
BY THE US GENERAL ACCOUNTING OFFICE

Report To The Mayor Of The District Of Columbia

The District Is Working To Increase Competition And Ensure Reasonable Prices For Supply And Service Contracts

GAO reviewed 19 District of Columbia procurement actions worth \$8 million that were processed near the end of fiscal year 1982 and found that the District awarded 13 contracts--6 formally advertised and 7 negotiated--for supplies and services without competition. District procurement regulations require that competition be obtained to the maximum extent practical.

GAO also found little or no evidence in six negotiated procurements to show that reasonable prices were paid. In addition, District officials did not take adequate steps to ensure that reasonable prices were paid in five of the formally advertised procurements for which only one qualified bid was received.

The District has implemented several GAO suggestions to increase competition, provide additional assurance that reasonable prices are obtained, and strengthen other procurement procedures. It has also agreed to implement further actions that GAO is recommending to enhance implementation and oversight of procurement practices.



028699



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-212973

The Honorable Marion S. Barry, Jr.
Mayor of the District of Columbia

Dear Mayor Barry:

This report identifies problems the District of Columbia has experienced in obtaining competition and ensuring reasonable prices for supply and service contracts and discusses the steps the District is taking to correct those problems. As the report points out, the District has implemented several of our suggestions to increase competition, better ensure reasonable prices, and correct other procurement weaknesses.

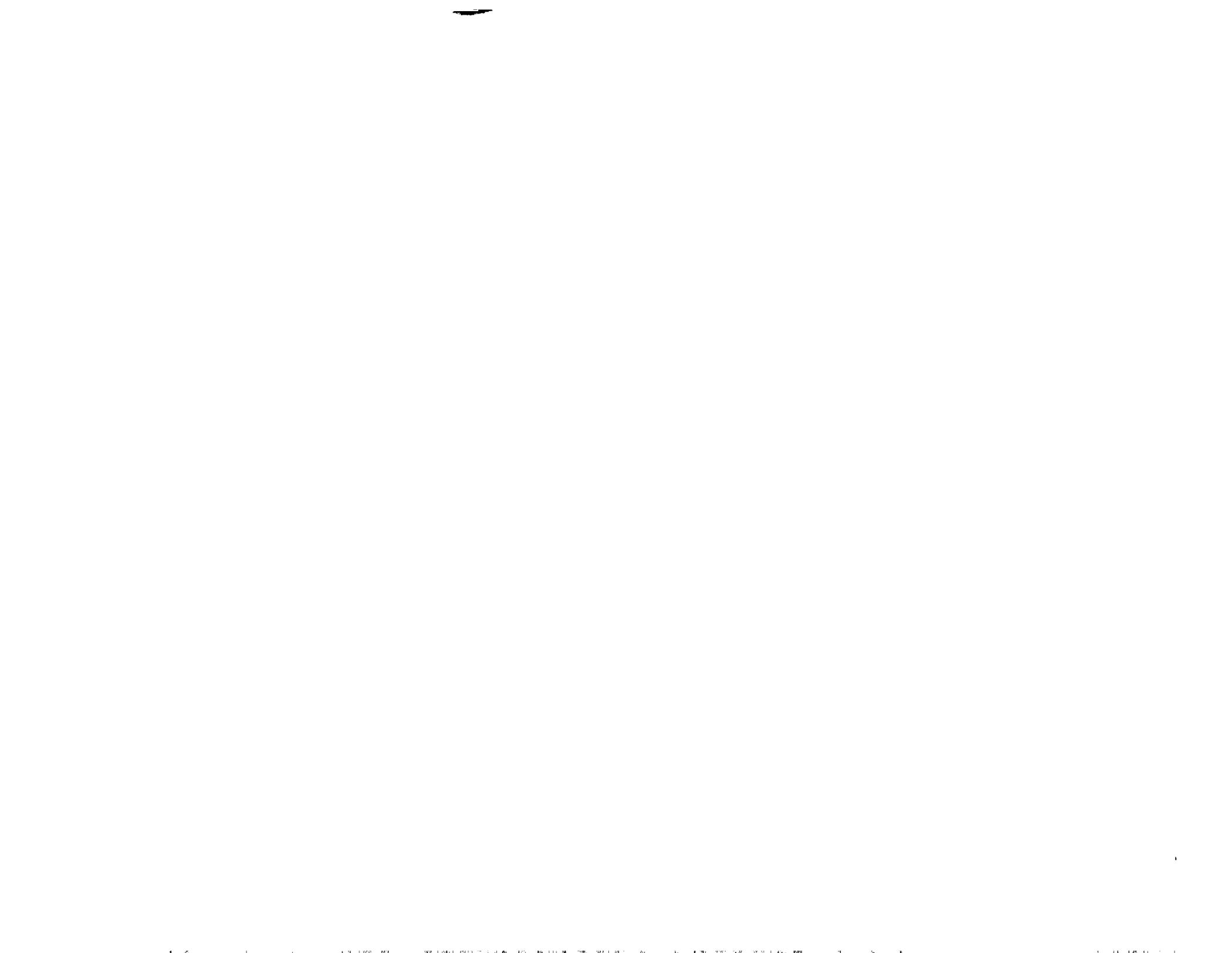
This report contains recommendations to you on pages 18, 27, and 33. As you know, the Mayor is required, within 90 days after receiving our audit report, to state in writing to the District Council what has been done to comply with our recommendations and to send a copy of the statement to the Congress (31 U.S.C. §715(c)(1), as recently codified by Public Law 97-258, formerly section 736(b) of the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198.) The Mayor is also required to report, in the District of Columbia's annual budget request to the District Council, on the status of efforts to comply with such recommendations (section 442(a)(5) of Public Law 93-198).

We are sending copies of this report to interested congressional committees; the Director, Office of Management and Budget; and to each member of the Council of the District of Columbia.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director



D I G E S T

To evaluate District of Columbia procurement policy and regulations, GAO reviewed 11 formally advertised and 8 negotiated actions worth \$8 million that were processed during the final 4 days of fiscal year 1982. Of the 19 procurements examined, the District awarded 13 without competition even though regulations require that competition be obtained to the maximum practical extent. Moreover, when competition was restricted GAO found little or no evidence to show that the District had determined that contract prices were reasonable.

GAO believes that its review, though limited to year-end procurements, identified problems that can occur at any time. A year-end contracting rush may have affected the outcomes, but inadequate regulations and enforcement--the underlying causes of the problems GAO found--are not unique to a particular time of year.

District officials agreed and, as a result of GAO's review, are strengthening the District's procurement policy and regulations to increase competition and ensure reasonable prices for supply and service contracts.

At the time of GAO's review the District's Department of General Services was responsible for processing procurement actions and enforcing procurement policies and regulations. Under a March 1984 reorganization, these functions were transferred to the Department of Administrative Services. While this reorganization changed the focal point of procurement authority, it does not affect the relevance of GAO's recommendations.

ACTIONS TO INCREASE COMPETITION

General Services awarded six formally advertised and seven negotiated contracts without

competition. Formal advertising, the preferred procurement method, is intended to promote competition by offering all qualified vendors equal opportunity to bid for contract award. Negotiation is allowed only when formal advertising is not feasible or practical and should be competitive to the maximum practical extent. (See pp. 1 to 3.)

General Services did not obtain competition on 10 of the 13 procurements due to one or more of the following reasons:

- in four cases, issued an invitation for bids containing a purchase description which specified a brand name or its equivalent and could be met by only one product. GAO found no evidence that restrictive descriptions were essential to minimum procurement needs or that General Services questioned the need for restrictive product features (see pp. 10 to 13);
- in a similar case, issued an invitation for bids to acquire street light posts that only one vendor could make. Because it did not review previous procurements of the posts, General Services was unaware that competition was unlikely and as a result, did not evaluate the feasibility of competitively procuring other posts to meet the District's need (see pp. 15 and 16);
- in three cases, was notified of a procurement need after District agencies solicited contract proposals and requested work to begin. Although a contract had not been awarded General Services believed it was too late to obtain competition because a contractor was already performing work (see pp. 21 to 23);
- in two cases, allowed the public exigency exception to formal advertising to be invoked without evidence that an urgent need clearly existed. As a result, competition was restricted without adequate justification (see pp. 23 and 24);
- in two cases, made limited or no effort to identify potential sources before noncompetitive negotiations began (see pp. 24 to 26.)

In one case, General Services awarded a non-competitive contract under the District's policy of fostering minority business opportunities. Though this policy limits competition, it serves other important goals. (See p. 26.)

In two cases, documentation was not adequate for GAO to determine the reasons for no competition.

In response to GAO's suggestions to increase competition, the District supplemented its procurement regulations to:

- Tighten the criteria governing the use of brand name or equal purchase descriptions. (See pp. 14 and 15.)
- Require procurement agents to investigate reasons for limited bidding when fewer than three bids are received for a formally advertised award. (See p. 17.)
- Ensure that a market search is conducted before a request for noncompetitive negotiation is approved. (See pp. 30 to 31.)

To further promote competition, the District should ensure that user agencies (1) obtain negotiation approval before they solicit contract proposals and (2) show that an urgent public need clearly exists to justify negotiation on the basis of public exigency. (See pp. 21 to 24.)

In addition, the District should expand its procurement reporting system to show the competition obtained for formally advertised awards and use the system to identify and alleviate barriers to competition. (See p. 17.)

