

GAO

Report to the Chairman,
Committee on Government Operations,
House of Representatives

January 1989

PROCUREMENT

Department of State Should Be Competing Many Sole-Source Contracts





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

**National Security and
International Affairs Division**

B-231304

January 24, 1989

The Honorable John Conyers, Jr.
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

As requested by the Subcommittee on Legislation and National Security on August 4, 1987, we reviewed whether sole-source contracts awarded by the Department of State's main procurement office should have been competed.

As arranged with the Subcommittee, we did not ask the Department of State to comment on this report. However, throughout the review we discussed the facts and circumstances surrounding individual contracts under review and procurement practices in general with State procurement officials. We have included their views where appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of State; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

This report was prepared under the direction of Martin M Ferber, Senior Associate Director. Other major contributors are listed in appendix IV.

Sincerely yours,

A handwritten signature in cursive script that reads 'Frank C. Conahan'.

Frank C. Conahan
Assistant Comptroller General

staff and emphasizing staff training, and (3) issuing procedures requiring review of proposed contract actions by officials other than the contracting officer.

GAO believes that the actions the procurement office is planning and taking should reduce the incidence of some problems GAO found. However, the contract review procedures need to be more specific to encourage thorough reviews.

Principal Findings

Many Sole-Source Contracts Should Have Been Competed

At the Subcommittee's request, GAO initially reviewed nine sole-source contracts awarded by the procurement office and found that eight of the nine contracts should have been competed. State had awarded sole-source contracts for periods of several years to 30 years to most of the contractors involved. GAO subsequently reviewed a sample of 33 recent sole-source contracts and found that three of nine sole-source awards for over \$500,000 did not require justification, certification, and approval in writing to be awarded on a sole-source basis because they were awarded to small businesses. Five of the other six contracts for over \$500,000 requiring written justification were appropriately awarded sole-source; however, one award for automated data processing support services should have been competed. The procurement office has competed the fiscal year 1989 follow-up contract.

GAO found that 21 of the 24 awards under \$500,000 required justification, certification, and approval in writing. Eleven of these contracts should have been competed. For example, six contracts for medical personnel to provide medical services to State employees were awarded sole-source on the basis that unusual and compelling urgency did not allow time for full competition. However, these contracts were for recurring services and, therefore, State had adequate time to plan for their competition. Also, the procurement office made inaccurate statements in the required written justifications that the requirements for medical services had been advertised in medical journals, when they had not.

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- have appropriate officials develop an automated system to collect and report complete and accurate procurement information to the Federal Procurement Data Center;
 - have the Comptroller develop and maintain the required paying office contract files; and
 - have the Assistant Secretary for Administration develop procedures and requirements for contract issuing office contract files review.

Agency Comments

In accordance with the requester's wishes, GAO did not request official agency comments on a draft of this report. However, GAO sought the views of responsible officials during the course of its work and incorporated their views in this report where appropriate.

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Abbreviations

FAR Federal Acquisition Regulation
GAO General Accounting Office

after soliciting and negotiating with only one source, it is called a sole-source contract.

Objectives, Scope, and Methodology

The objectives of our review were to determine whether (1) sole-source contracts awarded by the Department of State through the Office of Supply, Transportation, and Procurement should have been competed and (2) some key requirements in federal regulations, which represent important internal management control procedures, were followed in awarding contracts. To do this we initially reviewed nine sole-source contracts, involving eight contractors, at the request of the Subcommittee. We also evaluated the history of State's sole-source relationship with the contractors, which ranged from several years to over 30 years. In some cases, these contracts preceded the Competition in Contracting Act of 1984 (41 U.S.C. 253 *et seq.*, Competition Act). In others, the contracts were covered by the act. (The different regulations that applied are explained in chapter 2.) To determine if the type of problems we identified in these contracts, some of which had been awarded several years ago, existed in State's current contract awards, we evaluated a sample of 54 sole-source contracts over \$25,000 each. The procurement office awarded these contracts from July 1986 through June 1987, the latest period for which information was available.

We drew our sample of 54 contracts from a universe of 151 sole-source awards reported by the procurement office to the Federal Procurement Data Center. This universe contained 9 sole-source awards of \$500,000 or more, which we reviewed, and 142 awards under \$500,000. We selected a random sample of 45 of the actions under \$500,000 so that we could project the results to the universe of 142. Five contracts in the sample proved to be highly classified; therefore, we agreed with the Subcommittee on Legislation and National Security not to review them.

We selected new contract actions for the sample, as opposed to modifications to or orders under existing contracts, since new contracts provide the primary opportunity for businesses to compete for federal government business. We examined the contracts and the available supporting documentation and discussed the actions with State officials, such as the contracting officer in the procurement or contract issuing office and the program or technical personnel in the office which requested the procurement. We also contacted potential contractors, as needed, to determine their views on whether sources other than the winning contractor could have met the government's needs.

Federal Regulations Generally Require Procurements to Be Competed

Federal government procurement regulations are contained in the Federal Acquisition Regulation (FAR) system, which consists of governmentwide regulations and agency regulations that implement and supplement it. Current regulations require federal agencies to compete procurements except in certain specified circumstances. Although the requirements for small purchases, those for \$25,000 or less, are less stringent, the regulations also require that small purchases over \$1,000 be competed to the maximum extent practicable.

Current Regulations

Current regulations require that contracts, with certain exceptions, be awarded using full and open competition procedures. Proposed contract actions in excess of certain dollar values must be publicized in the Commerce Business Daily to encourage competition, and all capable and responsible sources must be permitted to submit offers and compete for the government's business.

The Competition Act established seven circumstances for which full and open competition procedures do not have to be used.

1. Property or services are available from only one source and no other type of property or services will satisfy the needs of the agency. This also includes certain follow-ons, such as for continuing production or development of major systems or highly specialized equipment and unsolicited research proposals.
2. The agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources solicited.
3. A contract needs to be awarded to a particular source to maintain a facility in case of national emergency, to achieve industrial mobilization, or to establish or maintain an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center.
4. It is required by the terms of an international agreement or treaty or by written direction of a foreign government that is reimbursing the agency for the cost of the procurement.
5. A statute expressly authorizes or requires procurement through another agency or from a specified source or the agency's need is for a brand-name commercial item for authorized resale.

Past Regulations

The Competition in Contracting Act of 1984 introduced the concepts of full and open competition and other than full and open competition. Under the act, soliciting competition by either sealed bids or proposals for negotiating a procurement, from all responsible sources, is full and open competition; limiting the number of sources solicited, when adequately justified by one of the seven exceptions, is other than full and open competition.

Prior to the Competition Act, soliciting sealed bids, then called formal advertising, was the preferred method for achieving competition. For civilian agencies, negotiating a procurement could only be done if any of 15 circumstances existed; however, even then publicizing actions in the Commerce Business Daily was frequently required and the maximum number of qualified sources practicable were required to be solicited. Some of the initial contracts we reviewed before drawing a sample from the recently awarded contracts were executed prior to the Competition Act and cited one of the 15 circumstances as the authority permitting negotiation. The following are the only four exceptions that were cited on these contracts:

1. It is impracticable to secure competition by formal advertising.
2. The public exigency will not allow the delay due to advertising because of unusual and compelling urgency.
3. The contract is for personal or professional services.
4. The procurement should not be publicly disclosed because of its character, ingredients, or components.

In addition to soliciting the maximum number of qualified sources practicable, a written justification, called a determination and findings, also was required for exceptions 1, 2, and 4. The determinations and findings were required to clearly and convincingly establish that using formal advertising would not have been practicable and to justify the determination made. They had to be signed by the official approving them.

Small Purchases

Federal regulations have traditionally included small purchase procedures that contained less stringent competition requirements than those for larger contracts. Current regulations still require agencies to obtain competition by soliciting quotations for small purchases over \$1,000

Contracts Were Not Competed and Controls Were Not Followed

Eight of the nine sole-source contracts that we initially evaluated should have been competed. With a few exceptions, the sole-source awards for goods and services made to these contractors in past years should also have been competed. Further, our analysis of the sample contracts showed that one of six awards over \$500,000 and about half of the awards under \$500,000 requiring a written justification should have been competed and key internal controls intended to limit sole-source awards, such as advertising in the Commerce Business Daily and obtaining required approvals, often were not followed (see app. III). To increase competition and adherence to the regulations, the procurement office has been taking actions, such as increasing its staff, issuing new procedures, and establishing a board to review high dollar contracts. The contract review procedures should be made more specific, however, to ensure that regulations are followed.

