Ohio, inhibited competition by not obtaining available data package

The Defense Construction Supply Center, Columbus, Ohio, bought 2,100 flanges ^{1/} for \$41,000 noncompetitively from General Motor's Detroit Diesel Allison Division. Even though the Government had unlimited data rights, Supply Center officials simply did not obtain information necessary for a competitive procurement.

The Supply Center's data package did not identify two basic elements necessary to obtain competition--the flanges' metal composition and the heat treatment process used during their

^{1/}These flanges are replacement parts for the F-4 aircraft.

manufacture. Of the 12 firms which were sent bid packages, only Detroit Diesel submitted a proposal. Supply Center officials said that this missing information limited competition, and that with it, they could have formally advertised. However, since they considered Detroit Diesel's flange price reasonable, no additional competition was considered necessary. Accordingly, the Supply Center did not attempt to obtain the missing data nor did it plan to get the data for future procurements. However, after our review, the Supply Center acquired the necessary data to use for obtaining competition.

SERVICEWIDE PLANS TO IMPROVE COMPETITION DID NOT IDENTIFY PROBLEMS WITH SMALLER DOLLAR PROCUREMENTS

In response to a June 1979 request by the Deputy Secretary of Defense, the Secretaries of each service and the Director of the Defense Logistics Agency developed plans to improve competition. For example, the Army planned to reassess the level of review and approval for sole-source determinations. Further, it directed the Army Inspector General and acquisition management review activities to include noncompetitive contracts as items of special interest in their audits. The Navy's plans included providing guidance to acquisition managers and contracting personnel on methods of increasing competition, including parallel development, leader-follower arrangements, and use of reprourement data packages. The Air Force's plans called for establishing goals to increase competition in each major acquisition area. Finally, the Defense Logistics Agency planned to emphasize to contracting personnel the possibility of securing competition by using alternate solicitation techniques or contract types. Except for the Defense Logistics Agency plans, none of the plans specifically addressed inappropriate noncompetitive contracts for goods and services valued between \$10,000 and \$1 million.

CHAPTER 3

MAJOR POLICY, PROGRAM, AND FUNDING CHANGES

ACCOUNT FOR COMPETITIVE DECLINE

Although our statistical sample shows where additional competitive opportunities existed in fiscal year 1979 contracts, it does not totally explain the 8-percent decline in price competitive procurements between fiscal years 1972 and 1978. The primary reasons for this decline were

- increased spending on and a concurrent loss of competition for procurement of petroleum and nuclear submarines,
- increased use of design and technical competition for major weapon systems, and
- greater emphasis on "set asides" for businesses owned and controlled by socially or economically disadvantaged persons.

A FEW COMMODITIES EXPLAIN MOST OF THE COMPETITIVE DECLINE

Declines in the rate of competition and increased obligations for procurements of fuels and nuclear submarines explain about 64 percent of the relative decline in price competitive procurements. The oil embargo had a dramatic impact on DOD's ability to obtain competition for fuels, and the noncompetitive procurement of Trident submarines was another major contributing factor causing the decline.

Loss of competition for fuels explains about 40 percent of the decline

In 1973 the oil embargo substantially changed the market for refined petroleum procurements. In fact, shortly after the embargo, suppliers refused to bid on formally advertised fuel solicitations or to respond to requests for proposals for negotiated competitive awards from DOD.

Because suppliers would not respond to DOD solicitations and because of dislocations in the fuels markets, the President started a fuel allocation system which, in part, required suppliers to contract with DOD. Consequently, the Defense Fuel Supply Center, the organization in the Defense Logistics Agency that buys about 99 percent of DOD's fuel requirements, had to negotiate most of its fuel needs noncompetitively. Thus, competitive fuel procurements dropped from 90 percent of the fuel obligations in 1972 to 45 percent in 1978.

