

July 2004

CONTRACT MANAGEMENT

Guidance Needed to Promote Competition for Defense Task Orders



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Highlights of [GAO-04-874](#), a report to congressional committees

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Guidance Needed to Promote Competition for Defense Task Orders

Why GAO Did This Study

The Department of Defense (DOD) spends billions of dollars each year acquiring services through task orders issued under multiple-award contracts or the General Services Administration's federal supply schedule program. However, previous GAO and DOD Inspector General reports found that DOD was not obtaining the level of competition on these task orders that Congress had envisioned. Congress responded by enacting section 803 of the National Defense Authorization Act for Fiscal Year 2002, which requires procedures to promote competition and provides when waivers of competition are allowed.

In response to a congressional mandate, GAO identified the extent to which selected DOD buying organizations waived the competition requirements of section 803 and determined the level of competition on orders available for competition. For this review, GAO randomly selected 74 orders at five DOD buying organizations.

What GAO Recommends

GAO is making recommendations to the Secretary of Defense to develop guidance on the conditions under which a waiver of competition may be used, require detailed documentation to support waivers, and establish approval authority above the contracting officer level based on the value of the order. DOD concurred with these recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-04-874.

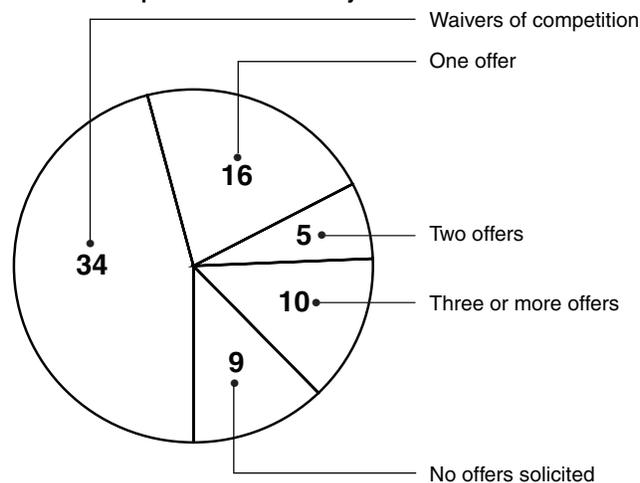
To view the full product, including the scope and methodology, click on the link above. For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

What GAO Found

Competition requirements were waived for nearly half (34 of 74) of the multiple-award contract and federal supply schedule orders GAO reviewed. Often, contracting officers waived competition based on requests from the program offices to retain the services of contractors currently performing the work. In addressing these requests, safeguards to ensure that waivers were granted only under appropriate circumstances were lacking. Specifically, guidance for granting waivers did not sufficiently describe the circumstances under which a waiver of competition could be used. In addition, the requirements for documenting the basis for waivers were not specific, and there was no requirement that waivers be approved above the level of the contracting officer.

Competition was limited on the 40 orders available for competition. For 16 orders, only one offer was received in response to agency solicitations. For 15 orders, the buying organizations received two or more offers. For nine orders, contracting officials did not solicit competitive offers on individual orders. Instead, the nine orders were awarded based on data previously submitted to the government. The figure below shows the level of competition on the orders that we reviewed.

Level of Competition on Randomly Selected DOD Task Orders



Sources: DOD (data); GAO (analysis).

Striking the right balance between achieving the benefits of competition and retaining contractors that are satisfying customer needs is a challenge for DOD. The frequent use of waivers to competition may be hindering DOD's ability to obtain innovative solutions to problems, and the best value for the taxpayer. On the other hand, requests by program offices to waive competition to retain the services of incumbent contractors are strong indications that contractors are satisfying customer needs.