Eight of Nine Initially Identified Sole-Source Contracts Should Have Been Competed

Eight of the nine Office of Supply, Transportation, and Procurement sole-source contract awards we initially evaluated at the Subcommittee's request should have been competed. Also, we found that State had made sole-source awards to six of the eight contractors in the past, which also should have been competed. For example, State leased automobiles for its two domestic motor pools from the Chrysler Corporation and Ford Motor Company for almost 20 years on a sole-source basis. For the two fiscal year 1986 contracts (for 73 vehicles costing \$212,000), the procurement office stated that vehicles were available from only one source as the authority for not competing the contracts. Then, for fiscal year 1987, the procurement office leased the cars sole-source by issuing several small purchase orders (each under \$25,000) during the year, even though the regulations prohibit breaking up large purchases into several small purchases. During our review, State competed one lease contract to provide cars for both motor pools for fiscal year 1988, which Ford Motor Company won.

Also, the procurement office awarded a sole-source contract for \$874,000 to Motorola, Inc., in September 1985 to buy 30 lightweight satellite terminal radios and 40 power supplies. Unusual and compelling urgency was cited as the authority for not competing the contract; however, the justification did not demonstrate urgency. It stated that portable equipment on hand was adequate for State's needs, although lighter weight equipment would reduce transportation problems. It also stated that Motorola made the smallest, lightest unit available at the time. We found, however, that Cincinnati Electronics Corporation was making a

months work that had been performed without authorization from State procurement officials after a previous contract with Computer Business Methods had expired, and provided for 6 months additional work. The original value of the fiscal year 1987 contract was about \$977,000. When we reviewed it in the first half of 1988, the costs had been increased to about \$1,833,000 and the contract extended through September 1988.

State cited unusual and compelling urgency as authority for not fully competing the contract, but the "urgency" resulted from inadequate advance procurement planning. Under the Competition Act and applicable regulations, the use of other than competitive procedures cannot be based on a lack of adequate advance planning. In this regard, State had contracted sole-source with Computer Business Methods in September 1982 and extended that contract on a periodic basis through September 1986. In 1985, the procurement office considered awarding a new contract instead of extending the old one and, in October 1985, publicized its intent to negotiate sole-source with the company in the Commerce Business Daily.

Several vendors requested a solicitation package or detailed information describing State's needs. State had neither planned for competition nor prepared a package, however, and asked the vendors to send a statement of their capabilities instead. One company, Genasys Corporation, responded and was determined qualified to perform the needed services by the contracting officer and an Information Systems Office technical representative. The procurement office contracting officer thus began planning to develop a solicitation package. But Genasys then withdrew its request for the package. According to a company Corporate Vice President, an official from State's Information Systems Office telephoned and urged him to "withdraw and not make waves." The State official said that he asked for a withdrawal letter because in his discussions with Genasys he decided it was not qualified to perform the work. After Genasys withdrew, the procurement office did not prepare a solicitation package. After the contract expired in September 1986, Computer Business Methods continued working without a contract. The current contract was then awarded without seeking any other sources.

In August 1987, State planned to compete a new contract to continue to provide the services and publicized its requirement in the Commerce Business Daily. It intended to award a contract to a small business after the current contract expired. State received 217 vendor requests for the solicitation package, which still had not been prepared. During our

occurred since State has a continuing need for these services and contracts for them each year. Therefore, State had ample time to develop a description of its needs and seek competition.

Key Controls to Promote Competition Often Not Followed

The procurement office often did not follow key requirements of procurement laws and regulations that are intended to promote competition and reduce the unjustified awarding of contracts on a sole-source basis. These requirements represent important internal management control procedures. For example, written justifications often did not contain sufficient facts and rationale to justify not using full and open competition. Frequently, contracting officers had not certified the completeness and accuracy of the justifications, appropriate level officials had not approved the justifications, State had not publicized actions in the Commerce Business Daily, and State had not tried to find other sources from which to solicit offers. Table 3.1 shows the frequency of the procurement office's failure to follow these key controls for the 21 sole-source contracts under \$500,000 we reviewed.

Table 3.1: Frequency of Failure to Follow Key Controls

	Contracts
1. Written justification contains inadequate support for less than full and open competition.	14
2. Contracting officer did not certify that the written justification was complete and accurate.	5
3. Appropriate level officials did not approve the justification.	14
4. State did not advertise the contract in the <u>Commerce Business Daily</u> when it should have.	12
5. State did not attempt to solicit offers from other sources when practicable.	12

The written justifications for the 10 contracts that were appropriately not competed, and for 11 contracts that should have been, did not always adequately demonstrate the need for a sole-source contract. One example was a contract to develop options for reimbursing the costs to State of providing administrative support to other federal agencies' employees overseas. The justification, dated February 28, 1987, cited unusual and compelling urgency to develop a plan because a congressional committee report had requested a plan by March 15, 1987. In an attached memo, it also stated that the proposed contractor, a retired Director of State's reimbursements office, had unique knowledge necessary to quickly and effectively perform the study. However, State had known about the deadline since June or July 1986, and the justification

Procurement Office Efforts to Improve Procurement Function

The Federal Managers' Financial Integrity Act of 1982 requires executive agencies to evaluate their internal control systems against specified standards and report annually to the President and the Congress. In its December 1987 report, although State did not specifically note internal control weaknesses in its compliance with laws and regulations requiring competition for contracts, it reported it needed to correct deficiencies in its procurement process.

Also, during our review, procurement officials stated that in the past management had not placed emphasis on procurement, and the procurement office had awarded sole-source contracts when it should have sought competition and had been lax in following procurement regulations. They noted, however, that many recent procurement office actions are showing increased adherence to procurement regulations, especially obtaining competition. For example, the procurement office is competing or planning to compete many of the sole-source contracts we reviewed. It also

- instituted acquisition planning to ensure adequate lead time to allow for competition,
- appointed a procurement office advocate for competition in May 1988 to promote the use of full and open competition by the office and challenge barriers to competition,
- issued some new, updated procurement procedures and a contracting handbook,
- obtained an automated system in mid-1988 to directly transmit notices of proposed contracts for publication in the Commerce Business Daily,
- increased procurement office on-board staff from 34 in late 1985 to 70 in 1988, including a staff attorney, and is emphasizing staff training, and
- strengthened contract review by establishing a board to review proposed contracts over \$100,000 as well as certain other proposed contract actions.

Specific Contract Review Procedures Lacking

The Chief of the procurement office developed the newly issued procurement procedures because contracting officers and other procurement staff no longer had copies of or followed the previous procedures. The new procedures require reviews of proposed procurement actions by officials other than the contracting officer. They require reviews of

- actions from \$25,000 to \$99,999 by a procurement office team leader (a contracting officer who leads a team of other contracting officers and

better ensure the supervision necessary to increase compliance with regulations.

Recommendation

We recommend that the Secretary of State direct the Assistant Secretary for Administration to develop specific procedures for reviewing and approving contracts and have reviewers certify in writing that proposed contract awards adhere to key procurement regulations. The procedures should ensure that contracts are reviewed, approved, and certified by required officials before award, and that sole-source decisions are adequately justified and comply with key procurement laws and regulations. For cases in which the regulations permit awards based on unusual and compellingly urgent circumstances before preparing the written justification, the procedures should also include deadlines for justification preparation and review.

Executive Order. According to State's Procurement Executive, he has not yet certified the systems' adequacy and will not be able to conduct necessary evaluations to determine the adequacy of State's systems without a database.

Also, State had reported some information inaccurately on the actions in our sample. For example, in our sample of 45 contracts under \$500,000, 15 were agreements for possible future contracts that created no obligation for the U.S. government, but State reported them as contracts obligating federal funds. Also, 1 of the 45 actions was a grant that the Congress required State to give to Australia for its bicentennial celebration, but the procurement office inaccurately reported it as a sole-source contract. Additionally, we found reporting inaccuracies, such as incorrectly reporting the amount of funds obligated on a contract or the authority cited for not fully competing the contract, on 15 of the 21 sole-source contracts that we reviewed in detail.

Contract Files Not Adequately Kept

Federal regulations require agencies to maintain fully documented and readily accessible files on each contract. The detail of required documentation and the time period over which the file must be retained are greater for contracts over \$25,000 than for small purchases. For each contract over \$25,000, the contract issuing office file must provide a complete history of the award, support actions taken, and provide information for reviews, investigations, litigation, and congressional inquiries related to contract award and modifications executed by the contracting office.

The paying office contract file, in addition to a copy of the contract and any modifications, must contain a record of contract payments and bills, invoices, vouchers, and any other documents supporting the contract payments.

For small purchases over \$1,000, the contract issuing office file must contain, in addition to the contract, a notation of the sources contacted and the prices, terms, and conditions quoted by each. If only one source is solicited, a notation must explain why. Other pertinent documents should also be included to the extent necessary for management review purposes.

contract as required, thus reducing State's assurance that only appropriate contract payments are made.