ACTIONS TO HELP ENSURE REASONABLE PRICES

In six of the eight negotiated awards GAO reviewed, documentation in the contract files was not sufficient to show how reasonableness of price was determined. (See pp. 28 and 29.)

Six of the 11 formally advertised contracts GAO examined were awarded on the basis of only one qualified bid. In five of the six procurements, steps taken by General Services were not sufficient to ensure that reasonable prices were paid. (See p. 30.)

In response to GAO's suggestions the District revised its procurement procedures to require a written determination of price reasonableness before a negotiated contract or a formally advertised contract with only one qualified bid is awarded. The procedures also were revised to require closer examination of proposed prices when fewer than three bids are received for a formally advertised award. (See pp. 30 and 31.)

OTHER ACTIONS TO IMPROVE THE PROCUREMENT PROCESS

GAO also noted that

- in three instances, revised contract language was needed to conform to statutory restrictions on expenditures of appropriated funds;
- in three instances, pre-award reviews of contractor affirmative action employment plans were not done; and
- in four instances, justifications for exercising contract option clauses allowing the District to increase the quantities of supply or extend the period of a service contract were not adequately supported. (See pp. 31 and 32.)

The District adopted revised contract language to ensure compliance with statutory funding restrictions and instructed the procurement staff to adhere to requirements for review of contractor affirmative action plans. The District is also preparing guidelines to ensure that contract option clauses are properly justified.

RECOMMENDATIONS

GAO recommends that the Mayor require the Director, Department of Administrative Services, to ensure that competition is

obtained to the maximum extent practical for all supply and service contracts and that proposed prices are determined reasonable before contract award. To meet these objectives, the Director should implement and enforce procurement policy and regulations which:

- Require District agencies to submit written justification and obtain negotiation approval before they solicit contract proposals. (See p. 27.)
- Require District agencies to document the compelling and unusual urgency and the date supplies or services are needed before negotiation is authorized under the public exigency exception to formal advertising. (See p. 27.)

GAO also recommends that the Mayor require the Director, Department of Administrative Services, to:

- Modify the current procurement reporting system to show both the number of bids received and the number disqualified for each formally advertised award and use this data to monitor trends in competition and evaluate and correct causes of unfavorable trends. (See p. 18.)
- Implement and enforce regulations governing the use and exercise of contract option clauses. (See p. 33.)

AGENCY COMMENTS

The City Administrator agreed with GAO's recommendations. His comments were based on a draft of this report which contained several GAO suggestions in addition to the recommendations shown above. Consequently, the comments describe actions taken on the earlier suggestions and those to be taken on the final recommendations. The text of the comments appears in appendix I and is summarized with GAO's evaluation in pertinent sections of chapters 2, 3, and 4.

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CHAPTER 1

INTRODUCTION

During the fiscal year ending September 30, 1982, the Department of General Services--the District's central procurement authority--processed over 650 procurement actions to acquire supplies and services valued at about \$82 million.¹ Of that total, however, \$12.9 million, or nearly 16 percent, was awarded during the the final 4 days of the fiscal year. About \$12.3 million was awarded by General Services on September 30, 1982, alone.

We reviewed a sample of procurement actions processed during the final 4 days of fiscal 1982 because our prior studies of federal procurement have shown that a high level of year-end spending can result in poor procurement practices and waste. For example, some agencies, in the rush to spend funds quickly, short-cut prescribed procedures, paid excessive prices, and acquired items that were not needed. In evaluating the District's policies and procedures, we were especially concerned with efforts to obtain competition and to ensure reasonable prices.

In addition to processing procurement requests, General Services was responsible for the development, implementation, and enforcement of procurement policies and regulations. Under a recent reorganization, these responsibilities were transferred to a new agency, the Department of Administrative Services. Although the reorganization changed the focal point of procurement authority, it does not affect the relevance of our review findings, conclusions, and recommendations.

THE DISTRICT USES FORMAL ADVERTISING AND NEGOTIATION

Like the federal government, the District procures supplies and services by formal advertising and negotiation. Formal advertising, the preferred method of procurement, is defined by a rigid set of procedures. Negotiation, on the other hand, is more flexible and generally includes all methods of procurement other than formal advertising. District policy requires that

¹As used in this report, a procurement action means the process used to acquire supplies or services. This includes, but is not limited to, the award of a contract and amendments to existing contracts.

formal advertising be used whenever feasible and practicable and authorizes negotiation only on an exception basis.

Formal advertising requires specific procedures and is the preferred method

Formal advertising involves four steps. First, an invitation for bids, which contains specifications describing the District's minimum needs, is issued to prospective contractors. Second, the vendors respond by submitting sealed bids. Third, the bids are publicly opened at a specified time and place. Finally, the District awards the contract to the lowest responsible bidder whose bid is responsive.

To be responsible, a contractor must have the financial, technical, or other resources the District deems necessary to perform the contract. To be responsive, a bid must conform in all material respects to the requirements described in the District's invitation. If found nonresponsive, a bid is disqualified regardless of whether it offers the lowest price.

The reasons why formal advertising is the preferred method of procurement have been stated numerous times by the courts and the Comptroller General. For example, in addressing the federal requirement to advertise procurement needs, the Comptroller General said:

"The clear purpose ... is to restrict the uses of appropriations to the acquiring of actual Government needs; to secure such needs at the lowest cost; and to guard against injustice, favoritism, collusion, graft, etc., in the transacting of the public business."²

Furthermore, by offering all qualified vendors equal opportunity to bid, formal advertising promotes full and open competition for contract awards. This competition³ helps to ensure that the District pays, and vendors receive, reasonable prices.

²13 Comp. Gen. 284 (1934), at 286.

³Receiving offers from at least two independent firms capable of meeting District requirements.

Negotiation is more flexible,
but its use is restricted

Unlike formal advertising, negotiation allows the District to discuss with a vendor the features of the vendor's proposal. However, District regulations authorize negotiation only under certain circumstances and require that its use be justified in writing. The regulations also require that competition be obtained to the maximum extent practical when negotiation is used. If it is determined that competition is not feasible, however, a procurement may be negotiated noncompetitively (i.e., sole source).

In negotiated procurement, prospective contractors are provided with requests for proposals which state the District's procurement needs and criteria for evaluating offers. After it receives and evaluates all offers, the District holds discussions (i.e., negotiates) with those vendors whose proposals are considered to be within the competitive range. The vendor whose final proposal is most advantageous to the District, price and other factors considered, is awarded the contract.

District regulations allow supplies and services to be procured by negotiation only when

- public exigency requires immediate delivery or performance;
- a District purchasing or contracting officer certifies that only one source of supply is available;
- the services to be acquired are of a technical or professional nature; or
- the amount involved is less than \$2,500.

ORGANIZATION OF PROCUREMENT
FUNCTIONS AND DUTIES

At the time of our review the Director of General Services had delegated procurement functions to the agency's Bureau of Materiel Management. Certain contracts, before they are awarded, also had to be reviewed by the District's Contract Review Committee and Office of Human Rights.

Bureau of Materiel Management

The Bureau of Materiel Management was headed by an assistant director and staffed by 19 agents who processed agency

procurement requests in excess of \$10,000. The agents were responsible for reviewing purchase descriptions and specifications, issuing invitations for bids, ensuring that negotiated procurements were properly justified, and enforcing related regulations and standards. Though General Services handled all aspects of formal advertising on behalf of other District agencies, discussions with vendors on negotiated procurements were handled by contracting personnel of the individual agencies. Under both procurement methods, General Services was responsible for contract awards.

The Bureau of Materiel Management also maintained the procurement manual containing the District's contracting principles, rules, and regulations. Developed in part to ensure judicious use of public funds, the manual does not prescribe policies and procedures for all procurement situations. However, General Services has stated that when its regulations are silent, District procurements will be guided by the Federal Procurement Regulations (FPR).

Pre-award contract reviews

In general, the District's Contract Review Committee reviews proposed negotiated contracts in excess of \$25,000 and formally advertised contracts to be awarded to other than the lowest bidder. Chaired by a representative from the Office of Corporation Counsel, the Committee was established by the Mayor in 1975 to ensure compliance with procurement standards and to make appropriate recommendations to contracting officers.

In addition, a contractor selected to receive an award in excess of \$10,000 must have its affirmative action employment plan reviewed by the District's Office of Human Rights. Under current procedures, the office has 10 days after receipt of a plan to complete its review.

Recent reorganization changed procurement focal point

On March 2, 1984, the Mayor abolished General Services and established the Department of Administrative Services as the focal point of procurement authority within the District Government. Headed by a director, the new department is responsible for (1) issuing regulations on the procurement of property and services, management of property and information resources, and disposal of excess District property; (2) assisting the Mayor in the administration of procurement authority; and (3) providing a variety of administrative support services to District agencies. The procurement functions formerly delegated to General Services

were transferred to Administrative Services together with all positions, personnel, property, records, and unexpended funds related to General Services' procurement operations.

OBJECTIVES, SCOPE, AND
METHODOLOGY

We examined 19 procurement actions totaling \$8 million which General Services processed during the final 4 days of fiscal year 1982. Our purpose was to determine whether General Services processed those actions and awarded contracts according to sound procurement standards. Our objectives were to

- evaluate the effectiveness of the District's procurement policies and regulations and General Services' enforcement procedures;
- determine whether General Services complied with policies, regulations, and procedures; and
- identify areas in which the existing policies, regulations, or enforcement procedures need to be strengthened to promote competition, better ensure reasonable prices, or otherwise improve the effectiveness of the procurement process.

