Sole-Source Versus Competitive Contracting: Why A GAO Audit Guide Is Needed

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"Sole-source" is generally regarded as a nasty word in the world of government contracting. This is at least partly due to abuses involving the awarding of federal contracts noncompetitively (sole source) to one firm when others should have been given the opportunity to compete for government business.

The federal government awards most of its procurement dollars noncompetitively (that is, based on only one offer). In fiscal year 1982, federal government contract awards totaled $159 billion. Awards exceeding $10,000 in value totaled $146.9 billion. Of this amount, about $54.5 billion (37 percent) was categorized as competitive while the remainder was categorized as noncompetitive. The Department of Defense (DOD), which awards about four-fifths of all federal procurement dollars, awarded 35 percent of its procurement dollars competitively.

Requirement for Competition

The Congress has historically required that the government purchase its goods and services by using competition whenever practicable. For example, the Congress, in Public Law 96-83 (41 U.S.C. 401 *et seq.* (Supp. III 1979)), spells out a policy calling for the executive branch to use full and open competition to promote economy, efficiency and effectiveness in the procurement of its property and services. Consequently, federal regulations require agencies to award all contracts competitively "to the maximum extent practical."

In general, competition in government procurement refers to situations in which two or more firms vie for a contract award by submitting offers to the government.

Benefits of Competition

Competition plays a prominent role in government procurement law and policy—for good reason. All qualified potential contractors should have the opportunity to do business with the government and the right to compete equally with others. Contracts should not be awarded on the basis of favoritism but instead should go to those that are most advantageous to the government. Offering all qualified contractors the opportunity to compete also helps to minimize collusion. In addition, competition provides some assurance that the government pays, and the contractor receives, reasonable prices.

The benefits of competition go beyond short-term price advantage. The competitive process provides a means for discovering what is available to meet a particular government need, and for 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 to win a government contract provides a key incentive for greater efficiency and effectiveness. When competition is restricted unnecessarily, the government loses opportunities, not only to obtain lower prices, but also to increase the productivity and the effectiveness of its programs.

Many Unwarranted Sole-Source Decisions

To assess the adequacy of federal noncompetitive decisions, our office has examined statistical samples of new, sole-source contracts awarded by the Department of Defense and six major civil federal agencies; the National Aeronautics and Space Administration, the Veterans Administration, and the Departments of Energy, Interior, Transportation, and Health and Human Services.

The reviews showed that these agencies frequently did not base their contract awards on competition to the maximum extent practical. A July 1981 report[1] concluded that DOD should have competitively awarded 25 (or 23 percent) of the 109 new, sole-source contracts that GAO reviewed. We estimated that DOD lost opportunities to obtain available competition on about $289 million in new fiscal year 1979 contract awards. In an April 1982 report,[2] we estimated that for the six civil agencies reviewed, competition was feasible on 32 percent of the new sole-source contracts in our statistical universe. An additional 8 percent could have been competitive using better agency planning or management. These six agencies lost opportunities to obtain available competition on an estimated $148.5 million or about 28 percent of the dollar value in our universe. The dollar amounts for both defense and civil agencies represent initial contract obligations, which in some cases may be substantially increased through later contract modifications.

The percentage of civil agency sole-source contract awards for which competition was found to be feasible varied from lows of 20 percent at HHS and 21 percent at NASA to highs of 73 percent at the Department of Energy and 49 percent at the Department of Transportation.

Basically, both GAO reports concluded that (1) many contracts were awarded sole-source unnecessarily, and (2) specific actions should have been taken to ensure that competition was obtained when available.

Causes of Missed Opportunities To Obtain Competition

Why didn't agency officials obtain competition for awards that could have been

[1] DOD Loses Many Competitive Procurement Opportunities (GAO/PLRD-81-4[illegible] July 1981).

[2] Less Sole-Source, More Competition [illegible] on Federal Civil Agencies (Contracting [illegible] PLRD-82-40, Apr. 7, 1982).

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competitive? Both reports identified several major reasons for this lack of competition, including

- ineffective procurement planning or the failure of contracting officers to perform market research adequate to ensure that sole-source procurement was appropriate and
- inappropriate reliance of procurement officials on the unsupported statements of agency program, technical, or higher level officials.

In addition, both reports show that key agency personnel lacked a commitment to competition. Instances of overly restrictive specifications and failure to use available data packages to obtain competition were also cited.

Reform in Noncompetitive Contracting

Significant accomplishments have resulted from GAO's reviews of federal noncompetitive contracting. For example, the Federal Procurement Regulations, which cover civil agencies, have been amended to adopt almost all of GAO's recommendations from report PLRD-82-40. These amendments represent major changes in the regulatory requirements relating to competition (See *Federal Register*, Rules and Regulations, Vol. 48, No. 74, Apr 15, 1983) Many agencies have also officially promised to take various corrective actions.