Recommendations

We recommend that the Secretary of State direct

- the Under Secretary for Management, in coordination with the Assistant Secretary for Administration, the Comptroller, and the Procurement Executive, to develop and implement an automated system to collect, maintain, and report to the Data Center accurate data on all State procurement actions, as required by procurement regulations;
- the Assistant Secretary for Administration to develop specific procedures and requirements for contract issuing office contract files review to assure that future contract files contain timely and adequate pre-award documentation, and that post-award actions are timely and adequately documented; and
- the Comptroller develop and maintain a paying office contract file for each contract as required by procurement regulations.

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

Federal regulations require each justification to contain sufficient facts and rationale to support the use of the specific exception authority cited. As a minimum, each justification is required to include the following information:

1. Identification of the agency and the contracting activity, and specific identification of the document as a "justification for other than full and open competition."
2. Nature and/or description of the action being approved.
3. A description of the supplies or services required to meet the agency's needs (including the estimated value).
4. An identification of the statutory authority permitting other than full and open competition.
5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a Commerce Business Daily notice was or will be publicized, and if not, which exception allowing State to not publicize applies.
7. A determination by the contracting officer that the anticipated cost to the government will be fair and reasonable.
8. A description of the market survey conducted and the results, or a statement of the reasons a market survey was not conducted.
9. Any other facts supporting the use of other than full and open competition, such as:
 - (i) An explanation of why technical data packages, specifications, engineering descriptions, statement of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
 - (ii) An estimate of the additional cost that would be incurred as a result of awarding the contract to a different contractor, along with how the estimate was derived, when only one responsible source is cited for follow-on acquisitions. The belief in this case is that a second contractor

Problems Found on Sole-Source Contracts That Should Have Been Competed

Initially Evaluated Sole-Source Contracts

We initially evaluated nine sole-source contracts at the request of the Subcommittee on Legislation and National Security, House Committee on Government Operations. The following discusses eight of these contracts which should have been competed and other State sole-source contracts involving the same contractors.

Motor Pool Auto Leasing Contracts

State maintains two domestic motor pools. First, the general services motor pool provides transportation for State executives other than the Secretary of State. Second, the diplomatic security motor pool provides protective transportation for the Secretary of State, the U.S. Ambassador to the United Nations, foreign dignitaries visiting the United States, and resident foreign officials. According to State officials, cars have been leased sole-source from Ford Motor Company and the Chrysler Corporation for almost 20 years. However, files for lease contracts prior to fiscal year 1986 were not available because, according to State officials, they had been lost or destroyed. The 1986 files had to be reconstructed by the agency.

The fiscal year 1986 lease contracts with Ford Motor Company and the Chrysler Corporation, for a total of 73 vehicles at a total cost of \$212,000, each cited that vehicles were available from only one source. The reconstructed contract files had no written justifications supporting use of this authority and no evidence that the proposed contracts had been publicized in the Commerce Business Daily to ensure that no other sources were available to compete for the contracts.

The regulations prohibit breaking up large purchases into several small purchases to avoid competition. However, for fiscal year 1987, State issued several small purchase orders (each \$25,000 or less) during the year to continue leasing cars on a sole-source basis. Again, we found no evidence that the actions were publicized in the Commerce Business Daily as required. The purchase order files did not contain the required notations explaining the absence of competition.

We believe State should have been competing motor pool car leasing contracts over the years. State officials realized this and during our review competed a car lease contract for both motor pools for fiscal year 1988. Three companies competed and Ford Motor Company won.

**Appendix III
Problems Found on Sole-Source Contracts
That Should Have Been Competed**

1985 and (2) other than full and open competition for the options exercised after the Competition Act in fiscal years 1986 and 1987. State did not do this.

State apparently thought the options complied with regulatory requirements at the time of contract award. However, even if that were the case, the procurement office did not follow other requirements related to including options in contracts and exercising options. The regulations require that contracts specify the overall duration of the contract term, including extensions and that the total contract term, including options, not exceed 5 years. They also require that an analysis of the market and prices or a solicitation for offers be done before exercising an option so that price may be considered in determining whether exercising the option is in the best interest of the government. The contract did not specify any overall duration; it was in effect for 6 years instead of the maximum 5 years; and solicitations for offers were not issued nor the market searched and analyzed before exercising options. Further, the last option extending the period of performance, exercised on September 29, 1986, was exercised subject to the availability of funds in violation of the regulations, which prescribe that options only be exercised after determining that funds are available.

The second American District Telegraph Company contract was a post-Competition Act sole-source contract awarded on September 30, 1987. This contract was for 1 year and contained an option for 1 additional year. The contract cited that State's requirements for building security systems are available from only one source.

A notice of intent to negotiate a sole-source contract with the telegraph company was publicized in the Commerce Business Daily, but no inquiries expressing interest in the contract were received. The notice, however, did not (1) include the required statement that the proposed contract was being justified on the basis that no other sources were available and (2) describe State's needs in functional, performance, or design terms, or in the minimum acceptable description terms of brand name followed by the words "or equal." It described State's needs in terms of the telegraph company's equipment and systems. Also, the written justification stated that competition would require extensive preplanning, formulation of an in-depth technical proposal, and a reasonable time for bid award and installation of equipment, if another contractor won the award. Thus, the justification implies that proper planning for a competitive procurement was not done.

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were awarded based on procurement regulations, the Director for Refugee Programs has authority to award contracts without following the procurement regulations based on provisions in the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601, et seq.) and Presidential Executive Order 11077, and that had State thought of it, the contracts could have been awarded sole-source citing that authority. Nevertheless, in making these awards under applicable procurement regulations, State did not follow the regulations.

The fifth and sixth awards to the consultant were made by the procurement office for State's Bureau of Inter-American Affairs. Both were for assessing issues related to Nicaraguan refugees in Honduras. Since neither the procurement office nor the Bureau of Inter-American Affairs has the authority to award contracts without following the procurement regulations, these awards were made based on procurement regulations. One of the actions was a small purchase order that was not publicized in the Commerce Business Daily, as required, and for which no effort was made to solicit any competing sources. The required note explaining the absence of competition was not in the contract file. The other action was a ratification for work performed by the consultant based on an unauthorized commitment by Bureau of Inter-American Affairs officials.

The Bureau of Refugee Programs awarded the seventh contract for analyzing refugee programs in Eastern Honduras. It awarded the eighth contract for analyzing refugee protection and humanitarian assistance programs for Southern Africa, Southeast Asia, and Central America. State cited the Migration and Refugee Assistance Act, the Presidential Executive Order, and internal delegations of authority as the basis for not following procurement regulations when making these awards. Accordingly, State did not publicize the actions in the Commerce Business Daily or seek any competition.

**Financial Management
Expertise Contracts**

The procurement office awarded 12 sole-source small purchase orders and 1 sole-source contract (\$368,000 was obligated on the awards) to The Hopkins Company for financial management support services performed over a 41-month period from April 1984 through August 1987. Contract files were only available for the last seven small purchase orders and the contract.

Because of their values, federal regulations required five of the seven purchase orders to be advertised in the Commerce Business Daily, but only one was advertised. In this case, a notice of intent to negotiate sole-

was not awarded until over 2 months after the date of the written justification and the justification was not certified by the contracting officer as complete and accurate or approved by State's competition advocate as required. The Contracting Officer who signed the contract said he remembered nothing about it. He said, however, that he would not have known if other sources were available or if competition was feasible. He said he would have relied on the requiring office experts in the Office of Communications to know that information.

The justification did not demonstrate that the government would have been seriously injured if the contract had been competed. Such a demonstration is required by federal regulations when unusual and compelling urgency is the cited authority. The justification in fact stated that State's present equipment was adequate for its needs, but that this procurement was to obtain lighter weight equipment. In addition, the justification stated that Motorola was the manufacturer of the smallest and lightest unit in production at that time. However, it did not indicate as required if any market survey was performed to determine this or the reasons why a survey was not conducted.

We contacted two other radio manufacturers and found that Cincinnati Electronics Corporation manufactured a comparably small and light unit that would have met State's requirements at the time of this award. Cincinnati Electronics officials told us that they would have competed for the contract if they had known about State's needs.

**Mobile Radio, Test
Equipment, and Parts
Contract**

The procurement office awarded a sole-source contract for mobile radios and accessories, test equipment, and spare parts to General Electric Company on November 30, 1982. The contract was to be effective from the date of award through September 30, 1983, but contained options allowing extensions a year at a time through September 30, 1985. The procurement office cited the impracticability of competing by formal advertising as the authority for negotiating the pre-Competition Act award sole-source. State extended the contract through September 30, 1985, but in each case the contract was not extended until after it had expired. Then on November 12, 1985, the contract was extended past the maximum limit of September 30, 1985, cited in the original contract, to September 30, 1986. Over the 4-year period, State reported \$5,783,000 of contract obligations to the Federal Procurement Data Center.

