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United States Government Accountability Office
Washington, DC 20548

June 14, 2006

Congressional Committees

Subject: *Commerce Information Technology Solutions Next Generation
Governmentwide Acquisition Contract*

Concerns have been raised about the fairness of the “bid down” approach of the Department of Commerce’s Information Technology Solutions Next Generation (COMMITTS NexGen) contract. In response to these concerns, the fiscal year 2006 Science, the Departments of State, Justice, and Commerce, and Related Agencies appropriations conference report requested our review of COMMITTS NexGen. This letter transmits the briefing document we provided to your staff on May 15, 2006, concerning a variety of issues related to the COMMITTS NexGen contract. Specifically, we provided information on (1) how the COMMITTS NexGen contract is structured to meet its intended goals, (2) what effect the tier system has on the task order competition process, and (3) what oversight and internal control procedures Commerce has implemented to address the risks of interagency contracting.

The COMMITTS NexGen tier structure, which includes a range of sizes of small business contractors and allows similar size contractors to compete against each other, is unique among other similar contracts. We found that many of the 55 COMMITTS NexGen contractors have grown significantly or have been acquired by larger businesses and may no longer meet small business size standards. In addition, small business accomplishments might be overstated since specific small business size standards are not identified for each task order. We also found that a significant portion of the task orders intended for the smallest contractors were issued to larger, incumbent contractors. However, because of the way in which the Department of Commerce has defined incumbency for this contract, an incumbent contractor may have obtained its initial work through a contracting vehicle other than COMMITTS NexGen. With regard to oversight and internal controls, the COMMITTS NexGen program has established procedures; however, it is unclear whether some of these controls are in place and others, such as performance measures, have yet to be established to ensure that the program is meeting its goals. Program officials said they will begin to collect specific performance data later this fiscal year. The Small Business Administration has proposed regulations that would address the issues we identified with contractors not meeting the small business size standards; therefore, we are not making any recommendations at this time.

We provided a draft of this briefing to the Department of Commerce for review and comment. The Department of Commerce Director for Acquisition Management and

Procurement Executive provided comments via e-mail. He stated that not assigning industry codes or requiring business size certification for each task order is a procedure that is used with other interagency contracts, but they agreed that a rule change could help with fairness in implementing the contract as intended. Concerning the contractors that may no longer meet small business size standards because they have grown significantly, Commerce stated that they will follow the final ruling when it is issued and made effective by the Small Business Administration; however, until then, Commerce will continue to require small business size recertification every three years. With regard to the contractors that have been acquired, Commerce commented that they are requesting each company to submit a novation package to determine eligibility to continue as a COMMITTS NexGen contractor.¹

We are sending copies of this briefing to interested congressional committees, the Secretary of Commerce, Director of the Office of Management and Budget, and the Administrators for General Services and Small Business. We also will make copies available to others upon request. In addition, the briefing will be available at no charge on GAO's Web site at www.gao.gov.

If you or your staff have questions regarding this briefing, please contact me at (202) 512-4841 or ShamesL@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this briefing. GAO staff who contributed to this briefing were Amelia Shachoy, Assistant Director; Sarah Jane Hise; Russ Reiter; and Karen Thornton.



Lisa Shames
Acting Director
Acquisition and Sourcing Management

Enclosure

¹At the time of a novation or change of name agreement, the Small Business Administration regulations (Title 13, Code of Federal Regulations, Section 121.404(i)) require contractors to submit a written self-certification in order for the agency to count the award or orders issued pursuant to the contract towards its small business goals.

List of Committees

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The Honorable Barbara A. Mikulski
Ranking Member

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and Related Agencies

Committee on Appropriations

United States Senate

The Honorable Frank R. Wolf
Chairman

The Honorable Alan B. Mollohan
Ranking Member

Subcommittee on Science, the Department of State,
Justice, and Commerce, and Related Agencies

Committee on Appropriations

House of Representatives

Commerce Information Technology Solutions Next Generation Governmentwide Acquisition Contract

Engagement Objectives, Scope, and Methodology

Objectives

- Concerns have been raised about the fairness of the “bid down” approach of the Department of Commerce’s Information Technology Solutions Next Generation (COMMITTS NexGen) contract because it permits incumbent contractors to compete against smaller firms. In response to these concerns, the fiscal year 2006 Science, the Departments of State, Justice, and Commerce, and Related Agencies appropriations conference report requested our review of the COMMITTS NexGen governmentwide acquisition contract.¹ Specifically, we examined:
 - how the COMMITTS NexGen contract is structured to meet its intended goals;
 - what effect the tier system has on the task order competition process; and
 - what oversight and internal control procedures Commerce has implemented to address the risks of interagency contracting.