To meet our objectives, we reviewed the 19 procurement actions and supporting documentation in the contract files and discussed each action with General Services' procurement staff. For some actions, we also interviewed program or technical personnel of the agency which had requested the procurement or prepared the procurement specifications. Each of the 19 actions was examined according to criteria given in the District's procurement regulations. When those regulations were silent, however, we used the FPR as our criteria of sound procurement practices.

In addition, we talked with local vendors to ascertain their views on procurement specifications or to identify their reasons for not competing for contract awards. We also discussed the activities of the District's Contract Review Committee with the acting chairman. Our review was done in accordance with generally accepted government auditing standards.

Three factors influenced our selection of the 19 procurement actions. First, we wanted to focus on year-end spending. The actions processed by General Services in September 1982 represented 19 percent of the total dollar amounts awarded in all of fiscal 1982 while those processed during the period

September 27-30 represented 84 percent of the total amounts awarded in the final month of the fiscal year. As we noted earlier, a disproportionately large amount of spending near the close of the fiscal year often results in hasty procedures and wasted funds.

Second, we and the management of General Services agreed that a limited review of year-end procurements would be adequate to validate or disprove suspected problems and to justify needed improvements. On the basis of our preliminary findings and review plans, the agency director acknowledged that certain problems may exist and stated that he did not need exhaustive evidence to implement corrective measures. The director expressed the desire to make appropriate changes provided that a limited review supported the need for change.

Third, we wanted to include procurement actions which reflected the types of contracts awarded and supplies and services purchased during the final week of fiscal year 1982. This was done as follows: General Services classifies contracts by three types--definite quantity, negotiated services, and term.⁴ From agency records, we prepared a listing of each type awarded during the period September 27-30. A total of 82 procurement actions valued at \$12.9 million were processed during that period. We then sought to select enough actions to include 50 percent of the dollar amount awarded for each contract type and, at the same time, obtain a reasonable mix of the supplies and services purchased. The 50-percent criterion was satisfied for definite quantity and term contracts. However, due to an unusual mix of services acquired, our selection of negotiated services actions was limited to 43 percent of the total dollar amount. The 19 procurement actions we selected are identified in appendix II by contract number, type, dollar amount, and the supply or service procured.

Because we selected the 19 actions on a judgmental basis, our findings concerning individual actions cannot be used to make statistically valid inferences about procurement activity during fiscal year 1982 or any other specific period. Nevertheless, we believe that the problems discussed in this report can occur at any time. Though perhaps aggravated by a year-end

⁴A term contract is used when it is impossible to determine in advance precise quantities of a particular supply or service that will be needed during a definite period of time. Once District agencies determine the quantities needed, individual purchase orders are issued against the contract.

spending rush, the procurement problems we found generally occurred because of inadequate regulations and enforcement. These conditions are not unique to a particular time of year.

CHAPTER 2

RESTRICTIVE PURCHASE DESCRIPTIONS

LIMITED THE BENEFITS OF FORMAL ADVERTISING

The District did not ensure that purchase descriptions promote, rather than needlessly restrict, competition. As a result, it did not receive all the benefits of formal advertising.

Several of the formally advertised contracts we reviewed had limited or no competition because the invitation for bids contained purchase descriptions which few vendors could meet. District procurement agents did not evaluate the descriptions to determine whether less restrictive specifications could be used. In some instances, it was questionable whether the restrictive descriptions were essential to the procurement need. For example, a prospective vendor did not compete because its product could not meet the purchase description even though the product could have satisfied the procurement need. As a result, there was no assurance that the District obtained the best available price.

In addition to giving closer attention to purchase descriptions, the District could promote competition by (1) reviewing formally advertised awards to identify reasons for limited bidding and (2) modifying its existing procurement report format to show the extent of competition obtained for formally advertised awards. These measures would provide management with a means to systematically identify instances of limited competition, investigate the underlying reasons, and take remedial action to increase competition for future awards.

In response to our suggestions the District supplemented its procurement regulations to (1) tighten the criteria governing the use of brand name or equal purchase descriptions and (2) ensure that instances of limited bidding are reviewed to identify ways of increasing competition for future contracts. In addition, the District is modifying the procurement report format to provide more complete information on the competition obtained and plans to use the information to investigate causes of unfavorable trends.

PURCHASE DESCRIPTIONS SHOULD ENHANCE, NOT INHIBIT, COMPETITION

Our examination of 11 formally advertised contracts awarded by General Services identified 6 contracts in which restrictive

purchase descriptions, in all probability, inhibited competition. In each of those cases, we found no evidence that General Services questioned the need for the restrictive descriptions. The underlying reason for this inaction was a lack of regulations and enforcement governing purchase descriptions.

Purchase descriptions should reflect only minimum procurement needs

Although District regulations permit the use of restrictive descriptions in formally advertised procurements, they did not assign responsibility for determining when such descriptions are justified and for enforcing their proper use. As a result, General Services did not question the need for agencies to use restrictive descriptions.

The first step in formal advertising is to issue an invitation for bids which includes a description of the supplies or services to be purchased. The purchase description should accurately reflect the user's minimum needs and should not be unnecessarily restrictive by specifying features such as dimensions, materials, or other salient characteristics which are peculiar to the product of a particular vendor.

To describe an item, the purchase description may refer to one or more brand names followed by the words, "or equal." A brand name is a commercial product described, for instance, by make or model number. The brand name or equal description should include salient characteristics of the referenced item essential to the user so that vendors can readily discern what is needed and offer an equal product.

According to District regulations, a brand name or equal description can only be used when particular features of the referenced products are essential to the procurement need and similar products lacking those features would not meet the need. However, the regulations did not state who is responsible for making this determination or that it be justified in writing.

By contrast, the FPR's require a contracting officer to prepare written justification for the contract file when a brand name or equal description is used. Moreover, the FPR's generally allow such descriptions only when

- a suitable formal government specification or widely recognized and used industry description is unavailable or inadequate and
- a nonrestrictive description cannot be prepared because the public need is urgent or because preparation is impractical or uneconomical.

Furthermore, the FPR's require that all known, acceptable brand name products be listed in the invitation for bids. Such a listing was not required by the District.

Competition was limited
by restrictive descriptions

General Services received between one and four bids on six formally advertised contracts containing a brand name or equal purchase description. In several instances, it disqualified one or more bids as nonresponsive. As a result, over 80 percent of the dollars for the six contracts were awarded without competition.

Table 1 shows that the six contracts included seven actions totaling about \$760,000.⁵ Although at least three bids were submitted for half of the contracts, General Services awarded four contracts representing 82 percent of the total dollars on the basis of only one qualified bid because

- in two instances, one of two bids submitted was disqualified as nonresponsive to the purchase description;
- in one instance, three of four bids submitted were disqualified as nonresponsive; and
- in one instance, only one bid was received.

⁵The number of actions is larger than the number of contracts because in one case involving multiple items, two award actions occurred. The same vendor was awarded both actions under the contract, however (see table 1, note c).

Table 1
Extent of Competition When Brand Name or Equal
Purchase Description Was Used

Contract	Award Action	Number of bids		Total contract amount	Amount of total awarded on basis of		
		Submitted ^a	Disqualified		1 qualified bid	2 qualified bids	3 or more qualified bids
1 ^b	1	2	1	\$ 302,760	\$ 302,760		
2	2	1	-	83,474	83,474		
3	3	2	1	131,480	131,480		
4	4	4	3	108,120	108,120		
5	5	3	1	54,021		\$ 54,021	
6	6 ^c	3	1	69,903		69,903	
6	7 ^c	3	-	<u>10,360</u>			\$ <u>10,360</u>
Total				\$ 760,118	\$ 625,834	\$ 123,924	\$ 10,360
Percent of total				100.0	82.3	16.3	1.4

^aIncludes bids received for part of the items in the invitation for bids.

^bPurchase description did not cite a brand name, but specifications were based on a brand name product (see pp. 12 and 13).

^cBoth actions on this contract were awarded to the same vendor.

Our examination of the contract files found no documentation justifying the use of brand name or equal purchase descriptions. Moreover, we found no evidence that General Services questioned the need for brand names. As the following three cases illustrate, the District could enhance opportunities for competition if procurement agents questioned the need for brand name or equal descriptions before issuing invitations for bids. These cases are drawn from the six contracts included in table 1.

Pianos

On behalf of the user agency, General Services issued an invitation for bids to six vendors for pianos and related instructional equipment. The purchase description, prepared by the user, cited a particular manufacturer's brand name or equal. Among several features, the description specified a piano with a pinblock constructed of 19 plies and full-blow key action.⁶

⁶The pinblock, constructed of wood plies secured by glue, holds a piano's pins and provides tuning stability. Key action refers to the responsiveness and evenness of the piano's touch.

General Services did not ask the user agency why its purchase description cited a brand name or equal and whether the detailed features were essential to its need. Nor did General Services ask for a listing of all known, acceptable brand name pianos. A procurement official with the user agency told us that the particular brand name was not essential to the procurement need. However, the official believed that including the "or equal" phrase was sufficient to ensure competitive bids. In fact, one vendor submitted a bid and was awarded the contract at a cost of more than \$83,000.