**Appendix III
Problems Found on Sole-Source Contracts
That Should Have Been Competed**

State was not able to provide the contract file for one of the seven contracts and two of the remaining six contained highly classified information which we only partially reviewed. We completely reviewed the remaining four.

We found that all four contracts should have been competed. For example, one pre-Competition Act contract was awarded sole-source, stating that it was impracticable to secure competition. State believed that only one person in one firm could accomplish the task without requiring training. However, that person accepted another job before contract award and the contractor then said he had yet another person even more qualified than the first. State then described this new person as fully qualified to perform the contract tasks. State's written justification did not demonstrate that other firms could not perform the work, and following a notice in the Commerce Business Daily, two firms inquired about the procurement. State told one respondent that no solicitation package was available, and it informed the other firm that negotiations had been held on a sole-source basis and the person who would perform the contract tasks was uniquely qualified.

Another pre-Competition Act contract was awarded sole-source on the grounds that the character or ingredients of the contract services could not be publicly disclosed. However, neither the contract nor statement of work were classified and, according to State's Competition Advocate, the requirement should have been publicized in the Commerce Business Daily to seek competition. Another contract was awarded sole-source by a contracting officer without getting the required approvals. It ratified unauthorized work that was performed following the above contract. It cited only one source as justification for not seeking competition. However, no approved sole-source justification was prepared, and State's Competition Advocate rejected the cited authority as providing inadequate justification.

Another contract, for about \$221,000, was also awarded sole-source without the required approvals. It cited unusual and compelling urgency as the authority for not seeking competition. This contract contained the same statement of work as the last contract discussed above. This contract's justification was not certified as complete and accurate by the contracting officer as required, nor was it approved by State's Competition Advocate, although over a year had elapsed between contract award and our review. In fact, according to State's Competition Advocate, he had not known about the contract award and would not have signed the justification since he had just rejected the draft justification

Appendix III
Problems Found on Sole-Source Contracts
That Should Have Been Competed

software package on State's International Business Machines Corporation computer. The contract period was from October 1, 1986, through September 30, 1987. The contract action ratified 6 months of work not authorized by procurement officials that State had Computer Business Methods perform after a prior contract had expired, and provided for 6 months additional work. The contract was later extended through September 30, 1988, and the obligation, as of April 1988, had been increased to about \$1,833,000.

The justification for this sole-source contract award based on the urgency exception was inadequate because the urgency arose from inadequate procurement planning and the regulations state that failure to plan is not adequate justification for not competing a contract. This contract was a follow-on to a pre-Competition Act sole-source contract awarded to Computer Business Methods on September 1, 1982, citing the impracticability of obtaining competition by formal advertising. The 1982 contract then was extended on a periodic basis through September 30, 1986. However, in 1985, the procurement office contemplated awarding the same company a new sole-source contract rather than further extending the prior contract.

On October 30, 1985, State publicized its intent in the Commerce Business Daily to negotiate sole-source with the company. As a result, State received requests from several vendors for a solicitation package or detailed information describing the services State needed. State had not planned for competition or prepared a solicitation package and notified the vendors to send a statement of their capabilities. Only one vendor, Genasys Corporation, responded and the Contracting Officer and his technical representative determined Genasys was qualified to perform the needed services. Thus, the Contracting Officer began planning and requesting information to develop a solicitation package. In a January 31, 1986 letter, Genasys' Corporate Vice President withdrew its request for the solicitation package. As a result, the procurement office did not prepare a solicitation package. After 6 months of work beyond September 1986 by Computer Business Methods without a contract, the current contract was awarded. Still, no solicitation package had been prepared and no adequate procurement planning had been done. Thus, since State's need was long-standing, the justification was inadequate since the urgency was not unusual.

When we contacted Genasys' Corporate Vice President to determine why it had withdrawn its request for the solicitation package in January 1986, he said that an official from State's Information Systems

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activities were handled the same on each. Therefore, to avoid duplication, the following discussion on the sole-source justification and market survey efforts is for all six medical service contracts.³

State cited unusual and compelling urgency as the authority for not competing the contracts, even though these services were needed on a repetitive basis. State contracts for the services each year and had awarded sole-source contracts for fiscal year 1986. It had ample time and should have developed a description of its needs and sought competition by advertising in the Commerce Business Daily and medical journals, but State neither planned nor acted to do this. Instead, State sought to waive the Commerce Business Daily requirement. Federal regulations allow an agency to do this if it determines after consulting with the Office of Federal Procurement Policy and the Small Business Administration that a Commerce Business Daily publication is not appropriate or reasonable. In consulting, State noted that it is more effective to advertise for domestic medical services in medical journals.

Both agencies opposed the waiver; however, their concurrence is not required and State's Procurement Executive granted it on a one time basis. State's written justification for not competing the contracts noted that the needs were advertised in several journals. However, from reviewing contract files and discussions with State officials, we found that this was not done. It appears that State never planned to compete these contracts in the year between award of the fiscal year 1986 and 1987 contracts, and then obtained a waiver to the regulatory requirements.

State issued sole-source contracts for domestic medical services again for fiscal year 1988, and this time cited only one responsible source. However, adequate attempts to find other sources were not made. As a result of a request made by State's Procurement Executive in the previous year, a Commerce Business Daily notice was published, but it was too late to compete the fiscal year 1988 contracts without an interruption in service. Also, the written justifications indicated that the requirements had been advertised in medical journals when they had not.

³We assessed 6 of 56 fiscal year 1987 domestic medical service contracts. The domestic medical service contracts were all procured on a sole-source basis, citing the unusual and compelling urgency exception. Because the medical service procurement activities were administered in a class manner, we found the same sole-source justification and market survey problems. The contract number and respective service provided under the contracts reviewed were 6025-725130, nurse; 6025-725104, medical internist; 6025-725134, health systems specialist; 6025-725133, pathologist; 6025-725110, psychiatric social worker; and 6025-725146, medical internist.

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plans for competing future requirements and about 2 years later, in August 1986, it contracted sole-source with VCA citing unusual and compelling urgency. Moreover, the contract file had nothing to indicate that State tried to solicit any other sources and the requirement was not advertised in the Commerce Business Daily. Finally, at the time of our review, over 1-1/2 years after contract award, the required written justification still had not been prepared and approved by appropriate level officials.

According to an official, he had searched industry magazines and contacted three other manufacturers, two of which were foreign and thus ineligible because of the special Tempest national security requirements. Officials said the third manufacturer's equipment required a maintenance technician to change equipment speeds and State needed operator-speed-changeable equipment. However, other sources which manufacture Tempest equipment could have been identified. The National Security Agency publishes a Preferred Product List of Tempest certified equipment. We contacted a number of other manufacturers on this list and found another manufacturer, Tracor, Inc., who appears to have equivalent equipment. Also, State had previously purchased MXT 1200 units directly from the manufacturer at a lower cost. State had about 2 years to plan for this procurement and, in our opinion, this contract should have been publicized and fully competed.

Contract 9

Contract No.: 1026-670708
Value at Award: \$29,789
Award Date: September 30, 1986
Authority Cited: Unusual and Compelling Urgency

This contract was awarded to Tektronix, Inc., to supply a microwave spectrum analyzer. The analyzer was for use as special test equipment to support installation and maintenance of the LST 8000 transportable Satcom terminals. State officials cited unusual and compelling urgency as the authority for not competing the contract.

Although an urgent need for a spectrum analyzer existed during the procurement effort, we believe State could have avoided the urgency by planning this procurement action. State was aware of the need for the spectrum analyzer equipment at least 5 months prior to contract execution; however, it limited procurement to Tektronix, Inc., by not publicizing in the Commerce Business Daily, by not trying other means to solicit

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Contract 11

Contract No.: 1038-603575
Value at Award: \$165,240
Award Date: July 25, 1986
Authority Cited: Unusual and Compelling Urgency

This was a contract awarded to Lowes Summit Hotel of New York City for hotel accommodations for security personnel during the United Nations' General Assembly.

The justification for other than full and open competition on this contract contained inadequate support. State officials cited urgency to justify the sole-source procurement. However, the General Assembly regulations state that it shall begin on the third Tuesday of September every year at the United Nations' headquarters, and the meeting has been held for at least the past 40 years. Also, a Bureau of Diplomatic Security official stated that about 145 to 165 agents plus support staff are required between mid-September and mid-October each year. Since State is aware of this annual need, we believe State's urgent need resulted from inadequate advance planning. The FAR states that a lack of advance procurement planning is not a justification for less than full and open competition. Additionally, the written justification for the 1986 contract did not include a determination that anticipated costs were fair and reasonable.

For the 1987 and 1988 awards, State did advertise its needs in the Commerce Business Daily and found that numerous vendors were interested in the contract. Eleven other potential bidders responded to State's advertisements.