Scope and Methodology

- To determine how the contract is structured to meet its intended goals, we:
 - reviewed and analyzed the business case documentation specifying the purpose and goals of the contract;
 - met with officials at the Department of Commerce, General Services Administration (GSA), Small Business Administration (SBA), the Office of Management and Budget’s Office of Federal Procurement Policy (OFPP), and four small COMMITTS NexGen contractors that have been actively submitting work proposals;
 - compared COMMITTS NexGen with other small business governmentwide acquisition contracts;
 - met with SBA officials concerning small business regulations affecting small business size determinations and compared all contractors’ current business size with SBA’s small business size standards as well as to the industry codes used to qualify for the contract; and

¹H.R. Rep. No. 109-272, p. 165.

Briefing on COMMITS NexGen

- reviewed contractors' current business size information obtained from Central Contractor Registration (CCR), including the SBA's Dynamic Small Business database,² or other publicly available information.
- To determine the effect of the tier system on the task order competition process, we:
 - identified the criteria used to place contractors into their respective tiers and analyzed data to determine under what industry codes contractors had performed prior government work; and
 - reviewed each of the 19 task orders issued as of April 30, 2006, under COMMITS NexGen.
- To identify the oversight and internal control procedures that Commerce has implemented to address the risks of interagency contracting we:
 - obtained documentation and interviewed officials with regard to the definition of roles and responsibilities, training, and guidance on the use of the vehicle and compared this information with concerns identified in our prior work on interagency contracting.
- We compared the data from the CCR and Federal Procurement Data System to other supporting documents to determine data consistency and reasonableness and found it sufficiently reliable for the purposes of this report.
- We conducted our work from February 2006 through May 2006 in accordance with generally accepted government auditing standards.

² Central Contractor Registration (CCR) is the primary vendor database for the federal government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions. Both current and potential federal government vendors are required to register in CCR in order to be awarded contracts by the federal government. The SBA's Dynamic Small Business database is generally a self-certifying database. The SBA does not make any representation as to the accuracy of any of the data included, other than certifications relating to 8(a) Business Development, HUBZone or Small Disadvantaged Business status.

Briefing on COMMITS NexGen

Summary

Background

- COMMITS NexGen is a governmentwide acquisition contract (GWAC) designed to offer information technology services to federal customers through a pool of highly-qualified small businesses. In January 2005, Commerce awarded 55 contracts to small businesses grouped into three tiers based on their size. COMMITS NexGen small business contractors provide services to federal customers through task orders. The contract has an \$8 billion ceiling over a 10 year performance period.
- COMMITS was originally established in 1999 to allow federal agencies to compete information technology solutions from a pool of small businesses. The original COMMITS contract reached its \$1.5 billion ceiling in December 2004. To continue the goals of COMMITS, Commerce established COMMITS NexGen.
- For COMMITS NexGen, Commerce created three tiers of similar size businesses to allow them to compete against each other. Contractors are placed in a tier based on their size as well as the type of service. The type of service is defined by the North American Industry Classification System (NAICS). Commerce used 19 different NAICS codes. The size standards are drawn from SBA, which publishes a table of small business size standards matched to each of the NAICS codes.³
- As of April 30, 2006, 19 task orders totaling about \$419 million had been issued.
- In 2005, GAO designated management of interagency contracting as a governmentwide high-risk area. In recent years, federal agencies have been making a major shift in the way they procure many goods and services. Rather than spending a great deal of time and resources contracting for goods and services themselves, they are making greater use of existing contracts, such as GWACs, already awarded by other agencies. These contract vehicles offer the benefits of improved efficiency and timeliness; however, they need to be effectively managed. If not properly managed, a number of factors can make these interagency contract vehicles high risk. For example, these vehicles:
 - attract rapid growth of taxpayer dollars;
 - are administered and used by some agencies that have limited expertise with this contracting method; and
 - contribute to a more complex contracting environment in which accountability has not always been clearly established.

Findings

- The COMMITS NexGen tier structure is unique among GWACs.
- Many COMMITS NexGen contractors have grown significantly or been acquired by larger businesses since their small business certification with COMMITS NexGen and may no longer meet the small business size standards.
- COMMITS NexGen permits incumbent contractors to compete for task orders otherwise designated for lower tier competition. Commerce defines an

³ NAICS codes classify commercial activity into industry categories, e.g., internet service providers, computer system design services, and wireless telecommunications.