Although the brand name or equal description was not essential to the user's minimum needs, it effectively precluded competition for the award. One of the vendors solicited by General Services told us that it did not submit a bid because its pianos could not conform to the detailed specifications but that they could have satisfied the user agency's requirements. Moreover, on the basis of our discussions with several piano dealers and review of different specifications, we determined that only the manufacturer named in the invitation for bids could meet the purchase description. We found that while pin-block construction varies from 4 to 28 plies, only one manufacturer uses 19 plies. Furthermore, the full-blow key action called for by the specifications is exclusive to the manufacturer.

Catch basin cleaner

On the basis of specifications prepared by another agency, General Services issued an invitation for bids for a catch basin cleaner--a device which removes debris from storm drains--consisting of a truck chassis, hydraulic crane, and dump body to hold refuse. The truck chassis purchase description did not cite a brand name but was based on a particular brand name product. Among other features, the description specified a truck engine with a displacement of 630 cubic inches and a minimum of 175 horsepower.

General Services sent the invitation to 11 vendors but received only two bids. Further, it disqualified one of the bids because (among other reasons) it did not offer a 630 cubic inch engine. As a result, the contract valued at nearly \$303,000 was awarded to the single qualified bidder who sells the brand name product.

According to the officials who prepared the purchase description, the engine offered by the winning vendor was the only one produced which could conform to the specifications. It is not certain, however, that those specifications were essential

to the procurement need. The officials told us that other engines are available but have different specifications. They also stated that the engine offered by the disqualified bidder probably could have met the procurement need. The officials preferred the engine described in the invitation for bids because of its reliability and because they wanted to standardize the basin cleaner fleet.

The General Services procurement agent who processed this procurement did not question the need for the unique engine. The agent told us that user specifications are not challenged unless they are obviously too restrictive or incorrect.

Vocational training kits

General Services sent an invitation for bids to 11 vendors for kits of model televisions, refrigerators, and other appliances to train vocational technical students. The invitation included 25 separate items, all of which were described ". . . as distributed by [vendor name deleted] or equal." Detailed specifications for each item were also included. The invitation stated that those specifications were intended to be descriptive and not restrictive.

Although two bids were received for 23 of the items, one bid was disqualified as nonresponsive to the specifications. For the remaining two items, only one bid was submitted. As a result, the only qualified bidder for all 25 items was the vendor specifically named in the invitation for bids. This vendor was awarded the contract at a cost of about \$131,000.

General Services' procurement staff did not question the use of the vendor's name in the purchase description. The responsible procurement agent told us that he did not feel qualified to raise a question because of the equipment's technical nature.

In our view, the use of a particular vendor's name to describe a product raises questions regardless of any technical considerations. For example, General Services could have asked the user agency whether the vendor's kits were the only kind acceptable and, if not, the reasons why other kits could not satisfy minimum needs. It also could have asked whether the vendor named was the only known source for the kits.

LESS RESTRICTIVE SPECIFICATIONS SHOULD BE USED

Although District regulations allow the use of brand name or equal purchase descriptions, they did not provide guidance on

less restrictive types of product specifications. Consequently, General Services used brand name or equal descriptions without considering performance or design specifications.

As a general rule, the Comptroller General has held that performance or design specifications are preferable to brand name or equal descriptions because they are usually less restrictive and provide greater opportunity for competition. A performance specification expresses product requirements in terms such as capacity, function, or operational capability, but leaves the details of design, fabrication, and internal structure to the option of the contractor. A design specification, by contrast, more completely defines an item by describing in detail product design, fabrication, and structure.

A brand name or equal purchase description should be used only when a performance or design specification is impractical or unavailable, and a design specification should be used only when minimum requirements cannot be stated in a performance specification. For example, in the catch basin cleaner procurement the District used a specification based on one manufacturer's brand name item (see p. 12). As an alternative, the District could have prepared a performance specification describing the various tasks required for the truck, crane, and dump body in terms of volume of debris, rate of removal, and other critical performance criteria. If this were not possible, a design specification could have been prepared to provide for an acceptable range of engine horsepower rather than specifying a 630 cubic inch engine with a minimum horsepower that only one manufacturer apparently could meet. Either type of specification would have provided greater opportunity for competition than a description based on a particular brand name.

ACTIONS TAKEN TO LIMIT USE OF RESTRICTIVE PURCHASE DESCRIPTIONS

On the basis of our review we suggested that the District process procurement actions with brand name or equal descriptions only when (1) the descriptions are essential to meet the user agency's minimum procurement needs, (2) a widely recognized and used government or industry standard is not available or is not adequate, and (3) preparation of a performance or design specification is impractical, uneconomical, or precluded by an urgent public need. We also suggested that contracting officers be required to include in the contract file written justification for using a brand name or equal description and that when such descriptions are used, the solicitation for bids contain

(1) the salient characteristics of the brand name product essential to the procurement need and (2) all known acceptable brand name products which could satisfy the need.

In December 1983 General Services augmented the District's procurement regulations to tighten the criteria governing brand name or equal descriptions in accordance with our suggestions. (See app. I, pp. 36 and 37.)

REASONS FOR LIMITED COMPETITION
SHOULD BE INVESTIGATED

In addition to avoiding restrictive purchase descriptions, the District could identify and alleviate barriers to competition by (1) following up on individual awards when few bids are received to identify reasons for limited bidding and (2) monitoring monthly award actions on an aggregate basis to assess trends in competition. The District has implemented followup review of individual awards and is working to implement monitoring of competitive trends.

Followup should occur when
few bids are received

District procurement regulations did not require follow-up review to identify reasons for limited competition. By contrast, FPR's require a contracting officer, when fewer than three bids are received, to examine the reasons for the limited number of bids and to recommend corrective action for increasing competition in future procurements. This follow-up can identify conditions which limit the effectiveness of formal advertising.

Of the 11 formally advertised contracts we reviewed, 5 did not use a brand name or equal purchase description. As shown in table 2, General Services received fewer than three bids on three of the five contracts.

Table 2
Extent of Competition for Formally Advertised Awards
Not Containing Brand Name or Equal Purchase Description

<u>Contract</u>	<u>Number of bids received</u>	<u>Amount awarded</u>
1	1	\$ 146,400
2	1	275,652
3	2	233,501
4	4	2,591,358
5	8	1,116,375
Total		<u>\$4,363,286</u>

General Services did not review the awards for which it received fewer than three bids.⁷ As the following example shows, follow-up reviews could identify impediments to formal advertising and allow management to take corrective action. The example is based on one of the contracts in table 2 involving only one bid.

On behalf of the user agency, General Services issued an invitation for bids for 60 street light posts. The invitation included specifications, prepared by the user, requiring that cast iron components conform to certain patterns (i.e., molds) that were available for inspection at a vendor's office in Spring City, Pennsylvania. Although General Services solicited eight vendors, the only bid it received was from the Spring City firm that was storing the post patterns. This firm was awarded the contract at a cost of \$146,400.

The General Services agent who processed the procurement did not know if the Spring City vendor had received any previous contract or if the contract had been competitively awarded. Nevertheless, the agent believed that competition was feasible since vendors could go to Spring City to obtain or replicate the light post molds. The agent also assumed that all the vendors asked to bid were capable of performing the contract and that a fair and reasonable price was ensured by issuing invitations to them.

We believe there was little reason to expect competition for the light post contract. Officials of the user agency told us that (1) the Spring City vendor made the post molds several years ago specifically for the District; (2) this vendor has received every contract for the particular posts; and (3) to their knowledge, no other vendor had ever bid. The officials also doubted that other vendors would be interested in producing the posts because the cast iron features are unique, the molds are expensive to make, and the market for the posts is small.

We believe that General Services would have known that competition was improbable if it had followed up on the previous award to the Spring City vendor. On the basis of its review, General Services could have evaluated the need for the unique type of posts and the feasibility of competitively procuring other types.

⁷In one instance General Services did question vendors after it had issued an invitation and received no bids. The invitation was reissued and only one bid was received. No follow-up on the second invitation was done, however.

Action taken to require
follow-up review

In August 1983 General Services augmented the District's procurement regulations to require follow-up when limited bidding occurs. When fewer than three bids are received, the procurement agent is required to (1) examine the product specifications for unnecessarily restrictive features and (2) write to vendors that declined to bid to request their reasons for not bidding. The agent also is required to consult vendor listings to identify additional product or service sources and to document the results of the search in the contract file. (See app. I, pp. 37 and 42.)

We believe this action will help the District identify correct reasons for limited bidding and promote increased competition for future awards of the same or similar items.

Monthly procurement report
should show data on
competition obtained

Each month the District prepares a computer-generated report showing award actions for supply and service contracts. If the report format was modified to show both the number of bids received and the number disqualified, the procurement staff could monitor competition on an aggregate basis and evaluate unfavorable trends.

Among several items, the report currently lists the contract number, commodity or service purchased, and contract value of each procurement action. Though not specifically designed to do so, the report also gives some indication of the competition obtained for formally advertised awards. For example, a contract may be listed as awarded to the "lowest bid as to price," or awarded to "other than lowest bid." In the vocational training kits, at least one lower bid was submitted but was disqualified.

Although the report classifications are not incorrect, they do not provide a complete picture of competitive activity. Some of the formally advertised contracts in our review received several bids while others received only one. In either case the contract could be reported as awarded to the low bidder even though the number of bids received varied substantially.

By modifying the report format to show the number of bids received and the number disqualified, the District would have a more comprehensive record. This record could then be used to monitor trends and to identify and correct conditions which have

limited competition. Restrictive purchase descriptions, for example, could be the cause of a trend showing either a small number of bids received or a large number disqualified in relation to those received.