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other offers, and by noting specific Tektronix model numbers on the requisition for the spectrum analyzer.

Contract 10

Contract No.: 1026-670894
Value at Award: \$41,595
Award Date: September 30, 1986
Authority Cited: Unusual and Compelling Urgency

This contract was awarded to Dataproducts New England to supply multiplexer equipment. The equipment was for use as part of a microwave radio system to establish a telecommunications link between State and the National Security Agency as required by National Security Directive, NSDD-97. State officials cited unusual and compelling urgency as authority for not fully competing the contract.

State's justification was inadequate. The written justification stated that it was urgent for the equipment to be installed by November 11, 1986, to meet installation schedules coordinated with other agencies and avoid delaying system activation. However, State was aware of the need in late 1985, nearly a year before the contract award, yet State took no action to obtain competition. The requirement was not advertised in the Commerce Business Daily nor did State try to solicit other sources. Additionally, State's requirements office did not submit a requisition for the equipment to the procurement office until September 16, 1986, 14 days before the contract was awarded. Further, the earliest equipment delivery terms provided in the contract were for equipment delivery 60 days after the date of contract award, or by November 29, 1986. With adequate planning by the requirements office the award could have been competed.

State's written justification also stated that the Dataproducts New England multiplexer has unique capability but provided no support for that statement. As noted earlier, no efforts were made to solicit other sources that might have compatible equipment.

Additionally, the justification was not certified as accurate by the contracting officer nor approved by higher level officials as required.

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Contract 7

Contract No.: 1001-602066
Value at Award: \$276,186
Award Date: September 2, 1986
Authority Cited: National Security

This was a contract awarded to International Business Communications, Inc., a Washington, D.C., public relations firm, for media relations activities such as arranging media events, interviews, and public appearances for Central American refugee groups and exiles in the United States; preparing briefings and newspaper opinion articles; translating articles on Latin America and the Caribbean and making them available to U.S. news organizations and public interest groups; and designing and operating a mail distribution system for materials and information on Latin America and the Caribbean. State officials cited national security as the authority for not fully competing the contract. Thus, State did not advertise in the Commerce Business Daily and did not solicit offers from other sources.

The justification for other than full and open competition was inadequate. The contract, which was later declassified, was audited by State's Inspector General, who found it had been improperly classified secret, apparently to avoid advertising in the Commerce Business Daily. State's Inspector General also found that officials from the Office of the Coordinator for Public Diplomacy for Latin America and the Caribbean had assumed the duties of contracting officials without authority by having the contractor begin work before the contract was awarded.

Contract 8

Contract No.: 1026-670422
Value at Award: \$99,566
Award Date: August 6, 1986
Authority Cited: Unusual and Compelling Urgency

This was a contract awarded to VCA Corporation (company name cited on contract) to acquire Dataproducts New England, Tempest certified, MXT 1200 teletype equipment to backup State's main communications center from an alternate location in the event of emergency problems. The equipment had to be compatible with the existing equipment.

The decision to procure this equipment on an other than full and open competition basis was inadequate. State officials knew by at least 1982 that an alternate site was required. State purchased nine MXT 1200 units for the main communications center in 1984. Yet, State made no

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Office had called him and urged him to "withdraw and not make waves." He said the official stated that State wanted a small business to get the contract and had made a mistake in not setting aside the procurement for small businesses. He said that Genasys, although highly capable with over 2,000 professional staff, is not a small business in its industry. He further stated that Genasys is disenchanted with State procurement practices because State discourages competition. According to the State official, he asked for the withdrawal letter because, as a result of his discussions with Genasys, he decided it was not qualified to perform the work.

In August 1987, State planned to compete the contract to continue to provide the services and publicized its requirement in the Commerce Business Daily for a total small business set aside contract to follow the current contract. In response, State received 217 vendor requests for a solicitation package, which almost 2 years after the previous notice still had not been prepared. During our review State was preparing a solicitation package, after which it competed the contract for fiscal year 1989. State received two vendor proposals and Computer Business Methods won the contract.

**Sole-Source Awards in
Sample Under
\$500,000 Each**

There were 45 awards under \$500,000 in our sample of recent contracts. Sixteen were incorrectly reported to the Data Center by State, 3 did not require written justification, and 5 were highly classified. The other 21 required written justification. The following discusses the 11 that should have been competed.

Contracts 1 Through 6

Contract No.: 6025-725104
Value at Award: \$38,850
Award Date: November 4, 1986
Authority Cited: Unusual and Compelling Urgency

This was one of six contracts we reviewed for fiscal year 1987 domestic medical services for State employees and their dependents. Its purpose was to hire a medical internist to perform physical examinations as requested by State's Medical Director. State used the same justification for not competing for all six contracts and the related procurement

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for the same work about a month before this contract was awarded. The unapproved justification stated that the services the contractor was already performing needed to be urgently continued. We believe that the urgency was not unusual. State was contracting to continue services it knew it was going to need. Adequate procurement planning could have avoided the urgency and provided for competition.

During our review, we also found that three of these consulting service contracts contained options that were exercised after the contracts had expired. None of the contract files for these contracts contained the required documents justifying the terms or periods of time referenced in the options. As already noted, a contract for supplies cannot be extended after its expiration date. In the case of service contracts, an extension could occur after the contract completion date, but only if the period for exercising the option was stated in the contract. These contracts did not extend the period for option exercise beyond the original contract term. Thus, when State exercised options to extend these three contracts, it was really awarding new contracts that were required to be competed, or if not competed, adequately justified. However, State did not do this.

Three of the contracts we reviewed were awarded as letter contracts. Letter contracts do not spell out all of the contract specifics and are required to be finalized as to contract terms later. Two of these contracts were not finalized as to terms and specifics within the guidelines established in FAR 16.603-2(c), and the files did not contain the contracting officer's authorizations to extend the time.

**Sole-Source Awards in
Sample of \$500,000 Or
More**

There were nine sole-source awards for \$500,000 or more in our sample of recent contracts. Six of the nine required written justification. The following discusses the one contract in this group which we found should have been competed.

Contract No.: 1083-705145
Value at Award: \$977,208
Award Date: April 1, 1987
Authority Cited: Unusual and Compelling Urgency

This contract was awarded sole-source to Computer Business Methods, Inc., for automated data processing support services for nine State offices that use the Computer Corporation of America Model 204 System

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The determination and findings for not originally competing this contract was inadequate because it did not clearly and convincingly establish that competition would not have been practicable. Although it noted that State already had over \$150 million of General Electric equipment in inventory and had a requirement for General Electric equipment, it did not state why only General Electric radios and equipment would suffice. Further, even if competition had been thought impracticable, State still would have been required to publicize the proposed contract in the Commerce Business Daily to ensure there were no other sources. The procurement office did not publicize the proposed action and we found no evidence showing that State tried to solicit other sources. We believe the contract should have been competed.

Additionally, regulations require that the terms or length of options in term contracts be justified and the justification document be included in the contract file. That was not done for this contract. They also require that options for supply contracts be exercised before the contract expires, but these options were exercised after contract expiration. Then, after the last option had expired, the contract was again extended by modification beyond the maximum term stated in the original contract. However, a contract cannot be extended after its expiration because the contractual relationship has ended and there is no contract to extend. Rather, such an action creates a new contract that must be awarded using competitive procedures or citing and justifying the use of the authority for not doing so.

During our review, State was competing equipment requirements for its worldwide radio program to avoid further unjustified sole-source procurements. It had solicited bids from 116 potential sources for 13 different categories of radio equipment, and it had awarded contracts for 6 categories, including 2 of 3 categories of mobile radios. Only 2 of the 116 potential offerors submitted bids for the "mobiles, full performance, Type B" category and Motorola, Inc., won the contract. Also, only two potential sources submitted bids for the "mobiles, limited performance" category, and General Electric Company won the contract.

**Communications System
Consulting Services
Contracts**

State awarded seven sole-source contracts valued at about \$3,648,000 for consulting services to provide advice and assistance to the Office of Communications regarding its worldwide communication system. These contracts were awarded to Operational Communications Services, Inc., and were performed between June 1981 and September 1987.

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source with The Hopkins Company was published in June 1985. As a result, one additional source expressed interest. State eliminated that source from consideration because the company's letter did not explain its financial management support services capabilities.

No other efforts were made to solicit additional sources for any of the seven purchase orders, even though the regulations require soliciting a reasonable number of sources (generally three). Also, the required notation in the file explaining the absence of competition was not made for three of the seven purchase orders. Further, for the four purchase orders where the notation was made, it did not adequately explain the lack of competition. The notations claimed that (1) The Hopkins Company had unique capability based on previous consulting for State, but did not explain why others were not capable of performing these support services, or (2) the needed work was urgent, but did not demonstrate any unusual urgency.