Accompanying this drop was a more than three-fold increase in the dollars obligated for fuel. Obligations increased from \$1.4 billion in fiscal year 1972 to \$4.6 billion in fiscal year 1978. This amounts to an almost 340-percent increase in dollars spent for fuel during a time when total DOD procurement obligations increased only 61 percent. The combination of this loss of competition and dramatically higher priced fuels accounted for approximately 40 percent of the total 8-percent decline in DOD competitive procurements. The Defense Logistics Agency does not expect a significant improvement in competition for fuels soon. Petroleum purchases are expected to continue to comprise a greater percentage of DOD's total procurement budget.

Change from price competitive to noncompetitive procurement of nuclear submarines accounts for 24 percent of the decline

The decline in competition for the procurement of nuclear submarines occurred when the Navy started contracting for the new Trident program. Fiscal year 1972 price competition included modifications and changes to contracts for class 688 submarines initially competed in prior years. At the time, 98.4 percent of nuclear submarine procurement obligations were reported as price competitive. Later, in fiscal year 1978, most of the obligations for nuclear submarines were made for the Trident program and were noncompetitive. In fact, only 6.7 percent of the obligations in this category were price competitive. Like fuels, expenditures for nuclear submarines increased dramatically (about 400 percent) from \$305.6 million in fiscal year 1972 to over \$1.2 billion in fiscal year 1978. Thus, the noncompetitive Trident program and the dramatic increase in expenditures for this program accounted for \$1.138 billion in additional noncompetitive dollars, or almost one-fourth of the total 8-percent decline in competition. The Trident program is expected to continue, and future awards will continue to have a substantial negative impact on DOD's competitive statistics.

CHANGES IN DOD PROCUREMENT POLICIES FOR MAJOR WEAPON SYSTEMS ACCOUNT FOR DECLINE IN PRICE COMPETITION

The early 1970s brought substantial changes in DOD's procurement of major weapon systems. Design and technical competition, where contractors would vie for major contracts through developing the best design or technology to meet DOD requirements, became an important contracting tool. Between fiscal years 1972 and 1978, design and technical competition increased 3 percent--from 7 percent of the fiscal year 1972 budget to 10 percent of the fiscal

year 1978 budget. This increase involved procurements which would have previously been price competitive.

An important underlying premise to the increased use of design and technical competition is that a better and more cost-effective weapon system results where emphasis is placed on technical design, thus minimizing pressures to simply contract for the lowest price. Although price is still a significant consideration, such procurements are coded as design and technical competition since the primary emphasis is placed on technical design. DOD's use of design competition influenced the Commission on Government Procurement to recommend its use Government-wide. This type of competition is also currently required by Office of Management and Budget Circular A-109.

The Air Force's fiscal year 1978 statistics, for example, reflect greater use of design and technical competition for fixed wing aircraft. This accounts for 20 percent of the price competitive decline. Changes in this category explain both the decrease in price competition and the resulting increase in design and technical competition. Most of the competition recorded in fiscal year 1972 for the procurement of fixed wing aircraft resulted from modifications to price competitive contracts for the F-14 (Navy) and C-5 (Air Force) aircraft. These contracts were awarded under the total package concept, an acquisition policy used in the late 1960s where major systems were bought with price competitive fixed-price incentive contracts. This concept did not work well, and newer aircraft programs, such as the F-15, F-16, and A-10, were awarded after design or technical competition. Fiscal year 1978 obligations, therefore, were primarily modifications to design and technical competitive contracts. Although these later year contracts were competitive, they were not necessarily price competitive.

MAXIMIZING FORMAL ADVERTISING AND PRICE
COMPETITION SOMETIMES TAKES A BACK SEAT
TO MEETING OTHER LEGISLATED OBJECTIVES

Obtaining formal advertising and, in general, maximizing price competition are important contracting goals. Other legislated programs, however, often decrease DOD's ability to accomplish these goals. An important example is the Government's set aside program for businesses owned and controlled by socially or economically disadvantaged persons. This program helps meet certain mandated social goals, but it also reduces DOD's ability to obtain unrestricted price competition.