CONCLUSIONS

Formal advertising is the preferred procurement method because it offers all qualified vendors an equal opportunity to compete and helps to ensure that supplies and services are obtained at reasonable prices. For formal advertising to be effective, however, purchase descriptions must reflect only essential procurement needs and not needlessly restrict competition.

The District has tightened the criteria governing brand name or equal purchase descriptions to ensure that they are used only when essential to meet minimum procurement needs and to require the use of less restrictive performance or design specifications when feasible. In addition, it has implemented a requirement for follow-up review when fewer than three bids are received in order to identify reasons for limited competition and permit corrective action to be taken on future awards.

In addition to these actions, the District should use its procurement reporting system to monitor trends in competition and to investigate the causes of any unfavorable trends. Implementing this action will require modification of the current report format to show the number of bids received and the number disqualified.

RECOMMENDATION

We recommend that the Mayor require the Director of Administrative Services to modify the current procurement reporting system to include both the number of bids received and the number disqualified for each formally advertised award. The procurement staff should use the report data to monitor trends on the extent of competition obtained and to identify, investigate, and work with user agencies to correct underlying causes of unfavorable trends.

AGENCY COMMENTS AND OUR EVALUATION

The City Administrator stated that the District is in the process of modifying the contract awards computer program to include both the number of bids received and the number disqualified for each formally advertised award. The procurement staff will use the data to monitor trends in the competition

obtained and to identify, investigate, and work with user agencies to correct causes of unfavorable trends. (See app. I, p. 38.)

CHAPTER 3

THE DISTRICT MISSED OPPORTUNITIES

TO OBTAIN COMPETITION FOR NEGOTIATED PROCUREMENTS

Six of the eight negotiated procurements we examined were awarded without adequate efforts to obtain competition even though District regulations require that competition be obtained to the maximum practical extent. These awards were made on a sole-source basis because agencies initiated negotiations without notifying General Services of their procurement needs; General Services approved awards on the basis of urgent public need without adequate justification; and limited or no effort was made to identify competitive sources. In one case, a sole-source award was made under the District's policy of fostering minority business opportunities. Though this policy limits competition, it serves other important social and economic goals.

In response to our review the District established procedures which require that a market search be done to identify competitive sources before sole-source negotiation is approved. To maximize competitive opportunities, the District also should ensure that user agencies obtain approval to negotiate before soliciting contract proposals and require users to document the nature of an urgent public need before negotiation is approved.

COMPETITION FOR NEGOTIATED AWARDS WAS LIMITED

General Services awarded seven contracts, including one contract awarded under the minority business program, on the basis of only one qualified offer. As shown in table 3, these actions total \$1.5 million and represent 52 percent of the dollars awarded for the eight negotiated procurements we reviewed.

Table 3
Extent of Competition for
Negotiated Procurement Actions

<u>Action</u>	<u>Total amount awarded</u>	<u>Amount awarded on the basis of</u>	
		<u>1 qualified offer</u>	<u>2 or more qualified offers</u>
1	\$ 72,290	\$ 72,290	
2	149,712	149,712	
3	434,567	434,567	
4	489,100	489,100	
5	72,080	72,080	
6	240,000	240,000	
7	54,210	54,210	
8	<u>1,393,089</u>		<u>\$1,393,089</u>
Total	<u>\$2,905,048</u>	<u>\$1,511,959</u>	<u>\$1,393,089</u>
Percent	100.0	52.0	48.0

The authority to waive formal advertising on an exception basis and use negotiation is separate from the requirement to obtain competition. In other words, even when negotiation is authorized, competition should be obtained to the maximum practical extent. Six of the actions listed in table 3 were awarded on a sole-source basis as a result of

- District agencies soliciting contract proposals before notifying General Services of their procurement needs. Because the contractor was already performing work, General Services believed it was too late to obtain competition although a contract had not been awarded;
- General Services authorizing negotiation on the basis of public exigency without evidence that an urgent need clearly existed. As a result, competition was restricted without adequate justification; and
- General Services and user agencies making limited or no effort to identify competitive sources before beginning sole-source negotiations.

Agencies solicited contractors before notifying General Services of a procurement need

In four of seven negotiated procurements, agencies solicited contractors without notifying General Services of their procurement needs. Three of the four procurements were non-competitive because when General Services became aware that

agencies had not attempted to obtain competition, contractors were already performing work to provide needed services. For example, a contractor worked for over 9 months before the agency notified General Services. Furthermore, in the single case when competition was obtained, General Services did not have enough time to complete its pre-award review.

District regulations state that no contract shall be negotiated unless a determination and findings statement is prepared and approved. The regulations require that the statement clearly and convincingly establish that formal advertising is not feasible and practical. Negotiation is authorized when the statement is approved and signed by an authorized contracting officer. At the time of our review, the statements usually were signed by the Assistant Director for General Services' Bureau of Materiel Management.

General Services procurement officials told us that user agencies typically determine the number of vendors to solicit, ask for proposals, and hold discussions with prospective contractors before they request General Services to approve a determination and findings statement. These officials acknowledged that approving a determination and findings statement after contract negotiations are virtually completed neither ensures that negotiation is justified nor that competition is maximized. As the following case illustrates, this practice deprived the District of opportunities to maximize competition.

In 1979, General Services awarded a contract on behalf of a user agency to lease and maintain computer equipment. The contract was renewed annually through fiscal year 1982. Though the procurement action included in our sample pertained to the renewal period ending September 30, 1982, we reviewed events leading to a follow-on contract awarded in fiscal year 1983.

The user agency began contract negotiations without informing General Services or obtaining its approval of a determination and findings statement. Because agreement was not reached by the end of fiscal 1982, the user asked the contractor to continue work without a contract. In February 1983, when the user and contractor finally agreed to terms, the user agency requested General Services to award a contract valued at about \$650,000.

Although General Services made the sole-source award, it told us that competition should have been obtained. An agency official stated that General Services did not exercise its

authority to ensure competition because the service was needed and the contractor was already performing the work. The District's Contract Review Committee also approved the award but noted that further review is needed to determine whether similar procurements can be competitive in the future.

Even when the user agency obtained competition, procurement safeguards were short-cut because General Services was not informed of the user's negotiation efforts. In this case the user agency solicited 140 vendors and received seven technically acceptable offers. Though competition apparently was maximized, the user did not contact General Services until 3 days before it wanted the contract awarded. General Services met the award deadline but, according to an agency official, did not have sufficient time to review the various proposals and ensure that the user selected the most advantageous offer.

To maximize opportunities for competition, we believe that user agencies should be required to notify the District's central procurement agency of all proposed negotiated procurements before they solicit contractors. This can be accomplished by requiring approval of a determination and findings statement as a prerequisite to soliciting contractors. If a user agency solicits contractors without an approved determination and findings statement, the central agency should take appropriate enforcement action, such as not awarding the contract or recommending disciplinary action against the individuals who requested the contractor to perform without a contract.

Justifications of public exigency were not adequately documented

In two contracts awarded by General Services we found no documentation to support user agency claims that public exigency justified negotiation. District regulations state that to invoke the public exigency exception, a procurement need must be compelling and urgent, a delay would result in serious injury, and the supplies or services could not be obtained by the date needed if formal advertising were used. However, the regulations do not provide specific guidance on the documentation needed to show that a public exigency exists.

Because the negotiated procurements approved on the basis of public exigency did not include adequate justification, it is not clear that an urgent need actually existed. For example, General Services approved an agency's request in April 1982 to procure floodlight poles and fixtures to replace ones which had been removed from a recreation facility earlier

in the year. To justify negotiation, the agency cited a "dire need" for the lighting system. A sole-source contract was awarded on September 30, 1982, at a cost of about \$72,000.

Since 5 months elapsed from the date the procurement action started until the contract was awarded, a serious question exists as to whether negotiation was justified on the grounds that public exigency would not permit the delay incident to formal advertising. If a dire need did exist, it should have been adequately documented and promptly addressed.

To ensure that the public exigency authority is properly used, we believe that District regulations should be expanded to conform to federal standards. On the basis of Comptroller General decisions and our studies of federal contracting, District agencies should be required to document the compelling and unusual urgency and the date the supplies or services are needed before negotiation is authorized under the public exigency exception.

Efforts to identify competitive sources were limited

District regulations did not require that a search be done for potential sources of supplies or services before a noncompetitive award is made. As a result, General Services awarded two sole-source contracts without adequate assurance that competition was not feasible. If the District had required market searches, the procurement staff would have had factual evidence for determining whether competition was feasible.

Both District and federal procurement regulations allow negotiation when only one vendor, because of unique capabilities, can satisfy a procurement need. Unlike the federal regulations, the District did not require a contracting officer to demonstrate that only one source is available. When only one source is believed available to meet minimum requirements, a market search should be done to ascertain whether other qualified and capable sources exist. Techniques for testing the marketplace include discussing potential sources with knowledgeable federal or nongovernmental experts; contacting trade associations; consulting contractor directories; and synopsising procurement needs in local publications to seek interested suppliers.

The federal policy of requiring market searches resulted from our review of procurement practices in federal agencies.

This review showed that the agencies with the lowest rates of unwarranted sole-source awards had the best record in searching the market for competition.

The extent of a market search depends on what is reasonable in the circumstances to ensure that competitive sources are not available. For example, if a relatively expensive item was not previously procured, the search should be extensive and thorough. On the other hand, if the same item had been purchased a short time earlier and a thorough market search had demonstrated that only one source existed, an extensive search may not be necessary.