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Abbreviations

AFB	Air Force Base
CECOM	Communications-Electronics Command
DCCW	Defense Contracting Command-Washington
DFARS	Defense Federal Acquisition Regulation Supplement
DISA	Defense Information Systems Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
GSA	General Services Administration
NICP	Naval Inventory Control Point
OC-ALC	Oklahoma City Air Logistics Center

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United States Government Accountability Office
Washington, DC 20548

July 30, 2004

The Honorable John W. Warner
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Duncan L. Hunter
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

The Department of Defense (DOD) spends billions of dollars each year for services—ranging from the maintenance of military installations to managing information systems. Much of this spending is through task orders issued under multiple-award contracts or the General Services Administration's (GSA) federal supply schedule program.¹ These contract vehicles permit federal agencies to acquire services in a streamlined manner, but both require ordering agencies to follow procedures designed to promote competition for individual orders.

Previous reports by us and the DOD Inspector General on DOD's use of multiple-award and federal supply schedule contracts have led to congressional concerns that DOD was not obtaining the level of

¹ Multiple-award contracts are contracts awarded to multiple contractors under the same solicitation for the same or similar products or services. Task orders are awarded under these contracts based on competition between the multiple contractors. Under the federal supply schedule program, GSA has negotiated contracts with thousands of companies that supply commercial products and services.

competition for orders that Congress had envisioned.² Congress responded by enacting section 803 of the National Defense Authorization Act for Fiscal Year 2002.³ Section 803 requires DOD to solicit offers from all contractors that are offering the required services under a multiple-award contract for orders exceeding \$100,000. For federal supply schedule orders section 803, as implemented, requires that DOD solicit all contractors offering the required services under the applicable schedule or enough contractors to ensure the receipt of three offers. If three offers are not received, the contracting officer must determine in writing that no additional contractors could be identified despite reasonable efforts to do so. Under certain circumstances, section 803 allows waivers of competition for multiple-award contract orders and federal supply schedule orders.

In response to a congressional mandate, we (1) identified the extent to which selected DOD buying organizations waived the competition requirements of section 803, and (2) determined the level of competition for orders available for competition.⁴ These objectives allowed us to focus on the outcome that section 803 was intended to achieve. We did not independently determine the validity of competition waivers, nor did we assess whether the buying organizations complied with each of the specific requirements of section 803. To accomplish our objectives, we

²We and the DOD Inspector General have issued a number of reports on the level of competition for services. See U.S. General Accounting Office, *Acquisition Reform: Multiple-award Contracting at Six Federal Organizations*, [GAO/NSIAD-98-215](#) (Washington, D.C.: Sept. 30, 1998); *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders*, [GAO/NSIAD-00-56](#) (Washington, D.C.: Mar. 20, 2000); Department of Defense Inspector General, *Contracts for Professional, Administrative, and Management Support Services*, D-2000-100 (Washington, D.C.: Mar. 10, 2000); *Contract Management: Not Following Procedures Undermines Best Pricing under GSA's Schedule*, [GAO-01-125](#) (Washington, D.C., Nov. 28, 2000); and Department of Defense Inspector General, *Multiple Award Contracts for Services*, D-2001-189 (Washington, D.C.: Sept. 30, 2001).

³ Pub. L. No. 107-107 (Dec. 28, 2001).

⁴ Section 804 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106-65, Oct. 5, 1999) required that we review the use of task and delivery order contracts by executive agencies. Our first report in response to this mandate, *Contract Management: Civilian Agency Compliance with Revised Task and Delivery Order Regulations*, [GAO-03-983](#) (Washington, D.C., Aug. 29, 2003), excluded DOD because new requirements applicable only to DOD under section 803 of the National Defense Authorization Act for Fiscal Year 2002 had only recently become effective. As agreed with committee staff, our current review of task orders subject to the section 803 requirements was needed to satisfy fully the section 804 mandate.

reviewed 74 randomly selected multiple-award and federal supply schedule orders subject to the section 803 requirements at five large DOD buying organizations. Appendix I contains the details of our scope and methodology. We conducted our review from May 2003 through May 2004 in accordance with generally accepted government auditing standards.