Set asides for businesses owned and
controlled by socially or economically
disadvantaged persons decrease competition

The Administrator of the Small Business Administration is authorized to help small businesses, owned and controlled by

socially or economically disadvantaged persons, achieve a competitive position in the marketplace. Under the set aside program, the agency enters into procurement contracts with other Federal agencies and departments and subcontracts the work to disadvantaged small businesses.

Procurements are generally sole source when set aside for disadvantaged firms. When the Government chooses to place increased emphasis on promoting the viability of disadvantaged firms, it places less emphasis on obtaining competition. Although data was not available for prior years, in 1979, DOD recorded 2,511 contract actions worth \$533.7 million to disadvantaged set aside businesses. A DOD contracting official said it is likely that almost all these contracts normally would have been negotiated price competitive or formally advertised.

CHAPTER 4

CONTRACTING PROCEDURES AT THE DEFENSE

NUCLEAR AGENCY INHIBIT COMPETITION

Procedures followed at the Defense Nuclear Agency (DNA) made it extremely difficult for contracting officials to exercise their authority to obtain competition. All four noncompetitive DNA contracts we analyzed originated from unsolicited proposals and involved starting work before the contracts were signed (early starts). All could have been awarded under competitive conditions and neither the noncompetitive justifications, nor the technical evaluations, nor the market analyses were adequate. None of the contracts were justified as noncompetitive because of the proprietary nature of their unsolicited proposals. Furthermore, contractors began working on each contract before an actual contract was signed, thus making it difficult for contracting officials to solicit additional contractors. In fiscal year 1979, DNA awarded 781 of its 795 new contracts noncompetitively to "selected sources." The vast majority of these were early starts and awarded from unsolicited proposals. DNA's handling of these contracts violated the intent of DOD guidance on maximizing competition.

UNSOLICITED PROPOSALS SHOULD NOT NECESSARILY LEAD TO NONCOMPETITIVE PROCUREMENTS

Although the contracting officer is responsible for determining whether noncompetitive contracting is justified, DNA's procedures for handling unsolicited proposals fail to fulfill the requirements of the Defense Acquisition Regulation. Any contract intended for sole-source award on the basis of an unsolicited proposal must be accompanied by a justification containing the facts and circumstances that prevent competition and support the recommended noncompetitive action. However, none of the four contracts reviewed at DNA were justified sole source and no documentation demonstrated the uniqueness of the proposals.

Research and development offices, such as DNA, depend heavily on scientists' original ideas submitted in the form of unsolicited proposals for work. An individual's unique creative ideas cannot ethically be competed. Officials at the research and development offices we visited said that such competition would be counterproductive because scientists would then be reluctant to submit proposals.

The Government encourages unsolicited proposals. However, the regulation specifies that unsolicited proposals "should not be merely an advance proposal for a specific agency requirement which would normally be procured by competitive methods." Further, it is necessary for procurement officers to distinguish between unsolicited proposals that are unique and those that are not. Each unsolicited proposal submitted must undergo a comprehensive evaluation, but, according to Defense Acquisition Regulation 4-910(a):

"A favorable comprehensive evaluation * * * is not, in itself, sufficient justification for negotiating on a noncompetitive basis * * * [If] the substance (i) is available to the Government without restrictions from another source, or (ii) closely resembles that of a pending competitive solicitation, or (iii) is otherwise not sufficiently unique to justify acceptance * * * the unsolicited proposal shall not be acceptable. When procurement is intended and competition is feasible, the proposal shall be returned to the offeror."

When unsolicited proposals are inappropriately awarded sole source--as they were in all four of the contracts reviewed--opportunities for competition are lost. For example, DNA awarded a sole-source contract valued at \$49,698 for the compilation and summarization of documents (a literature search) on the effects of electromagnetic pulse on command, control, and communication systems. The need for the service arose out of a change in DNA's Information System Division. After the change, DNA received the proposal to compile and summarize certain technical documents. Although DNA stated the proposal was unsolicited, the contractor could not remember who initiated the idea.