In the cases reviewed, limited or no effort to test the market was made by General Services or user agencies. In one case, General Services approved a sole-source justification based on the user's statement that "no other organization is known" to have the necessary capabilities. There was no evidence in the contract file to support the user's opinion.

In another case, General Services originally issued an invitation for bids and received one response. Because the bid price exceeded available funds, the user agency asked General Services to authorize sole-source negotiation to procure a lesser quantity than originally requested. To justify a sole-source action, the user stated that the market had already been tested by an invitation for bids and, therefore, re-advertisement would serve no useful purpose. However, we believe that the user agency substantially modified the scope of work when it changed the quantity of the procurement. In our view, this resulted in a new procurement for which the market should have been tested for competition. In similar situations the Comptroller General has recommended that a procurement be resolicited in order to ensure competition.

On the basis of our review, we proposed that the District require contracting officers to conduct a market search for competitive sources and document the results in the contract file before they approve a request for sole-source negotiation. We stated that the extent of the market search should depend on what is reasonable in the circumstances to ensure that competitive sources are not available. In August 1983, the District supplemented its regulations to require procurement agents to indicate on the determination and findings statement the actions taken to ensure that a procurement is in fact sole-source. Such actions shall include (1) screening of the market to determine availability of the product or service from additional sources and (2) inquiries to local government organizations to determine the type of procurement used for similar items or services. (See app. I, pp. 39 and 43.)

We believe this action is responsive to our proposal and will help ensure that competitive sources are sought before sole-source negotiation is approved.

MINORITY BUSINESS PROGRAM
LIMITS COMPETITION, BUT
SERVES OTHER GOALS

One of the sole-source procurements awarded by General Services was made under the District's Minority Business Contracting Program. Only one firm submitted an offer and was awarded the contract at a cost of about \$54,000.

While the Minority Business Contracting Program limits competition, it serves other important social and economic goals. Established in 1977, the program is intended to ensure fair and equitable business opportunities for minority-owned firms and to increase local minority business participation in District contracting. To achieve these goals, competition for selected awards is limited to firms certified by the District's Minority Business Opportunity Commission. General Services is required to consult the Commission to identify eligible firms before making contract awards. In the case we reviewed, the Commission identified only one firm as certified for the type of supplies procured.

CONCLUSIONS

Although District regulations state that negotiated procurements shall be conducted on a competitive basis to the maximum practical extent, opportunities to obtain competition were missed because (1) user agencies solicited contractors before notifying General Services of their procurement needs; (2) General Services limited the field of competition on the basis of public exigency without obtaining adequate evidence that an urgent need actually existed; and (3) sole-source awards were made without adequate effort to identify competitive sources.

The District has revised its procurement procedures to require a market search for competitive sources before sole-source negotiation is approved. We believe this action will promote increased competition for supply and service contracts.

We also believe that competitive opportunities would be increased if District agencies are prevented from soliciting contract proposals before they receive negotiation approval and are required to justify their requests to negotiate on the

basis of urgent public need. The District could accomplish these objectives by augmenting its procurement regulations to require user agencies to submit written justification for waiving the requirement to formally advertise procurement actions; clearly provide that no agency personnel have the authority to solicit proposals before a waiver request is approved; and require users to document the compelling and unusual urgency and the date supplies or services are needed before negotiation is approved on the basis of public exigency.

RECOMMENDATIONS

We recommend that the Mayor require the Director of Administrative Services to establish and enforce procurement policy and regulations which:

- Require District agencies, before they solicit contract proposals, to submit to Administrative Services written justification for waiving the requirement to formally advertise a procurement action. The regulations should clearly state that no agency personnel have the authority to solicit proposals until Administrative Services signs a determination and findings statement approving the waiver.

- Require District agencies to adequately justify public exigency as authority to negotiate. The regulations should stipulate that before Administrative Services authorizes negotiation, the user agency must document the compelling and unusual urgency and the date the supplies or services are needed.

AGENCY COMMENTS AND OUR EVALUATION

The City Administrator stated that a Mayor's directive will be published and incorporated into the District's procurement regulations to implement our recommendations. (See app. I, pp. 38 and 39.)

CHAPTER 4

ACTIONS TAKEN TO ENSURE REASONABLE PRICES

AND RESOLVE OTHER PROCUREMENT ISSUES

While General Services processed agency awards in timely fashion, it did not always ensure that the District paid reasonable prices. In six negotiated procurements, documentation was not prepared or was inadequate to show how reasonableness of price was determined. In five formally advertised procurements for which only one qualified bid was received, the steps taken were not sufficient to ensure price reasonableness. Moreover, General Services did not

- use contract language that ensures compliance with statutory restrictions on expenditures of appropriated funds;
- comply with requirements for pre-award review of contractor affirmative action employment plans; and
- adequately document the justification for using contract option clauses.

In response to our review General Services augmented the District's procurement regulations to require a written determination of reasonable price before a negotiated contract or a formally advertised contract with only one qualified bid is awarded. The regulations also were supplemented to require closer examination of proposed prices when fewer than three bids are received for a formally advertised award.

Furthermore, the District has adopted revised contract language to ensure compliance with statutory funding restrictions and instructed the procurement staff to adhere to requirements for review of contractor affirmative action plans. Finally, the District is preparing guidelines to ensure proper use of contract option clauses.

DOCUMENTATION WAS NOT SUFFICIENT TO ENSURE REASONABLENESS OF NEGOTIATED PRICES

In six of the eight negotiated procurements we reviewed, documentation in the contract files was not sufficient to show that the District paid reasonable prices.

District regulations require a contracting officer to determine that proposed prices are reasonable before awarding a

contract. For negotiated procurements, the regulations state that an estimate of the proper price level or value of the product or service to be purchased should be developed before soliciting contractors. The regulations also state that at the conclusion of each price negotiation, a memorandum setting forth the principal elements of price shall be promptly prepared and included in the contract file. This memorandum should contain sufficient detail to reflect the most significant considerations concerning the establishment of the contract price.

Because government procurement assumes that competition ensures fair and reasonable prices, it is important to determine reasonableness of price if competition is restricted. When negotiation is used, certain restrictions on the competitive process are normally present. To compensate, District regulations require some form of price or cost analysis to ensure that a negotiated price proposal is reasonable.

Price analysis is the process of examining and evaluating a proposed price without considering the elements of cost and profit. Although the method and degree of an analysis depends on the circumstances, District regulations cite several techniques to use, including

- comparison of price quotations received;
- comparison of prior quotations and contract prices for the same items when the reasonableness of prior prices was established; and,
- comparison of prices set forth in published price lists for competitively sold items.

Cost analysis is more detailed and involves review and evaluation of each element of cost included in a vendor's proposal. A cost analysis is normally done when price analysis alone cannot provide adequate assurance that the proposed price is reasonable.

For three negotiated procurements, we found no documentation to show how proposed prices were determined to be reasonable. In three other cases, the documentation did not adequately reflect the establishment of price. For example, there was no evidence that an independent estimate was prepared before price negotiations began. Similarly, there were no detailed memoranda describing the negotiation results.

REASONABLE PRICE NOT ASSURED
WHEN ONLY ONE QUALIFIED BID
WAS RECEIVED

Six of the 11 formally advertised contracts we examined were awarded on the basis of only one qualified bid. Since competition is not present in such cases to ensure a reasonable price, we believe that the District should document a determination of price reasonableness before it awards the contract.

District regulations require that a contracting officer should determine that a proposed price is reasonable even when formal advertising is used. In contrast to negotiated procurements, the contracting officer is not required to document the determination. The regulations state, however, that particular care must be exercised when only one bid is received.

In five cases, when General Services received only one qualified bid, we found little or no evidence that particular care was exercised to ensure reasonableness of price. Procurement agents told us that they had not attempted to determine price reasonableness or had relied on the user agency. The contract files contained no evidence, however, to show what steps the user had taken. In one instance, a user agency official told us that he had made a cursory review of the contract's proposal, but stated that he did not have the experience to ensure that the contractor's price was reasonable.

ACTIONS TAKEN TO ENSURE
REASONABLE PRICES

On the basis of our review, we suggested that contracting officers be required to include in the contract file a written determination to show that a proposed price is reasonable before they award a negotiated contract or a formally advertised contract for which only one qualified bid is received. We also suggested that the written determination include the method used (price analysis, cost analysis, etc.) to establish the reasonableness of price. In December 1983, General Services augmented the District's procurement regulations to implement our suggestions. (See app. I, pp. 39 and 45.)

In addition, in August 1983, General Services supplemented the regulations to (1) require procurement agents to compare bid prices on formally advertised solicitations when fewer than three bids are received and (2) permit resolicitation of bids if the low bidder's price is determined

excessive. (See app. I, p. 42). We believe this action will also help to ensure that the District pays reasonable prices.

PROBLEMS IN COMPLYING WITH
THE ANTIDEFICIENCY ACT

Language used in three contracts we reviewed did not sufficiently conform to the statutory restrictions contained in 31 U.S.C. 1341(a)(1), which is commonly known as the Antideficiency Act. This statute prohibits government officials from authorizing the expenditure or obligation of funds either in excess or in advance of available appropriations. In interpreting the statute, the Comptroller General has not objected to a government agency entering into a contract prior to the enactment of an appropriation act if the contract specifically provides that the government would incur no legal liability for the payment of any money until appropriations are provided. While the language used in some General Services' contracts contained clauses which indicated the contingent nature of certain obligations, we suggested these clauses be strengthened to conform to our previous decisions.