Results in Brief

Contracting officers waived competition requirements on nearly half (34 of 74) of the orders we reviewed. For the most part, competition was waived based on determinations that only one source could provide the service or that the work was a follow-on to a previously competed order. Although these are permitted exceptions to the competition requirements of section 803, the use of these competition waivers generally reflected the desire of program offices to retain the services of contractors currently performing the work. When contracting officers addressed requests from program offices for waivers, safeguards to ensure that waivers were granted only under appropriate circumstances were lacking. Specifically, guidance for granting waivers did not sufficiently describe the circumstances under which a waiver of competition could be used. In addition, the requirements for documenting the basis for waivers were not specific, and there was no requirement that waivers be approved above the level of the contracting officer. As a result of the frequent use of waivers, there were fewer opportunities to obtain the potential benefits of competition—improved levels of service, market-tested prices, and the best overall value.

Competition was limited for most of the 40 orders available for competition. Of those 40 orders, buying organizations awarded 16 orders after receiving only one offer in response to agency solicitations. For 15 of the 40 orders, the buying organizations received two or more offers. For the remaining nine orders, contracting officials did not solicit competitive offers, but instead, used procedures that based the selection of a contractor on data previously submitted to the government. These procedures, which existed prior to the section 803 requirements, were not designed to maximize competition for individual orders. We question whether they are consistent with the requirements of section 803. We are continuing to pursue this issue with appropriate agency officials.

To encourage competition in awarding task orders under multiple-award and supply schedule contracts, we are making three recommendations to the Secretary of Defense to develop additional guidance on the circumstances under which competition may be waived, require detailed documentation to support competition waivers, and establish approval

levels above the contracting officer for waivers of competition on orders exceeding specified thresholds.

Background

Multiple-award contracts have provided an expeditious way to fill government needs. Contractors compete under a single solicitation to be awarded similar contracts for certain types of products or services, such as information technology services. These contracts are awarded for indefinite quantities for delivery at dates to be determined. The purpose of such contracts is to establish a group of prequalified contractors to compete for future orders under streamlined administrative procedures once agencies determine their specific needs.

Under the federal supply schedule program, GSA has negotiated contracts with thousands of companies that supply commercial products and services. These contracts can be used by any federal agency to purchase a wide variety of commercial products and services at prices associated with volume buying.

Under procedures in effect prior to the enactment of section 803, and which still apply to non-DOD orders, agencies placing multiple-award contract orders are required to ensure that each contractor is afforded a fair opportunity to be considered for the orders.⁵ Agencies are not required to contact each contractor, however, if the agency has information available to ensure that each contractor is provided a fair opportunity to be considered for orders. Waivers of the fair opportunity requirements are permitted in specified circumstances, such as when services are urgently needed or when only one source is capable of providing them. Under the federal supply schedule program, GSA has established special ordering procedures for services that require a statement of work.⁶ These procedures require agencies to request

⁵ The Federal Acquisition and Streamlining Act of 1994 provided statutory authority for federal agencies to enter into multiple-award, task and delivery order contracts. The act and the Federal Acquisition Regulation (FAR), Part 16.505, provide guidance on ordering requirements and the competitive process. Section 804 of the National Defense Authorization Act for Fiscal Year 2000 required more specific guidance to agencies on the appropriate use of task and delivery order contracts, which led to revisions in the FAR. See [GAO-03-983](#).

⁶ Under the Competition in Contracting Act of 1984, procedures established by GSA for the federal supply schedule program are competitive if participation has been open to all responsible sources and orders result in the lowest overall cost alternative to meet the needs of the government. Competition requirements are included in the FAR, subpart 8.4.

quotations from at least three federal supply schedule contractors after an initial evaluation of catalogs and price lists.