The contract was awarded for about \$71,000 to The Hopkins Company on January 15, 1986. It contained options for extending the contract a year at a time for a maximum of 5 contract years, and was for work which had begun in late November 1985. Contract modifications later extended the contract through April 1987 and increased funding to nearly \$180,000.

The contract cited that only one source was available to perform the needed financial management support services and no other type of property or services would satisfy the agency's needs. The proposed contract was not publicized in the Commerce Business Daily. Rather, State relied on the notice of intent to negotiate sole-source that was published in June 1985 in connection with the last small purchase order awarded before the contract. No other efforts were made to solicit other sources. No written justification for using other than full and open competition was prepared and approved at a level above the contracting officer. In our opinion, this contract should have been competed.

**Lightweight Satellite
Terminal Radio Contract**

The procurement office awarded an \$874,000 sole-source contract for purchasing 30 lightweight satellite terminal radios and 40 power supplies from Motorola, Inc., on September 30, 1985. State cited unusual and compelling urgency as the authority for not following full and open competition and did not publicize the proposed action in the Commerce Business Daily or solicit any additional sources. However, the contract

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The Federal Acquisition Regulation (FAR) 6.301(c) specifically states that contracting without providing for full and open competition shall not be justified because of a lack of planning by the requiring activity. The justification does not provide any evidence that specifications of State's needs could not have been developed for soliciting competition during the more than 30 years of repetitive requirements, or that competition could not have been sought.

During our review, State developed alarm system specifications and was planning to compete future awards.

**Refugee Program/Issue
Analysis Contracts**

State awarded seven sole-source contracts and one sole-source small purchase order for performing refugee program or issue analyses during 45 of the 51 months from March 1984 through May 1988 to an individual who had several years experience in performing contracts on disaster relief for organizations, such as the Agency for International Development. These analyses related primarily to refugee issues in Uganda, the Sudan, Honduras, Southern Africa, Southeast Asia, and Central America. State obligated about \$542,000 for the contracts. Of this amount, an estimated \$310,000 was for compensating the consultant and the remainder was for daily expenses, transportation, and other costs. Two of the awards were made by the Office of Supply, Transportation, and Procurement, and the other six by the Bureau for Refugee Programs, which has authority to make procurements related to its refugee missions.

The first four awards were made by the Bureau for Refugee Programs for analysis of refugee issues in Uganda, activities in Thailand and Malaysia to prevent pirate attacks on refugees, refugee and drought assistance issues in the Sudan and Chad, and refugee programs in Honduras. Only the first of the four contracts cited the authority for not competing the contract. Also, written justifications required for not fully competing two of the contracts were not prepared. Further, none of the four contract actions were publicized in the Commerce Business Daily to try to locate other qualified consultants. Additionally, three of these contracts had not been reported to the Federal Procurement Data Center.

The Bureau for Refugee Programs Contracting Officer stated that errors in awarding these contracts may have occurred because procurement is only one of many functions he performs and he is unfamiliar with the procurement regulations. He also noted that, although these contracts

Building Security System Contracts

State has contracted sole-source with American District Telegraph Company for over 30 years for installation, maintenance, and inspection of domestic buildings security alarm systems. However, contract files are only required to be kept for 6 years and 3 months after the final contract payment and were only available for the last two contracts. The first contract was from October 1, 1981, to September 30, 1982, and contained an unpriced option to extend the contract for an unlimited number of years. State extended and funded the contract through September 30, 1987. Over this 6-year period, it obligated about \$2,562,000 on the contract. This pre-Competition Act award was negotiated sole-source citing the impracticability of securing competition by formal advertising. State did not publicize the contract in the Commerce Business Daily as required, nor did it make any effort to search for other sources. The justifying document for not competing the contract states that the removal of the telegraph company's equipment would take a long time, disrupt security systems operation, and be expensive. However, the 1981 justifying document provided no estimates of time or cost and did not mention whether installing new systems before removing the equipment had been considered to avoid operation disruption. In our opinion, the reasoning did not clearly and convincingly establish that formal advertising would not have been practicable and that a sole-source award rather than a competitive award was justified.

State further restricted competition by including options in the contract for which no price or formula for determining price was stated. State later exercised them. The Comptroller General has held that the essential terms of contract options, such as price or the formula for determining price, must be established at the time of the initial or underlying contract award.¹ Otherwise a valid contract option does not exist. If an option price is negotiated after the contract is awarded, such a negotiation constitutes a resolicitation of the contract on a sole-source or non-competitive basis.² Consequently, the requirements relating to competition applied each year the option was exercised under this contract. That is, State was required by regulations to publicize the proposed actions in the Commerce Business Daily and to justify in writing the use of (1) negotiation instead of formal advertising for the options exercised before the Competition Act in fiscal years 1983, 1984, and

¹See Devres, Inc. (B-228909, Dec. 30, 1987, 87-2 CPD 644); Department of Health and Human Services-Reconsiderations (B-198911.3, Oct. 6, 1981, 81-2 CPD 279).

²Varian Associates, Inc. (B-208281, Feb. 16, 1983, 83-1 CPD 160).

**Appendix II
Elements Required to Be Included in
Justification for Other Than Full and
Open Competition**

may have to duplicate work already done by the contractor holding the current contract.

(iii) Data, estimated cost, or other rationale as to the extent and nature of the harm to the government, when unusual and compelling urgency is cited.

10. A listing of the sources, if any, that expressed in writing an interest in the acquisition.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

12. Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

13. Evidence that any supporting data that is the responsibility of technical or requirement personnel (e.g., verifying the government's minimum needs or schedule requirements or other rationale for other than full and open competition) and that form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

Approvals Required by the Competition Act for Justifications for Other Than Full and Open Competition

The required approvals are intended to ensure that contract awards are based on full and open competition whenever required. They are the following:

1. Justifications for contracts over \$25,000 but not exceeding \$100,000 must be approved in writing at a level above the contracting officer.¹
2. Justifications for contracts over \$100,000 but not exceeding \$1 million must be approved in writing by the competition advocate for the procuring activity.²
3. Justifications for contracts over \$1 million but not exceeding \$10 million must be approved in writing by the head of the procuring activity.³
4. Justifications for contracts over \$10 million must be approved in writing by the senior procurement executive.⁴

¹Contracts are exempt from this requirement if they are (1) for certain utility services and available from only one source, (2) for educational services from nonprofit institutions, or (3) awarded based on the fourth or fifth exceptions to full and open competition (see pp. 11 and 12).

²The competition advocate may not delegate this authority. Each executive agency head is required by the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. 401.418) to designate a competition advocate for the agency and for each procuring activity of the agency to promote full and open competition and to challenge barriers to competition. The Department of State has designated a competition advocate for the agency who has performed the approval function for its procuring activities. In May 1988, it also designated a competition advocate for its main procurement office.

³The head of the procuring activity may delegate this authority to a general or flag rank officer or to a civilian government official at the GS-16 grade level and above.

⁴The senior procurement executive may not delegate this authority. Each executive agency head is required by the Office of Federal Procurement Policy Act (41 U.S.C. 401.414(3)) to designate a senior procurement executive.

Contract Files Can Be Improved

Reviewing the adequacy of contract file documentation was not the primary focus of our review. However, to examine whether procurement laws and regulations were being followed, we reviewed contract file documents and found some administrative deficiencies. Many of the procurement office contract files contained insufficient and inadequate documentation. For example, we found documentation problems on 17 of the 21 sample sole-source contracts under \$500,000 each. These problems included insufficient documentation to support statements made in the justification for not fully competing a contract, not providing all required data in the justifications, and insufficient documentation showing that an extension had been granted to allow more than the 180 days prescribed in the regulations before making a letter contract definite.

According to the Chief of the procurement office, after June 1987, the office included checklists in contract file folders, and it hired two people in mid-1988 to review files for contracts over \$100,000 to be submitted to the Contract Review Board. We believe these actions will help ensure that files, especially for contracts to be reviewed by the Board, contain adequate documentation. However, we believe files for all contracts should be reviewed.

State's Comptroller does not maintain the required paying office contract file for each contract. The office maintains records of payments by accounting obligation number and files payment support documentation with schedules of payments made on a particular date to many contractors. The paying office was often unable to provide a list of payments for specific contracts we were reviewing or to find supporting documentation for some payments. State officials said that they plan to begin maintaining the required paying office files for contracts awarded in fiscal year 1989.