On the basis of information we provided, the District prepared and adopted revised contract language which clearly provides that no legal liability on the part of the District for payment arises unless and until funds are so appropriated. (See app. I, p. 40.) This language should preclude Antideficiency Act problems in future contracts.

OFFICE OF HUMAN RIGHTS
PRE-WARD REVIEW WAS PREEMPTED

Three of the procurement actions we examined were awarded by General Services without giving the District's Office of Human Rights the prescribed number of days to review contractor affirmative action employment plans. Furthermore, General Services took no action to ensure contractor compliance following contract award.

Prospective contractors are required by Commissioner's Order 73-51 (Feb. 28, 1973) to submit an affirmative action plan prior to contract award. The Office of Human Rights has 10 days to approve or disapprove the plan. If Human Rights does not complete its review in 10 days, General Services may proceed to award the contract.

On September 30, 1982, the final day of the fiscal year, General Services informed Human Rights that it had awarded 24 contracts totaling about \$2.5 million. These awards, three of

which were included in our sample, were made before the 10-day review period expired for emergency reasons. Though General Services told Human Rights that every effort would be exhausted to ensure contractor compliance with the Commissioner's Order, it made no effort to follow up after awarding the contracts.

On August 10, 1983, the Assistant Director of General Services' Bureau of Materiel Management issued a memorandum to the procurement staff which requires that the 10-day period for Human Rights' review be strictly followed.

JUSTIFICATION FOR OPTION
CLAUSES WAS NOT ADEQUATELY
DOCUMENTED

Five of the procurement actions we reviewed contained an option clause to either (1) increase the quantities of supplies or (2) extend the performance period of a service. Of the five options, four were exercised by General Services. For those four cases we found no documentation to justify the use of the options.

The District has no regulations governing the use and exercise of contract options. However, the FPR's state that a contracting officer should justify in writing the quantities or terms under option. The regulations also require the contracting officer to document that exercise of the option was the most advantageous method of fulfilling the procurement need, price and other factors considered. For the cases we reviewed, there was no documentation to justify the quantities or terms or to show that exercising the option was the most advantageous procedure in terms of price or other factors.

Near the close of our review, the District's Contract Review Committee issued proposed regulations which would require written justification for using and exercising contract option clauses. The regulations contain guidance similar to the FPR's and, if implemented and enforced, should help ensure that option clauses are properly used.

CONCLUSIONS

The District has implemented steps to ensure reasonable prices for negotiated procurements and formally advertised procurements involving a limited number of bids. It also has resolved problems related to the Antideficiency Act and the review of contractor affirmative action plans. To provide more assurance that reasonable prices are paid, the District should

require contracting officers to justify in writing the terms or quantities included in contract option clauses and the basis for exercising an option.

RECOMMENDATION

We recommend that the Mayor require the Director of Administrative Services to implement and enforce regulations governing the use and exercise of contract option clauses.

AGENCY COMMENTS AND
OUR EVALUATION

The City Administrator stated that guidelines on the use and exercise of contract option clauses are being drafted and will be incorporated into the procurement regulations. (See app. I, p. 41.)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE

OFFICE OF THE CITY ADMINISTRATOR
DEPUTY MAYOR FOR OPERATIONS



THOMAS M. DOWNS
CITY ADMINISTRATOR
DEPUTY MAYOR FOR OPERATIONS
1350 PENNSYLVANIA AVE., N.W. — ROOM 507
WASHINGTON, D.C. 20004

6 JAN 1984

Mr. William J. Anderson
Director
General Government Division
United States General Accounting
Office
Washington, D.C. 20548

Dear Mr. Anderson:

In response to the recommendations in the draft GAO report entitled, "The District Should Increase Competition and Ensure Reasonable Prices for Supply and Service Contracts", which was received on December 5, 1983, I enclose a copy of a report to me from Mr. John Touchstone, Director of the Department of Public Works. As your report indicates, the District's central procurement authority has been located within the Department of General Services, (DGS), with specific functions delegated to the Bureau of Materiel Management. However, under the Mayor's Reorganization Plan No. 5 of 1983, which was submitted to the City Council on December 1, 1983, the procurement function will be transferred from DGS to the Department of Administrative Services.

In order to strengthen the procurement system as it exists, and to ensure continuity of the processing of orders and contracts, a District-wide vendor numbering system has been developed and a Mayor's Order, which addresses year-end encumbrances has been implemented. During the first quarter of calendar year 1984, a vendor numbering system, based on the Data Universal Numbering System (DUNS), operated by the Dunn and Brandstreet Corporation and used by the Federal General Services Administration will enhance competition by selecting potential vendors through the use of codes, location, size and minority enterprises. Mayor's Order 83-258 of November 2, 1983, states that all encumbrances (unfilled purchase orders and contracts) will lapse at the end of each fiscal year.

I can assure you that we are looking carefully at the recommendations and comments proposed by the report and will continue to implement changes in the procurement system in order to affect increased competition and cost containment.

Sincerely,



Thomas M. Downs
City Administrator/Deputy Mayor
for Operations

Enclosure

cc: Curtis McClinton
Al Hill
John Touchstone

GAO note: Page references in these comments refer to a draft GAO report and are not the same as the final report. In addition, those recommendations numbered 1, 2, 6, 7, and 8 were proposed in the GAO draft and have been implemented by the District. Consequently, the proposals do not appear as recommendations in the final report but are discussed as actions taken in the appropriate sections of chapters 2, 3, and 4.

R E P O R T

This response is directed to recommendations in the three major areas of the audit: Chapter 2, "Restrictive Purchase Descriptions Are Limiting the Benefits of Formal Advertising"; Chapter 3, "The District Is Missing Opportunities To Obtain Competition For Negotiated Procurements," and Chapter 4, "Actions Needed to Ensure Reasonable Prices and Resolve Other Procurement Issues."

1. Page 19, Chapter 2, GAO Recommendation:

"--Tighten the criteria governing the use of brand name or equal descriptions likely to restrict competition. The criteria should stipulate that General Services will process procurement actions with brand name or equal purchase descriptions only when (a) their use is essential to the user agency's minimum procurement needs (b) a widely recognized and used government or industry standard is not available or is not adequate, and (c) preparation of a performance or design specification is impractical, uneconomical, or precluded by an urgent public need." -- Require contracting officers to include in the contract file written justification for using a brand name or equal description. Further, when a brand name or equal description is used the solicitation for bids should contain (a) the salient characteristics of the brand name product essential to the procurement need and (b) all known acceptable brand name products which could satisfy the need.

District Response:

The Department of General Services, has implemented the GAO recommendation by issuing the following Office Memorandum 83-11, attached, to its procurement staff:

Directive: In accordance with the District's policy to increase competition and insure reasonable prices for supply and service contracts, the following procedures will be followed in preparation of Invitation for Bids containing brand name or equal specifications:

1. The District will process procurement actions with brand name or equal purchase descriptions only when (a) their use is essential to the user agency's minimum procurement needs, (b) a widely recognized and used government or industry standard is not available or is not adequate, and (c) preparation of a performance or design specification is impractical, uneconomical or precluded by an urgent public need.
 2. Written justification, executed by the contracting officer, shall be included in the contract file setting forth the facts and conclusions regarding the reasons for using brand name or equal as specified in Section 1, (a) (b) and (c).
 3. In preparation of the Invitation for Bid containing brand name or equal specifications, the description shall contain (a) the salient characteristics of the brand name product essential to the procurement need and (b) all known acceptable brand name products which could satisfy the need.
 4. This policy is effective immediately."
2. Page 19, Chapter 2, GAO Recommendation:
- "We also recommend that the Director require General Services' procurement staff to (1) investigate the reasons for limited competition when fewer than three bids were received for a formally advertised award and (2) document in the contract file methods to increase competition on future procurements for the same or similar items."

District Response:

Department of General Services, Bureau of Materiel Management, Office Memorandum 83-7, dated August 16, 1983, (attached) describes the current policy of the procurement staff in order to increase competition in cases where fewer than three bids are received. This policy requires the procurement staff to examine specifications for unnecessary restrictive features, and request reasons why prospective bidders did not chose to submit on particular procurements. In addition, the case file will be documented to indicate expanded solicitation sources and recommended actions to be taken by the staff to increase competition in future solicitations. We feel that this Office Memorandum is in conformance with the GAO recommendation.

-4-

5. Page 27, Chapter 3, GAO Recommendation:

--Require District agencies to adequately justify public exigency as authority to negotiate. The regulations should stipulate that before General Services authorizes negotiation the user agency must document the compelling and unusual urgency and the date the supplies or services are needed."

District Response:

The Mayor's directive mentioned in District Response to Recommendation No. 4, will also include a requirement that agencies will adequately justify compelling and unusual urgency and the date the services or supplies are needed to justify public exigency.

6. Page 27, Chapter 3, GAO Recommendation:

--Require General Services contracting officers to conduct a market search for competitive sources and to document the results in the contract file before they approve a request for sole-source negotiation. The extent of the market search should depend on what is reasonable in the circumstances to ensure that competitive sources are not available."

District Response

Department of General Services, Bureau of Materiel Management Office Memorandum 83-9, dated August 16, 1983, (attached) describes the current policy of contracting officers to conduct a market search for competitive sources in case of sole source procurement. We feel this to be in conformance with the GAO recommendations.