Section 803 of the National Defense Authorization Act for Fiscal Year 2002 changed the competition requirements under both types of contracts for DOD orders for services more than \$100,000. Section 803 and the implementing regulations in the Defense Federal Acquisition Regulation Supplement,⁷ which became effective in October 2002, were intended to promote competition under these contracts by prescribing more rigorous requirements. In general, under the section 803 regulations for multiple-award contract orders, DOD contracting officers (and agencies buying on behalf of DOD) are required to solicit offers from all contractors offering the required services under the multiple-award contracts. For federal supply schedule orders, DOD contracting officers are required to solicit all federal supply schedule contractors offering the required services under the applicable schedule or as many as practicable to ensure the receipt of three offers. If three offers are not received, the contracting officer must determine in writing that no additional contractors could be identified despite reasonable efforts to do so. Under both types of contracts, officials must provide a fair notice of the intent to make the purchase, a description of the work the contractor shall perform, and the basis upon which the contracting officer will make the selection. Additionally, under both types of contracts, DOD contracting officers are required to afford all responding contractors a fair opportunity to make an offer and have that offer fairly considered. Also, section 803 and the DOD implementing regulations permit waivers for both multiple-award and federal supply schedule contract orders under specified circumstances.

We randomly selected 74 orders at five DOD buying organizations to determine the level of competition for DOD orders more than \$100,000 subject to section 803. Table 1 below shows the selected locations. We selected these locations because we wanted to focus on buying organizations with large volumes of orders and we wanted a mix of DOD-wide, Army, Navy, and Air Force buying organizations. (See appendix I for more information on our scope and methodology.)

⁷ The Defense Federal Acquisition Regulation Supplement citations are DFARS 216.505-70 for orders under multiple-award contracts and DFARS 208.404-70 for orders under the federal supply schedule.

Table 1: Selected Buying Organizations

Buying organization	Location
Communications-Electronics Command (CECOM)	Fort Monmouth, N.J.
Naval Inventory Control Point (NICP)	Mechanicsburg, Pa.
Defense Contracting Command-Washington (DCCW)	Washington, D.C.
Defense Information Systems Agency (DISA)	Scott Air Force Base (AFB), Ill.
Oklahoma City Air Logistics Center (OC-ALC)	Tinker AFB, Okla.

Source: GAO.

Frequent Use of Competition Waivers Reflects Preference to Retain Incumbent Contractors

Competition requirements were waived for nearly half (34 of 74) of the multiple-award and federal supply schedule orders we reviewed. In 26 of these 34 cases, competition was waived based on a determination either that only one source could provide the service or that the work was a follow on to a previously competed order. Often, contracting officers waived competition in these cases based on requests from program office customers to retain the services of contractors currently performing the work. When contracting officers addressed requests for waivers from program offices, the existing process lacked safeguards to ensure that waivers were granted only under appropriate circumstances. Specifically, the guidance available to contracting officers in granting waivers was limited because it did not sufficiently describe the circumstances under which a waiver of competition could be used; the requirements for documentation of waivers were not specific; and regardless of the amount of the order, there was no requirement for review at a level higher than the contracting officer. As a result of the frequent use of waivers, there were fewer opportunities to obtain the potential benefits of competition—improved levels of service, market-tested prices, and the best overall value for the taxpayer.

Competition Waivers Used Frequently

Thirty-four of the 74 orders we reviewed were awarded on the basis of waivers to competition requirements. These waivers accounted for \$53.3 million, or 58 percent, of the total dollar value of the orders we reviewed. Twenty-four of these 34 waivers were for federal supply schedule orders, and 10 were for multiple-award contract orders. Table 2 shows that waivers were common across all five buying organizations we visited.

Table 2: Waivers of Competition at Five Buying Organizations

Dollars in millions

Buying organizations	Total orders reviewed		Waivers of competition	
	Numbers of orders	Dollars	Numbers of orders	Dollars
CECOM	14	\$14.9	4	\$0.9
NICP	13	17.1	8	9.3
DCCW	15	20.9	8	16.6
DISA	16	31.2	8	23.2
OC-ALC	16	8.2	6	3.3
Total	74	\$92.3	34	\$53.3

Sources DOD (data); GAO (analysis).