Drawing from DNA's contractor pool, we discussed the contract's requirements with representatives from four other firms, all of whom stated that they would have been interested in reviewing the project. In fact, one firm had already developed a comparable compilation for similar use.

A DNA official stated that it would be presumptuous to assume that no other firm would be interested in the work, but if officials know a firm can do the job it has proposed, they usually award the contract to that firm without checking other sources. This implies that an unsolicited proposal will be accepted if DNA believes the contractor can do the work. DNA does not require that a proposal contain proprietary ideas or

that the offeror have unique capabilities. Neither the above contract nor the other three contracts we examined involved unique capabilities or proprietary information.

DNA's process for awarding contracts to selected sources is contrary to provisions in the Defense Acquisition Regulation. More competition could have been obtained. Moreover, no market analyses were done and officials did not question the sole-source justifications. Without market analyses and determinations about the uniqueness of proposals, DNA contracting officers cannot be assured that competition is unavailable or is not feasible.

DNA'S EARLY STARTS POLICY IS ANTICOMPETITIVE

DNA's early starts policy can hamper contracting officials' abilities to require additional competition. An important DNA objective is to start projects quickly. To do this, DNA officials estimate that 80 to 90 percent of their work was begun before formal contract negotiations were completed and before final contracts were signed. Work on all four of the contracts we reviewed was started before negotiations took place. Further, a 1979 Defense Audit Service study found 21 cases where work was started even before the receipt of unsolicited proposals or before the approval of purchase requests. This practice of starting contracts early results from DNA's belief that research and development work needs to be started quickly so there will be no delays in studying new ideas. The Defense Acquisition Regulation permits some discussion between potential offerors and agency personnel. Agency personnel, however, should not commit the Government to accept unsolicited proposals before they are formally submitted. Through the early starts process, some of DNA's contracts violate this limitation.

Early starts render the review process ineffectual. The contracting office is sometimes unaware of the proposed contract until after the technical personnel have been advising the contractor for several months. Thus, there is pressure to fund the project, and any opportunity to question the contract is severely limited.

Some negotiators also find it difficult to negotiate a contract on which work is already in progress. Legally, contractors are working at their own risks until after the contracts are signed. Because of the extra risk, contractors can sometimes demand a higher fee. On one of the contracts examined, the firm received an additional 0.5-percent profit on its original fee as a cost-risk factor for starting early, even though it was the firm, not DNA, who asked to start early.

DNA's review board is similarly constrained. The board is responsible for reviewing individual contracting actions over \$500,000, as well as a sample of contracts over \$50,000. When work on a contract has been started before the board examines it, it is extremely difficult for the board to require that the work be competed. Therefore, the board primarily has recommended that sole-source justifications be strengthened and that future procurements be competed.

A new DNA instruction, which went into effect on October 1, 1980, states that all early starts must be approved by the General Counsel, the Deputy Director for Science and Technology, and the Deputy Director for Operations and Administration. According to the instruction, a new early starts justification must be provided to show the benefit to the Government of an early start and "explain overall impact on cost, schedule, and performance if this action is not taken." However, during the first 20 days that the new policy was in effect, about 100 early starts were approved. Contracting through the early starts procedure should not be a normal contracting practice. Whether DNA's new policy will halt unnecessary early starts is unclear. One thing is clear: DNA's procedures for handling unsolicited proposals and its practice of starting work before negotiations inhibit competition and increase the cost to the Government.

CHAPTER 5

CONCLUSIONS, RECOMMENDATIONS, AND

AGENCY COMMENTS AND OUR EVALUATION

CONCLUSIONS

The Defense Acquisition Regulation requires contracting officers to offer as many qualified contractors as practicable the opportunity to compete for Government business. Ideally, awards through formal advertising and negotiated price competition provide the maximum assurance that the Government receives acceptable goods and services at the lowest price.

Historically, maximizing price competition has proved difficult. In fiscal year 1978, price competitive procurements (including formally advertised and small business set asides) represented only 26 percent of DOD's procurement budget. This is down 8 percent from fiscal year 1972, when price competitive procurements accounted for 34 percent of DOD procurements. About two-thirds of this decline are attributable to petroleum procurements and the Trident submarine program.