GAO divisions having responsibility for these agencies (especially GGD, HRD, and RCED) may want to consider doing followup work on this issue. Particularly important is the question of whether the changes to the Federal Procurement Regulations are being properly implemented.

In addition, GAO has worked with the Senate Committee on Governmental Affairs to develop S. 338, the Competition in Contracting Act. This bill would provide needed procurement reforms government-wide. We have testified in support of the bill before the Senate Committees on Governmental Affairs and Armed Services. However, even if these reforms are enacted, much work remains to be done to determine whether the key legal requirements are being properly implemented.

Need for an Audit Guide

During our work on federal agencies' noncompetitive procurements, we identified a need for GAO to develop and issue an audit guide for use in reviewing these sole-source decisions and determining the adequacy of the sole-source justifications and the feasibility of competition.

An audit guide is needed because there is little federal effort being made in reviewing sole-source justifications. Also, there is congressional interest in GAO's devoting much more effort to increasing competition and reducing sole-source procurements. In our view, GAO's General Procurement Group in NSIAD would not be able, by itself, to provide the large amount of resources needed to adequately cover this problem. A GAO audit guide would better enable others, including GAO evaluators in other divisions and agency internal audit staffs, to improve agency controls and increase competition.

As a result, in June 1983, GAO issued the "Audit Guide for Reviewing the Feasibility of Competition on Federal Agency Sole-Source Contracts" (GAO/PLRD-83-29). In GAO's view, significant benefits, such as cost savings, better solutions to the government's problems relating to its needs for goods or services, and increased public confidence in government can result from using this audit guide.

About the Audit Guide

Chapters 1 and 2 of the audit guide provide background information which should help those not familiar with various aspects of competition and noncompetitive decisionmaking. Based on the Comptroller General's decisions in bid protest cases[1] and other legal opinions, the audit guide summarizes the conditions that justify a noncompetitive decision The guide also identifies unacceptable sole-source justifications and summarizes the most important criteria for evaluating noncompetitive decisions.

Chapter 3, which deals with the work steps, is the heart of the audit guide. It covers all the essential information needed to determine the adequacy of efforts to seek competition in awarding noncompetitive contracts for goods and services The structured format of this chapter should help to systematically identify problem areas in representative samples of these contracts. Most questions in chapter 3 include a list of the answers anticipated, and, where necessary, explanations of important concepts. This makes the guide lengthier but should greatly increase its usefulness. In addition, chapter 3 is designed to help the user easily identify and skip those questions which do not apply to particular contracts. (See figure 1.)

The audit guide has been greeted with a favorable initial response. For example, Veterans Administration officials requested an additional 700 copies of the guide, while DOD officials have asked for more than 800 copies and expect to ask for more later. In addition, a draft of the audit guide was reviewed by the Offices of Inspector General at NASA, DOD, Energy, Health and Human Services, and Transportation. Each of the agencies gave us extremely favorable comments

The audit guide is intended to help various federal officials evaluate the appropriateness of noncompetitive contract decisions. Specifically, we hope the guide will (1) encourage federal Inspectors General, internal audit staffs, and other evaluators (including GAO's own staff) to become more active in questioning the use of noncompetitive contracts and (2) be helpful to federal procurement officials including those responsible for reviewing the adequacy of sole-source justifications We hope that the audit guide will help GAO evaluators who want to become more familiar with the subject of competition, which is one of the most important concepts in government procurement.

[1] The Comptroller General, as head of GAO, renders legal decisions when an interested party, such as an individual or a firm doing business, seeking to do business with the government, protests against the award of a contract in accordance with GAO regulations (4 C.F.R. [illegible] 1982) (See also FPR 1.2-407.8)

Figure 1

The audit guide (GAO/PLRD-83-29) will enable you to answer the following questions:

- **Was the agency's market search for competitive sources adequate?**
- **Was the use of the *Commerce Business Daily* proper and in accordance with regulatory requirements?**
- **Were unsolicited proposals handled properly?**
- **Did the agency use work statements, purchase descriptions, and other forms of specifications that were not unnecessarily restrictive of competition?**
- **Were potential competitive sources available but improperly excluded from competing?**
- **Was the sole-source justification properly documented?**
- **Was the noncompetitive decision properly reviewed by higher level officials, as required?**
- **What were the causes of the failure to obtain competition, if competition was feasible?**
- **Was a contract the appropriate legal instrument, or should a grant or cooperative agreement have been used?**