Conclusions

The Department of State is reporting incomplete, inaccurate, and unreliable data about its procurement to the Federal Procurement Data Center. Thus, the Congress and others, such as State's Procurement Executive, who oversee the agency's procurements or need to use the procurement data for other purposes, are forced to make decisions without complete and accurate information. The lack of a centralized system to gather data precludes State's Procurement Executive from certifying to the adequacy of the agency's procurement system. Also, many procurement office contract files contain inadequate documentation and State's comptroller's office does not maintain a contract file for each

Incomplete and Inaccurate Data Reported and Contract Files Not Adequately Kept

The Department of State and other federal agencies are required by federal regulations to report data on their procurements to the Federal Procurement Data Center at the General Services Administration. The Data Center uses the data in reports to the President, the Congress, federal agencies, and the public. The data and reports are used in providing oversight and management control over federal procurement and in policy-making. Therefore, for these functions to be performed most effectively, the data need to be complete and accurate, but the data for State procurement are incomplete, inaccurate, and unreliable.

Federal regulations also require an agency contract issuing office to maintain a file for each contract that provides a complete history of the award and supports the actions taken, but many procurement office files contained inadequate documentation. Further, the regulations require that the paying office maintain a readily accessible contract file for each contract to support contract payments. However, we found that State does not keep the files as required.

State Reports Incomplete and Inaccurate Data

Federal agencies, including State, are required by regulations and the Data Center's manual to report to the Data Center, every quarter, detailed data on each contract over \$25,000 made with appropriated funds and summary data on contract actions for \$25,000 or less. Each agency is required to establish a data collection point to collect, verify, and report the data.

The regulations also require each agency to establish a computer file, by fiscal year, containing specified unclassified records of all procurements, except small purchases. The fiscal year file is required to be maintained for 5 years and the data are to be transmitted to the Data Center.

For fiscal year 1987, State reported only about one-third, or \$326 million of about \$938 million, of its estimated procurements to the Data Center. This occurred primarily because State's foreign offices do not report procurements they make, State's Office of Foreign Buildings Operations does not report all its procurements, and State has not yet established the required central computerized database for departmentwide procurement.

In addition, the lack of a departmentwide procurement database also hinders State's Procurement Executive from certifying the adequacy of the agency's procurement systems, as required by a 1982 Presidential

- specialists in making a specific type of procurement, such as diplomatic security or telecommunications);
- actions from \$100,000 to \$499,999 by a team leader and a newly established Contract Review Board; and
 - actions \$500,000 and over by a team leader, a procurement office branch chief, the Contract Review Board, and the office of State's Procurement Executive (the person responsible for the overall management direction of an agency's procurement systems).

Although the procedures require contract reviews, they do not (1) specify the details of what is to be reviewed and whether the reviewer's approval means the award is in compliance with regulations or (2) require certification by the reviewer that the proposed contract is in compliance with procurement regulations. For example, the directive establishing the Contract Review Board states that its purpose is to review proposed actions for compliance with established policies and procedures and determine their overall reasonableness to assure that they are in the best interest of the government. The review form to be used by the Contract Review Board, however, does not specifically provide for assessing and recording whether the action complies with key procurement regulations and controls, such as being adequately justified for a sole-source action. Also, the form does not contain a certification that action approval means the proposed action is in compliance with procurement laws and regulations.

The directive establishing the requirement for reviews by other reviewers, such as a team leader or a branch chief, contains no specifics about the required reviews. The Chief of the procurement office stated that detailed review requirements had not been developed because the review system was designed to rely on the knowledge and experience of the contract reviewers.

Conclusions

Many sole-source contracts awarded by the procurement office both in the past and present should have been competed. However, the procurement office recognizes that problems exist and has been planning and implementing actions to correct the problems. We believe the procurement office's plans and actions, if properly carried out, will help reduce the occurrence of problems we found. However, contract review procedures are not specific about the details of contract reviews and the meaning of contract action approval. More specific review procedures could encourage more thorough and substantive contract reviews and

did not explain either the recent urgency or why State's current reimbursements office staff could not develop the plan.

The reimbursements office Director told us that State did not fully understand the scope of the study effort necessary to develop the plan and did not realize that outside expertise would be needed until late November 1986. At that point, State officials did not believe they had time to fully compete a contract and have a product prepared for the Congress by March 15, 1987. To adequately demonstrate the need to award a sole-source contract, the written justification should have included information explaining these circumstances.

State did not always attempt to solicit other sources when it would have been practical. For example, State awarded a contract in September 1986 to International Business Communications, Inc., a Washington, D.C., public relations firm. Among other things, the contract was for media relations activities, such as arranging media events, interviews, and public appearances, for Central American refugee groups and exiles in the United States. State cited that disclosing its needs by advertising in the Commerce Business Daily and soliciting offers from other sources would compromise national security. The national security justification was not adequately demonstrated, however, and State's Inspector General found that the contract had been improperly classified secret, apparently to avoid disclosing the requirements, seeking other sources, and competing the contract. In our view, it would have been practicable to solicit other sources and State should have done so. We contacted several potential sources and found several who believed they were capable and would have wanted to compete for the contract.

In addition to the controls listed in table 3.1, State has failed to follow other controls, such as the regulatory requirements related to contract options. For example, one sole-source contract for installing, maintaining, and inspecting domestic buildings security alarm systems contained an unpriced option to extend the contract indefinitely, and State extended the contract for 6 years. However, the regulations require a contract to specify its overall duration, including extensions, and limit the total to 5 years. Also, negotiating an unpriced option constitutes resoliciting the underlying contract on a sole-source basis and, therefore, requires justification.

review State was preparing a solicitation package, after which it competed the contract for fiscal year 1989. State received two vendor proposals and Computer Business Methods won the contract.

Low Dollar Contracts Should Have Been Competed

Low dollar value, sole-source contracts awarded by State's procurement office should have been competed. We found that of our sample of 45 sole-source contracts under \$500,000 reported by State to the Federal Procurement Data Center, 16 were incorrectly reported as contracts, 5 were highly classified, and 3 did not require written justification for noncompetitive procurement. Our sample included the following:

- 15 blanket purchase agreements (agreements on the terms of possible future small purchases that do not require the government to make purchases and do not create a contract) which had been incorrectly reported to the Data Center as sole-source contracts;
- 1 grant (money the Congress required State to give to Australia for its bicentennial celebration) which had been incorrectly reported as a contract to the Data Center;
- 5 highly classified contracts that we agreed with the Subcommittee not to review;
- 3 contracts awarded to certain small businesses, which do not require a written justification for the absence of competition; and
- 21 sole-source contracts that should have had written justifications.

We reviewed the 21 sole-source contracts and found that 11 of them should have been competed. Based on our sample findings, we project that about 66 of the 142 reported sole-source contracts from which the sample was drawn were not highly classified and required written justification,¹ and that 35 of these should have been competed.²

One example of sole-source contracts from our sample that should have been competed involved six contracts that were awarded by the procurement office to various medical practitioners, such as a nurse, a medical internist, and a psychiatric social worker, to provide domestic medical services for State's employees and their dependents during fiscal year 1987. State cited unusual and compelling urgency as the authority for not competing the contracts. However, no unusual urgency

¹We are 95 percent confident that there are between 47 and 85 of these contracts.

²We are 95 percent confident that between 22 and 47 of these contracts should have been competed.

comparable unit at the time, which would have met State's requirements.

One of the nine sole-source contracts we evaluated was justifiably awarded sole-source. In November 1984, State awarded a contract to Motorola, Inc., to buy cryptographic radios and parts for about \$5,488,000. At the time the contract was awarded, State had to quickly improve communications security at its foreign offices as part of the U.S. effort to combat international terrorism. Motorola made the only type of needed equipment that was approved at the time by the National Security Agency.

Many Recent Sole-Source Contracts Should Have Been Competed

The procurement office reported 151 new post-Competition Act sole-source contract awards to the Federal Procurement Data Center from July 1986 to June 1987. We reviewed all 9 awards with an initial value of \$500,000 or more and a random sample of 45 of 142 awards for less than \$500,000 each. Our purpose was to determine if the problems we found with the initially evaluated sole-source contracts, some of which had been awarded several years ago, existed in more current awards and to project the frequency of inappropriate sole-source awards.

Three of the nine high dollar value contracts were awarded under a government program to help certain small businesses. These awards do not require a written justification for not seeking full and open competition. For the other six that required written justification and approval, five were appropriately awarded sole-source and one should have been competed.

For example, one of the five contracts was awarded to Secure Service Technology, Inc., in September 1986 for \$1,072,000. This contract was for 89 certified Omnifax facsimile transceivers, which are shielded to prevent electromagnetic emissions that can be electronically eavesdropped. The Omnifax was the only facsimile approved by the Department of Defense for this purpose; therefore, the procurement office appropriately awarded the contract sole-source.