Briefing on COMMITS NexGen

“incumbent” as a firm that is currently the prime contractor for work that will be continued under a new task order. The prime contractor may have obtained the initial work through a contracting vehicle other than COMMITS NexGen.

- Only 30 percent, about \$125 million, of the total task order value was competed among the smallest contractors. A significant portion of this was placed with larger incumbent contractors.
- Because COMMITS NexGen does not include NAICS codes on individual task orders the program does not verify that contractors meet a particular size standard for that work. This may result in overstating small business contracting accomplishments.
- COMMITS NexGen lacks measures for assessing performance.

- Commerce’s goals included:
 - having a range of small business size contractors;
 - establishing tiers to allow similar size contractors to compete against each other; and
 - supporting the smallest of the small businesses through the tier structure.
- To accomplish these goals, Commerce used NAICS codes to differentiate small business sizes as shown in table 1.

Tier Structure Seeks Competition among Similar Size Businesses

Briefing on COMMITS NexGen

Table 1: Qualifying Industry Codes Used to Determine COMMITS NexGen Small Business Contractor Eligibility

Tier	North American Industry Classification System Codes and Type of Service	Small business size standards
One	518112 – Web search portals	\$6.5 million maximum revenues
	519120 – Libraries and archives	
	519190 – All other information services	
	541690 – Other scientific and technical consulting services	
	541990 – All other professional, scientific and technical services	
	517410 – Satellite telecommunications	\$13.5 million maximum revenues
	517510 – Cable and other program distributions	
	517910 – Other telecommunications	
Two	518111 – Internet service providers	\$23 million maximum revenues
	518210 – Data processing, hosting and related services	
	541511 – Custom computer programming services	
	541512 – Computer system design services	
	541513 – Computer facilities management services	
	541519 – Computer related services	
	516110 – Internet publishing and broadcasting	500 maximum employees (regardless of revenue)
Three	517110 – Wired telecommunications carriers	1,500 maximum employees (regardless of revenue)
	517211 – Paging	
	517212 – Cellular and other wireless telecommunications	
	517310 – Telecommunications resellers	

Source: Commerce (data); GAO (presentation).

Notes: Revenue size standards effective December 2005.

Revenue values are averaged over 3 years.

The number of employees is calculated on an average, 12-month basis.

Businesses may not exceed the size standards to be considered a small business.

- Our review of other small-business GWACs found that the COMMITS NexGen tier structure is unique. GSA manages a number of GWACs intended for small businesses. These GWACs are not structured into tiers and require contractors to meet the specific small business NAICS code(s) for the task order.
 - The 8(a) Streamlined Technology Acquisition Resources for Services (STARS) and the Historically Underutilized Business Zone (HUBZone) GWACs are small business set-aside contracts for technology solutions. The GWACs are structured according to distinct functional areas

Briefing on COMMITS NexGen

designated by the NAICS codes. The small business contractors must meet the small business size standard for the appropriate functional area. Each task order is then identified for a specific functional area.

- o GSA is also in the process of awarding two additional small business GWACs. The Veterans Technology Services (VETS) GWAC designed to provide worldwide information technology solutions to federal agencies and Alliant Small Business, a broadly scoped contract offering a suite of information technology services. Both of these GWACs use only one qualifying NAICS code, 541512-computer systems design services, which has a size standard of \$23 million.

Some Businesses Have Grown Substantially

- Some businesses have grown substantially.⁴ As shown in table 2, we found 16 (over 27 percent) of the COMMITS NexGen contractors do not meet the small business size standards for their current tier, or in some cases, any tier.

Table 2: Contractor Eligibility Based on Current Size Information

Tier	Current number of contractors	Current size falls in another tier	Current size does not meet any tier size
One	20	5	1
Two	27	3	4
Three	8	0	3
Total	55	8	8

Source: Commerce, CCR, public available information (data); GAO (analysis and presentation).

- We also found that six small businesses have been acquired or merged with large contractors, but small business size recertification did not occur.
- Recent studies by the SBA’s Office of the Inspector General, SBA’s Office of Advocacy, and our own review have found that agencies are counting awards to large firms toward their small business procurement goals. In May 2003, we reported that large companies are reported as small businesses on contracts such as GWACs.⁵ Regulations allow companies to be considered small over the life of the contract even if the company has grown into a large business or been acquired by a large company.