Increased competitive contracting is possible. On the basis of our statistical sample, we found that about \$289 million in noncompetitive procurements could have been competitive. Each of these contracts was valued at less than \$1 million. Most of the inappropriate procurements occurred because contracting officials accepted headquarters commands, technical, and end-user requests for noncompetitive purchases without adequate support that only one source was available.

Contracting officials did not develop factual support needed to assure the validity of the rationale for not formally advertising or for awarding a contract noncompetitively.

Major processing deficiencies included

- not factually demonstrating that there was insufficient time to formally advertise,
- not performing market research,
- failing to obtain or develop data needed to solicit other contractors, and
- establishing procurement specifications which did not represent the Government's minimum needs and reduced or eliminated competition.

Correcting the contracting problems we identified could increase competitive procurements. However, price competitive contract awards as a percentage of DOD's procurement budget may continue to decline since most of the loss in competitive dollars after fiscal year 1972 resulted from dramatically high obligations and loss in competition for needed military fuels, the noncompetitive procurement of Trident submarines, and the shift to design and technical competition for fixed wing aircraft.

DOD recently required the services and the Defense Logistics Agency to develop plans to improve their competitive performances. Except for the Defense Logistics Agency's plans, however, none of the plans specifically address the contracting problems identified in this report.

The Defense Nuclear Agency needs to improve the way it buys and contracts for research and development projects. Specifically, using unsolicited proposals to selected sources and starting contract work before negotiations should be limited to those cases where there would be demonstrated harm done to the Government by going through proper contracting processes.

RECOMMENDATIONS

We recommend that the Secretary of Defense give more emphasis to increasing competitive procurements by:

- Providing to contracting officers and program personnel more specific guidance on the factual support needed to justify a noncompetitive procurement. (See app. II for our proposed DOD guidance needed for the services.)
- Requiring that the services (1) address the specific contracting problems identified in this report in their plans for improving competition and (2) establish percentage improvement goals.
- Establishing a systematic approach for monitoring procurement office goals and reviewing selected contracts and documentation to assure they were appropriately awarded.

This latter approach will provide DOD officials with a management tool for improving competition in defense procurements. In its simplest form, it is a systematic analysis of competition in each procurement office by type of procurement. The analysis should compare the current extent of competition obtained by each procurement office for each item it procures with past years' level of competition in that office. It also should

provide data comparing current levels of competition at each purchasing office with a current level of competition for the whole of DOD. The information needed for the analysis is available through DOD's procurement action reporting system and could be readily analyzed with computer assistance.

The analysis would be accomplished through three steps. Step one would determine the current year's actual level of competition, step two would show how well the procurement office would have done if during the current year it obtained as much competition as it had in the past, and step three would show how well the procurement office would have done if it had obtained as much competition as DOD as a whole. The analysis should emphasize the percentage increase in dollars rather than in numbers of contracts.

By comparing expected competition with actual competition, one can identify and review differences. Then, on the basis of competitive goals for each office, each service and the Office of the Secretary of Defense would have a basis for systematically reviewing individual procurement office performance.

In addition, we recommend that the Secretary of Defense require the Defense Nuclear Agency to take steps to reduce its use of early starts and unsolicited proposals as a way of contracting.

AGENCY COMMENTS AND OUR EVALUATION

DOD agreed with the thrust of our recommendations concerning the need to justify noncompetitive procurements and the need for DNA to strengthen its contracting procedures. However, DOD did not believe that contracting officers and program personnel should have more specific guidance on the factual support needed to justify noncompetitive procurements. It stated that adequate guidance was currently available in the Defense Acquisition Regulation and in service regulations.

We disagree with this position. Our findings clearly demonstrated that DOD procedures were, in fact, inadequate and did not ensure that contracting officers obtained competition whenever feasible. The Defense Acquisition Regulation does not specifically indicate what information is required to justify noncompetitive procurements. Several DOD organizations have recognized this deficiency and have developed their own internal guidance. We strongly believe that DOD-wide guidance is urgently needed to reduce the number of inappropriate noncompetitive awards.