7. Page 33, Chapter 4, GAO Recommendation:

"We recommend that the Mayor require the Director of General Services to take action to provide more assurance that the District pays reasonable prices for supplies and services. To meet this objective, the Director should establish and enforce procurement policy and regulations which require General Services contracting officers to include in the contract file a written determination to show that a proposed price is reasonable before they award a negotiated contract or a formally advertised contract for which only one qualified bid is received. The written determination should include the method used (price analysis, cost analysis, etc.) to establish the reasonableness of price."

District Response:

Procurement policy and regulations established in Materiel Management Manual Section 2620.16 requires that cost/pricing analysis be made to show the proposed price is reasonable. In addition, the Department of General Services has implemented the GAO recommendation by issuing the following Office Memorandum 83-12, attached, to its procurement staff:

"Directive: In accordance with the District's policy to [increase] competition and ensure reasonable prices for supply and service contracts, the following procedures will be followed:

1. In cases where only one qualified bid is received, the contracting officer shall include in the contract file a written determination to show that a proposed price is reasonable, before award of a formally advertised or negotiated contract.
 2. The written determination shall include the method used to establish the reasonableness of price in accordance with Section 2620.16 of the Materiel Management Manual.
 3. This policy is effective immediately."
8. Page 33, Chapter 4, GAO Recommendation:

"We also recommend that the Mayor require the Director to:

--Use contract language that conforms to funding restrictions of the Antideficiency Act."

District Response:

The District has reviewed and implemented contract language which is in conformance with the GAO Decisions regarding the Antideficiency Act. The language is as follows:

"Appropriation of Funds: The District's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided."

3. Page 19, Chapter 2, GAO Recommendation:

"Furthermore, the Director should modify the current procurement reporting system to include both the number of bids received and the number disqualified for each formally advertised award. General Services' procurement staff should use the report data to monitor trends on the extent of competition obtained and to identify, investigate, and work with user agencies to correct underlying cause of unfavorable trends."

District Response:

The Department of General Services is in the process of modification of the contract awards computer program to include both the number of bids received and the number disqualified for each formally advertised award. The procurement staff will use the data to monitor trends on the extent of competition obtained and to identify, investigate, and work with user agencies to correct underlying causes of unfavorable trends.

4. Page 27, Chapter 3, GAO Recommendation:

"We recommend that the Mayor require the Director of General Services ensure that competition is obtained to the maximum practical extent for negotiated procurement actions. To meet this objective, the Director should establish and enforce procurement policy and regulations which:

--Require District agencies, before they solicit contract proposals, to submit to General Services written justification for waiving the requirement to formally advertise a procurement action. The regulations should clearly state that no agency personnel have the authority to solicit proposals until General Services signs a determination and findings statement approving the waiver."

District Response:

In order to comply with the GAO recommendation, a Mayor's directive will be published requiring the agencies to submit to General Services, prior written justification for waiving formally advertised procurement.

9. Page 33, GAO Recommendation:

"--Implement and enforce regulations governing the use and exercise of contract option clauses."

District Response:

The District is currently drafting guidelines, "Policies and Procedures for Options", for use and exercise of contract option clauses. This will allow the District to increase quantities or extend the term of a contract.

10. Summary

All of the actions cited above, which includes Office Memorandum and Mayor's directives, will be included in the District's future procurement regulations.

Enclosures as stated

OFFICE MEMORANDUM 83-7

August 16, 1983

TO: All Procurement and Contract
Management Personnel

SUBJECT: Increased Competition in Cases When Less Than
Three (3) Bids Are Received

General: In many instances one or two bids are received in response to solicitations to many firms on the bid list. This lack of greater participation may be due to many factors such as overly restrictive specifications, limited bidder's list or lack of adequate time to prepare the bid.

When less than three bids are received, the procurement agent shall examine the reason in accordance with the following procedure:

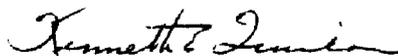
1. Examine the specifications for unnecessarily restrictive features.
2. Write to the prospective bidders who were mailed bids, but did not respond, to request reasons for not bidding.

The following action will be taken in an attempt to obtain increased competition in future bids and further to determine the acceptability of the price bid.

1. Use sources of bidders such as the Thomas Register, Yellow Pages of the phone book and the Blue Book Contractor's Register.
2. Compare bid prices when possible with previous bid prices to determine adequacy of the price. If the low bidder's price is excessive, the bid may be cancelled for lack of competition and rebid.

The file should be documented with action taken by the procurement agent.

This memo is effective immediately.



Kenneth E. Quinlan
Assistant Director for Materiel Management

OFFICE MEMORANDUM 83-9

August 16, 1983

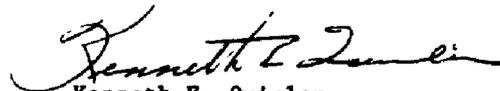
TO: All Procurement and Contract
Management Personnel

SUBJECT: Sole Source Procurements

General: In order to assure that contracts are formally advertised in lieu of sole source negotiation, procurement agents will use the following guidance in making the determination concerning method of procurement.

1. Determine that the contract is authorized by one of the exceptions to formal advertising listed in the D.C. Code 1981 Edition, Title 1-1110. (Cite the exception in the first paragraph of the Determination and Findings (D&F).
2. Indicate in the D&F document, actions taken to assure that the source of procurement is in fact a sole source. These actions shall include a screening of the market place to determine availability of the product or service from other than a single source.
3. D&F shall include a notation of inquiries made to local COG Government organizations to determine the type of procurement used for similar items or services.

This memo is effective immediately.



Kenneth E. Quinlan
Assistant Director for Materiel Management

OFFICE MEMORANDUM 83-11

December 27, 1983

TO: All Procurement and Contract
Management Personnel

SUBJECT: Brand Name or Equal Requirements

"Directive: In accordance with the District's policy to increase competition and insure reasonable prices for supply and service contracts, the following procedures will be followed in preparation of Invitation for Bids containing brand name or equal specifications:

1. The District will process procurement actions with brand name or equal purchase descriptions only when (a) their use is essential to the user agency's minimum procurement needs, (b) a widely recognized and used government or industry standard is not available or is not adequate, and (c) preparation of a performance or design specification is impractical, uneconomical or precluded by an urgent public need.
2. Written justification, executed by the contracting officer, shall be included in the contract file setting forth the facts and conclusions regarding the reasons for using brand name or equal as specified in Section 1, (a) (b) and (c).
3. In preparation of the Invitation for Bid containing brand name or equal specifications, the description shall contain (a) the salient characteristics of the brand name product essential to the procurement need and (b) all known acceptable brand name products which could satisfy the need.
4. This policy is effective immediately."



Kenneth E. Quinlan
Assistant Director for Materiel Management

OFFICE MEMORANDUM 83-12

December 28, 1983

TO: All Procurement and Contract
Management Personnel

SUBJECT: Increase Competition for Supply and Service Contracts

"Directive: In accordance with the District's policy to increase competition and ensure reasonable prices for supply and service contracts, the following procedures will be followed:

1. In cases where only one qualified bid is received, the contracting officer shall include in the contract file a written determination to show that a proposed price is reasonable, before award of a formally advertised or negotiated contract.
2. The written determination shall include the method used to establish the reasonableness of price in accordance with Section 2620.16 of the Materiel Management Manual.
3. This policy is effective immediately."



Kenneth E. Quinlan
Assistant Director for Materiel Management

Procurement Actions Reviewed By GAO

<u>Contract type and amount</u>	<u>Procurement method</u>	<u>General Services number</u>	<u>Supply or service</u>
<u>Definite quantity:</u>			
1 \$ 302,760	Advertised	0450-AA-38-0-2-MW	Catch basin cleaner
2 240,000	Negotiated	0573-AA-59-N-2-MR	Court recording system
3 233,501	Advertised	0605-AA-23-0-2-DD	Trucks and stepvans
4 146,400	Advertised	0590-AA-62-0-2-HT	Street light posts
5 131,480	Advertised	0039-AB-59-0-3-RD	Vocational training kits
6 108,120	Advertised	0039-AA-59-0-3-RD	Vocational training kits
7 83,474	Advertised	0659-AA-77-0-3-RD	Piano and piano labs
8 80,263	Advertised	0572-AA-74-0-2-MR	Atari computers
9 72,080	Negotiated	0544-AA-59-N-2-MR	Floodlight poles and fixtures
10 54,210	Negotiated	0556-AA-59-N-2-MR	Insulation materials
11 54,021	Advertised	0039-AC-59-0-3-RD	Vocational training kits
<u>Negotiated services:</u>			
12 \$1,393,089	Negotiated	0686-AA-NS-0-2-GA	Computer training and equipment
13 489,100	Negotiated	0083-AA-NS-0-3-GA	Educate the handicapped
14 434,567	Negotiated	0194-AA-NS-N-9-GA	Lease and maintain equipment
15 149,712	Negotiated	0724-AA-NS-N-9-GA	Instructional music
<u>Term:</u>			
16 \$2,591,358	Advertised	0006-AA-68-0-3-RD	Lime
17 1,116,375	Advertised	0006-AB-68-0-3-RD	Lime
18 275,652	Advertised	0558-AA-79-1-2-RD	Engineering services
19 72,290	Negotiated	0219-AA-78-0-2-EJ	Scientific apparatus

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