SBA’s Recertification Rules

- In April 2003, SBA published a proposed rule requiring contractors that receive a multiple award contract (such as a GWAC) to certify annually on the anniversary date of the contract award to continue to be considered a small

⁴ For example, a tier one contractor, whose revenues should not exceed \$13.5 million, now has projected revenues of \$150 million for 2006. A tier three contractor, who should not have more than 1,500 employees, had over 4,000 employees in 2005.

⁵ GAO, *Contract Management: Reporting of Small Business Contract Awards Does Not Reflect Current Business Size*, GAO-03-704T (Washington, D.C.: May 7, 2003).

Briefing on COMMITS NexGen

business for a specified size standard.⁶ As of May 2006, this rule has not been finalized.

- Commerce officials suggested that annual recertification would reduce COMMITS' effectiveness.
- A small business representative said that allowing large businesses to qualify as small businesses could deprive small businesses of contract opportunities.
- SBA issued a final rule amending its small business size determinations effective December 21, 2004, which requires that at the time a novation or change-of-name agreement has been executed, the new entity must submit a written self-certification that it is small.⁷ If the acquisition or merger does not result in contract novation or name change, a business concern need not recertify.
- COMMITS NexGen contractors are required to recertify their small business size after the initial 3 years and prior to the exercise of the options to extend the GWAC period for an additional year. We found that GSA also requires its small business contractors to recertify prior to exercising any options. However, this time frame can vary between 2 to 5 years, depending on the contract. Agency officials may request size recertification for individual task orders.
- We found cases in which contractors may be receiving task orders and not meeting the small business size standards because:
 - incumbent contractors are allowed to compete for lower tier work; and
 - individual task orders do not identify a specific NAICS code and the corresponding small business size standard.
- Incumbent contractors in COMMITS NexGen are permitted to compete for task orders designated for lower tier competition, even if the incumbents exceed the size standards for the designated tier of competition.
- As shown in figure 1, only about 30 percent of the total value of COMMITS NexGen orders was placed for competition in tiers one and two.

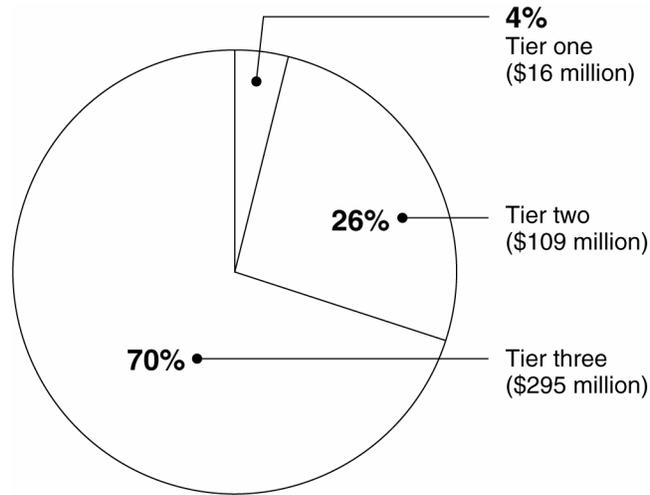
Task Orders May Be Issued to Businesses Not Meeting Size Standards

⁶ 68 Fed. Reg. 20350.

⁷ 69 Fed. Reg. 29192 (implemented at 13 CFR 121.404(i)), 29198.

Briefing on COMMITS NexGen

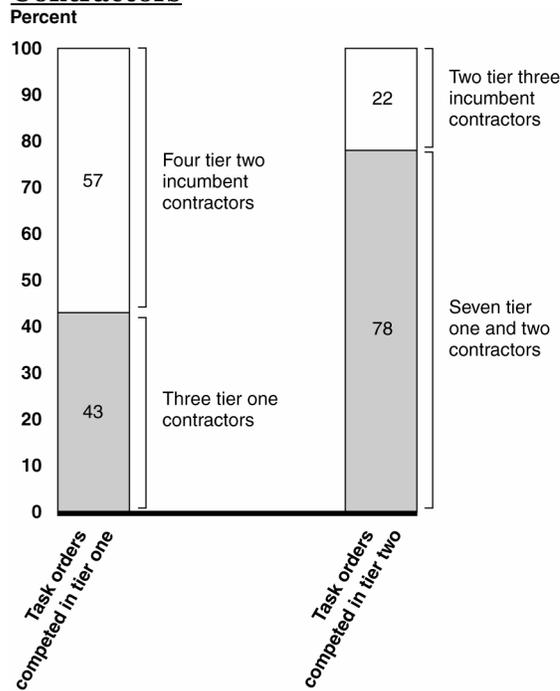
Figure 1: Dollar Value of Task Orders Meeting Tier Level Criteria



Source: Commerce (data); GAO (analysis and presentation).