DOD further stated that establishing and monitoring percentage goals for improving competition was impractical because too many variables affect competitive performance. Although DOD suggested that motivating contracting officers and their superiors to foster competition was a better approach, it did not specify the nature

of this motivation. On the basis of our review findings, we see little hope that DOD will correct the problems identified in our report unless DOD management translates its stated desire to obtain competition into realistic goals.

STATISTICAL SAMPLING PLAN

The statistical sample resulted from randomly selecting contracts from a universe comprised of new definitive non-competitive contracts awarded by DOD in fiscal year 1979. The universe was divided into five strata representing contract dollar value ranges. These strata were needed to assure representation of both numbers and dollar values of contracts. Samples for each stratum were chosen by randomly selecting a contract followed by periodic selection. The strategy was designed to be 95-percent confident about our results. The following table shows our sampling plan.

Sampling Plan

<u>Stratum</u>	Total number of contracts in the universe (by stratum)	Total dollar value in the universe (by stratum)	Random start number	Periodic selection number	Sample size
----- (thousands) -----					
\$10 to \$99	14,771	\$503,000	74	177th	84
\$100 to \$999	2,270	601,300	15	43d	13
\$1,000 to \$9,999	346	1,036,400	2	7th	4
\$10,000 to \$99,999	91	2,354,300	14	24th	4
\$100,000 or more	<u>4</u>	<u>756,800</u>	1	All	<u>4</u>
Total	<u>17,482</u>	<u>\$5,251,800</u>			<u>109</u>

GAO QUESTIONS CONCERNING
NONCOMPETITIVE PROCUREMENTS

The Defense Acquisition Regulation does not specifically address what information is required to justify noncompetitive procurements. Such criteria are needed to help reduce the number of inappropriate noncompetitive awards. Several DOD organizations have recognized this need and have developed internal guidance on the documentation and support required to justify noncompetitive procurements. On the basis of this guidance, our contract reviews, and discussions with DOD personnel, we developed the following questions which all DOD purchasing offices should ask. We also identified the factual support these offices should obtain in evaluating noncompetitive procurements. The questions should be answered and the factual support should be provided by the responsible contracting officers who ultimately are responsible for ensuring that the data is accurate and complete.

FACTUAL DATA REQUIREMENTS NEEDED
FOR ALL NONCOMPETITIVE PROCUREMENTS

1. What are the procurement's minimum requirements? Material evidence should be presented verifying these minimum requirements.
2. What unique capabilities does the proposed contractor possess which makes it the only company capable of meeting these minimum requirements?
3. Was a market search or other type of solicitation conducted? Material evidence should be presented verifying that such a search was conducted and that the proposed contractor was the only company meeting the procurement's minimum requirements.
4. Was the item or service previously procured? If yes, was it from the same contractor? If this is a continuation of a previous effort by the same contractor, demonstrate why no other sources of supply are available.
5. Is there a technical data package, specification, engineering description, statement of work, or purchase description available which is sufficient for competitive procurement? If not, is one being developed? If not, why not? How much leadtime would be required to develop it? Has any cost-benefit analysis been conducted to determine whether it is advantageous to the Government to buy or to develop such information? If not, what evidence is available to demonstrate why this analysis is not needed?

6. Can individual components of the procurement be competitively procured? If so, what steps have been taken to do this?
7. Does the procurement result from an unsolicited proposal? If so, who first described the problem to be addressed by the unsolicited proposal? Demonstrate why the proposed contractor is the only one capable of performing the service or providing the item.
8. What material evidence exists that the Government would be injured if the noncompetitive procurement is not made? This includes estimates of additional costs incurred and criticality of schedules (including when the procurement need was first identified, reasonableness of delivery schedules, etc.).
9. What steps are being taken to foster competition in subsequent procurements of this product or service?