High Dollar Contract Should Have Been Competed

The high dollar value contract that should have been competed was awarded to Computer Business Methods, Inc., for automated data processing services for nine State offices that use the Computer Corporation of America Model 204 System software package. The award covered the period from October 1986 to September 1987. It ratified 6

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Federal Regulations Generally Require
Procurements to Be Competed

from a reasonable number of sources (generally three), unless the contracting officer determines that only one source is reasonably available. Also, sole-source small purchases of \$10,000 or more are required to be publicized in the Commerce Business Daily to encourage competition.

6. Disclosure of the agency's needs would compromise national security, unless the number of sources is limited.

7. The head of an agency determines it is necessary in the public interest to use other than full and open competition and gives the Congress 30-days written notice before contract award.

When one of these exceptions is used, it must be cited and justified in writing except when statute authorizes is the exception used and the contract is with certain small businesses or agencies for the blind or other handicapped, or when public interest is the exception used. However, in the last case, a written determination by the agency head that full competition is not in the public interest is required. When a justification is required, it must usually be approved in writing by specified officials above the contracting officer (see app. I). The approval must occur before contract award, except when urgency is the exception. In that case, the justification and approval may be done after contract award if preparation and approval before award would unreasonably delay the procurement. The regulations do not specify how soon after contract award these justifications must be prepared and approved; however, we have recommended that it be no more than 30 days.¹ The regulations require that each justification contain sufficient facts and rationale to support the specific authority cited and contain other specified information (see app. II). Further, the regulations specifically state that a lack of advance procurement planning by the agency is not an adequate justification to use one of the exceptions.

When for reasons of unusual and compelling urgency or national security, full and open competition procedures are not used, the agency still is required to solicit offers from as many potential sources as practicable. Also, when exceptions are used, publicizing the actions in the Commerce Business Daily is often still required. For example, publication is required (1) to ensure that only one source can meet the government's requirements, when only one source is the exception used; (2) unless the contracting officer determines that the time delay would seriously injure the government, when urgency is the exception used; and (3) unless the contracting officer determines that the advertisement cannot be worded without disclosing the agency's needs and this would compromise national security, when national security is the exception used.

¹Procurement: Better Compliance With the Competition in Contracting Act Is Needed (GAO/NSIAD-87-145, Aug. 26, 1987).

To evaluate the reliability of State's procurement data reported to the Federal Procurement Data Center, we compared the actual contract data for sample contracts to the reported data, compared the total dollars of procurement reported by State for fiscal year 1987 with its comptroller's office estimates of the procurements, and discussed reporting with State officials. To determine what payments had been made on some sole-source contracts, we examined and discussed contract files with officials in the contract paying office (comptroller's office). Additionally, we reviewed the reports on internal controls that State had made to the President and the Congress under the Federal Managers' Financial Integrity Act of 1982 (P.L. 97-255) to see if any weaknesses in controls over procurement had been reported.²

We conducted our evaluation from August 1987 to June 1988 in accordance with generally accepted government auditing standards. In accordance with the requester's wishes, we did not obtain written comments on a draft of this report. However, during the course of our work we discussed the facts and circumstances surrounding individual contracts under review and procurement practices in general with State officials. We have included their views where appropriate.

²The Federal Managers' Financial Integrity Act of 1982 requires heads of executive agencies to evaluate their internal control systems against specified standards and report annually to the President and the Congress. If the agency head decides that the agency's systems do not comply with the standards, the report is to identify any material control weaknesses and the agency's plans for correcting them.

Introduction

The Department of State buys or procures a wide variety of goods and services for its foreign and domestic offices. In fiscal year 1987, it spent an estimated \$938 million.¹ State's procurements are made by 12 domestic and about 260 foreign offices. For example, State's Office of Foreign Buildings Operations is responsible for constructing embassies, consulates, and other overseas buildings; its Foreign Service Institute buys training equipment and services; its library buys books and periodicals; and its foreign offices make local procurements and buy some goods and services from the United States.

State's main procurement office is the Office of Supply, Transportation, and Procurement. In fiscal year 1987, the office contracted for about \$328 million, a little over one-third of State's identifiable procurements. About 91 percent, or \$298 million, of the procurement contracts were over \$25,000 each, and about 9 percent were for \$25,000 or less.

State reported that about one-third of its procurement office contracts over \$25,000 awarded in fiscal year 1987 were not competed. Historically, the Congress has favored federal agencies competing contracts whenever practicable.

The Chairman, Subcommittee on Legislation and National Security, House Committee on Government Operations, requested us to review State's main procurement office to determine whether its decisions to make sole-source procurements (procurements made after soliciting and negotiating with only one potential contractor) were supportable and made in accordance with applicable federal regulations.

Differences Between Competitive and Noncompetitive Procurements

Historically, the Congress has required contract awards to be based on competition whenever practicable and has strengthened the requirements in recent years. Competition for contracts over \$25,000 is normally achieved by publicizing the government's needs in the government publication, the Commerce Business Daily, to invite bids or proposals from interested parties, making solicitation documents available that describe the need and other essential information in detail, and awarding the contract to the source with the best offer. When a noncompetitive procurement is authorized, the agency requests offers from a limited number of sources, often only one. When a contract is awarded

¹State's actual total procurement in fiscal year 1987 is unknown, since the agency has no system to collect and summarize data on all its procurement. The \$938 million estimate was obtained from a summary prepared by State's comptroller's office from financial accounts under which procurement obligations would normally be recorded.

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Key Internal Controls to Promote Competition Not Followed

The procurement office often did not follow key control requirements in the procurement regulations designed to promote competition and limit unjustified sole-source awards. For example, GAO found that for 21 recent sole-source awards under \$500,000 each, 14 written justifications did not adequately demonstrate the need to award a sole-source contract, 5 were not certified as complete and accurate, and 14 had not received required approvals. Also, 12 were not publicized in the Commerce Business Daily and no attempts to solicit other sources were made. The procurement office recently issued procedures requiring review of proposed contract actions by officials other than the contracting officer. The procedures, however, do not specify the details of the reviews or require reviewers to certify that proposed contracts comply with key procurement regulations.

Incomplete and Inaccurate Data Reported

State reported only one-third of its estimated \$938 million fiscal year 1987 procurements to the Federal Procurement Data Center. Contrary to regulatory requirements, State's foreign offices did not report their procurements and its Office of Foreign Buildings Operations did not report all of its procurements. Also, State has not developed a required central computer database to collect and report the information. As a result, the reported data are incomplete, inaccurate, and unreliable.

Lack of Paying Office Contract Files and Inadequate Contract Documentation

GAO found that contrary to requirements in federal regulations, State's comptroller's office does not maintain a payment file on each contract and was often unable to provide a list of payments and supporting documentation for specific contracts. This internal control is intended to help ensure that only appropriate payments are made. The lack of the required files reduces assurance that all payments are appropriate. In addition, GAO found that for 17 of 21 recently awarded contracts, the main procurement office, which issued them, often maintained inadequate documentation in its contract files.

Recommendations

GAO recommends that the Secretary of State

- direct the Assistant Secretary for Administration to develop specific procedures for reviewing and approving contracts and have reviewers certify in writing that contract awards adhere to procurement regulations;

Executive Summary

Purpose

The Chairman, Subcommittee on Legislation and National Security, House Committee on Government Operations, requested that GAO review sole-source contracts awarded by the Department of State's procurement office. GAO's objectives were to determine if the awards should have been competed and whether key competition requirements in the federal procurement regulations were followed when the awards were made. GAO also reviewed State's reporting of procurement data to the Federal Procurement Data Center and the maintenance of paying office contract files by State's comptroller's office.

Background

State's procurement office buys a wide variety of goods and services for State's domestic and foreign offices. In fiscal year 1987, it made about one-third of State's estimated \$938 million of procurements. The other two-thirds was made by 11 other domestic offices and about 260 foreign offices.

Federal law and regulations require that procurements be made on the basis of full and open competition, except when specified exceptions are met. This means, basically, allowing all sources capable of satisfying the government's needs to compete for a contract award. Certain requirements represent key management controls for ensuring required competition and preventing the unjustified award of sole-source contracts. Key controls include requirements to (1) justify, certify, and approve, in writing, most decisions not to fully and openly compete a procurement, (2) publicize proposed contract awards in the Commerce Business Daily, and (3) solicit offers from as many sources as practicable.

Results in Brief

State's procurement office awarded many sole-source contracts that should have been competed. Controls designed to promote competition and limit the unjustified award of sole-source contracts often were not followed. State has reported incomplete, inaccurate, and unreliable procurement data to the Federal Procurement Data Center, undermining the usefulness of the data to the Congress and others for oversight, management control, and policy-making. State's comptroller's office does not maintain a paying office file for each contract to support contract payments, and contract issuing office files often contain inadequate documentation. State's procurement office has recently planned or taken several actions to ensure adherence to controls and adequate competition, such as (1) competing or planning to compete requirements for many of the contracts GAO reviewed, (2) increasing procurement office

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