- As shown in figure 2, task orders were issued to incumbent contractors exceeding the size standards.

Figure 2: Percent of Total Task Orders Won by Higher Tier Incumbent Contractors



Source: Commerce (data); GAO (analysis and presentation).

Briefing on COMMITTS NexGen

Not Using NAICS Codes May Result in Overstating Small Business Accomplishments

- COMMITTS NexGen task orders are **not** assigned NAICS codes. Not assigning NAICS codes to task orders can result in orders being issued to businesses not meeting the specific size standard for that type of service. Because competition for task orders is based on the total value of the order and not on the type of service size standard, contractors are allowed to compete for work with smaller size standards. If won, the task order is recorded as going to a small business.
 - Tier three contractors can compete for any task orders valued greater than \$40 million.
 - Tier two contractors can compete for any task orders valued greater than \$5 million.
 - Task orders with a value of \$5 million or less are reserved for tier one contractors.
- We found evidence that suggests that task orders may be issued to contractors not meeting the size standards for the category of work.
- SBA recognized that multiple award contracts, including GWACs, have multiple NAICS codes with different small business size standards. In April 2003, SBA proposed that contracting officers must assign an appropriate NAICS code to each order issued under a GWAC to help ensure that, when applicable, a contractor is a small business.⁸ As of May 2006, a final rule had not been issued.

Primary Small Business Size Standard Is \$23 Million in Revenue

- We determined that the primary NAICS codes for computer-related services and software development have a small business size standard of \$23 million.
- We determined that all but one of the 19 task orders (valued at over \$419 million) would most likely have been categorized as computer related services and software development having a small business size standard of \$23 million.
- Based on public information, we found 31 (over 56 percent) of the 55 contractors currently exceed the \$23 million size standards (table 3).

Table 3: COMMITTS NexGen Contractors Currently Meeting \$23 million Size Standard

COMMITTS contractors by tier	Currently meet \$23 million NAICS codes	Currently exceed \$23 million NAICS codes
Tier one (20)	18	2
Tier two (27)	6	21
Tier three (8)	0	8
Total (55)	24	31

Source: Commerce (data); GAO (analysis and presentation).

⁸ 68 Fed. Reg. 20350, 20355.

Briefing on COMMITS NexGen

Effect of Not Using NAICS Codes in Individual Task Orders Overstates Small Business Accomplishments

- Only five of the task orders have been issued to contractors that currently meet the \$23 million size standard (falling under tiers one and two).
- Eleven of the task orders were issued to contractors certified as small businesses under size standards for 500 or 1,500 employees (falling under tiers two and three).
- 92 percent of the total value of task orders issued went to contractors currently exceeding the \$23 million size standard.

The COMMITS NexGen ordering guide and business plan include oversight and internal control procedures to:

- ensure the task is appropriate for small business, prior to issuance of any task orders;
 - establish a risk management approach to monitor cost, schedule, and performance measurement throughout the life of this program;
 - require random post-award reviews of task orders;
 - place emphasis on ensuring the fair-opportunity competition is received and that task order prices are fair and reasonable;
 - require agency's contracting officers to attend training prior to receiving delegation of procurement authority;
 - require task orders to include performance metrics that are modified annually; and
 - establish a fee structure that is monitored and assessed on an annual basis to determine whether it is in alignment with program cost.
- However, it is unclear whether these controls are in place.
 - The program office was not able to document the 55 contractors' small business size certifications and contacted the contractors to obtain these certifications during our review.
 - At the time we completed our review, certifications were not obtained from nine contractors.
 - We identified six contractors that were placed in tiers lower than those for which they had certified. The program office was not aware that the six contractors inadvertently certified under incorrect NAICS codes. However, the program office believes that the contractors were placed in the correct tiers. Based on our review, the contracting officer has requested that contractors recertify immediately under the proper NAICS code.
 - In addition, the program has only issued 19 task orders, most within the past year.
 - The program has not developed performance measures to ensure that the program is meeting its goals. Appropriate performance measures help ensure that policies and processes are implemented and have the desired outcomes.
 - Program office officials stated that COMMITS NexGen specific performance data will be collected starting this fiscal year.

Effectiveness of Internal Controls and Oversight Is Unclear

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