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November 16, 1979

Mr. Elmer B. Staats
Comptroller General of the United States
Washington, D.C. 20548

Dear Mr. Staats:

This letter is to confirm my request for a study of the declining use of competitive bidding by Defense Department in procurement contracts. This request is an outgrowth of testimony received by the Task Force on Government Efficiency of the House Budget Committee on the issue of competitive bidding. At that hearing both Under Secretary of Defense Dale Church and Mr. Walton Sheley, the Deputy Director of the Procurement and Systems Division of GAO, testified that competition in the procurement process usually reduced the cost of government procurement significantly from what it would be without competition. Based on that testimony, I requested a study to determine if the Defense Department is using competitive bidding in all cases where it is appropriate.

At a meeting subsequent to the hearing Steve Silbiger of my staff met with Walton Sheley, Sid Wollen and Tom Hagenstead of your office to determine the best way to conduct such a study. At that meeting they agreed that because of data problems the study should be limited to contracts over ten thousand dollars and should include the following surveys:

- 1) a survey of a statistically significant sample of contracts that were let on a sole source basis to determine if they could have been let on a competitive basis; and
- 2) a survey of a statistically significant sample of contracts that were let on design competitive basis to determine if they could have been let out on a price competitive basis.

The Defense Department lets out upwards of \$50 billion in procurement contracts annually. Over seventy percent of the dollar values of these contracts are let through non-competitive processes. If any significant portion of these non-competitive contracts could be let competitively, it is clear to me that the Federal government could save hundreds of millions, if not billions, of dollars. Given the enormous possible savings in this area, I believe it would be extremely worthwhile to investigate this subject. I, therefore, would greatly appreciate it if you could have the GAO conduct the study I have requested as expeditiously as possible.

Sincerely,



STEPHEN J. SOLARI
Member of Congress

SJS:ss/g



THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESEARCH AND
ENGINEERING

15 APR 1981

Mr. Donald Horan
Director, Procurement
Logistics and Readiness Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Horan:

This is in reply to your letter to the Secretary of Defense regarding your report dated March 9, 1981, on DoD Loses Many Competitive Procurement Opportunities, OSD Case #5658, GAO Code 950575.

The report observes that there has been a decline in price competition over the past few years. It is the policy of this Administration to effect efficiencies and economies in the acquisition process. Wherever it is feasible and practical, contract awards will be made on a competitive basis. The report notes that the decline in competition is primarily attributable to the loss of competition for petroleum and nuclear submarines; emphasis on design and technical competition; and set-asides for minority enterprises. These factors will continue to dampen overall price competition.

As to the report's five recommendations, we concur with the thrust of the first concerning the need to justify noncompetitive procurements and the fifth concerning the need of the Defense Nuclear Agency to take steps to reduce its use of early starts and unsolicited proposals. However, we believe our guidance on sole-source justification set forth in the Defense Acquisition Regulation, which has been expanded upon by the Military Departments and Defense Agencies, is sufficient. The Defense Nuclear Agency advises that they have already strengthened controls over their procurements.

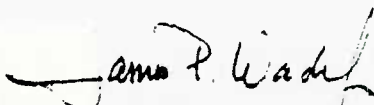
The other three recommendations deal with establishing and monitoring percentage goals for improving competition. We do not

concur with these recommendations. Goals would be impracticable to establish and monitor in any meaningful way. Time spent by operating and management personnel on such a system could be better spent on productive work. There are too many external and uncontrollable factors, such as changing requirements, the variable procurement mix, funding fluctuations, general economic conditions, and socio-economic programs, that can affect statistical performance.

We believe a better approach is to motivate contracting officers and their superiors to foster competition to the greatest extent possible. Individual contracts must be considered for competition prior to solicitation and in the preaward review process. The effectiveness of the program is monitored by procurement management review and internal audit personnel. Review of monthly procurement statistical reports detect trends in the competition area so that early attention may be given to identifying and correcting problems.

The opportunity to comment on your report is appreciated.

Sincerely,


James P. Wade Jr.
Acting

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