The five buying organizations primarily justified waiving competition requirements by citing either of two specific exceptions to competition: (1) that only one contractor was capable of providing services that were unique or highly specialized or (2) that the order was a logical follow-on to an order already issued on a competitive basis. Table 3 describes the rationale for granting waivers as stated in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). The table also shows the frequency with which these waivers were used.

Table 3: Basis for Waivers and Frequency Cited

Waiver basis	Number of times used
Urgent need: The services are urgently needed, and competition would result in unacceptable delays.	4
Unique or highly specialized services: Only one contractor is capable of providing services that are unique or highly specialized.	14
Logical follow-on: The award is in the interest of economy and efficiency because it is a logical follow-on to an order already issued on a competitive basis.	12
Minimum guarantee: It is necessary to place the order with a contractor to satisfy a minimum guarantee.	0
Statutory purchase: A statute expressly authorizes or requires that the purchase be made from a specified source.	0
Multiple exceptions and other.	4
Total	34

Sources: FAR and DFARS (data); GAO (analysis).

Note: The documentation in the contract files for individual orders generally cited the legal references pertaining to section 803 or the DOD regulations (exceptions to fair opportunity). In nine orders, the files provided references to the Federal Acquisition Regulation, section 6.302, pertaining to circumstances permitting other than full and open competition. For summary purposes, we combined similar justifications for waivers. For example, we combined the orders that cited “one source” as an exception under the DOD regulations (only one source is capable because of unique and highly specialized services) with “one source” as a circumstance under section 6.302-1 permitting other than full and open competition (only one responsible source and no other suppliers or services will satisfy agency requirements).

The waivers to competition include one case in which the order was awarded under the small business contracting program under section 8(a) of the Small Business Act.

Safeguards Lacking for Addressing Requests to Waive Competition

In requesting contract services, program offices often requested that contracting officers waive competition and retain contractors already providing the services. This preference for the incumbent contractor was particularly evident in the 26 waiver cases that cited the unique services or logical follow-on exceptions as the basis for the waivers. The following is an example:

- In March 2003, the Oklahoma City Air Logistics Center awarded a \$667,554 order under the federal supply schedule to provide information technology engineering and technical computer support services for the B-1 system support management office. In its request for services, the program manager for the B-1 technical support center said that it has several projects currently being developed and that the incumbent contractor had continually delivered quality services on time and within budget. The program manager added that the center is

a complex system of interrelated software applications and that it would be in the government's interest to award the order to the same contractor again. The program office said that it had no desire to change contractors at this critical time. The waiver was justified on the basis of a logical follow-on.

Several representatives of buying organizations told us that program offices often prefer to continue with incumbent contractors. For example, one buying organization representative told us that program offices continually place pressure on the buying organization to award orders to incumbent contractors and that program offices have been very resistant when the buying organization insisted on seeking competition. Another buying organization representative stated that it is often difficult for a contracting officer to balance competition requirements with the desire of a program office to maintain an existing relationship with its incumbent contractor.

In addressing requests from program offices to retain incumbent contractors, the guidance available to contracting officers in the Defense Federal Acquisition Regulation Supplement on the appropriate use of waivers is limited. Specifically, DOD's regulations implementing section 803 merely refer to the exceptions (listed above in table 3). The DOD regulations do not elaborate further on the circumstances under which an exception to competition may be used. As a result, contracting officers lack guidance in determining whether program office requests for waivers to competition should be granted.⁸

For example, DOD regulations do not specify what constitutes a logical follow-on to an order already issued on a competitive basis, how recent the previous competitive order should be, or whether there are any limits on the number of times the follow-on exception to competition may be used.⁹ We found three examples in which contracting officers deemed an

⁸ We did not attempt to assess whether the specific facts surrounding the 34 waivers justified the exceptions cited for granting the waivers, in large part because of the absence of support for the waivers in many of the contract files.

⁹ In addition to the DOD regulations, FAR section 16.505(b)(4) also applies to multiple-award contract orders made by or on behalf of DOD and provides some additional but limited guidance on logical follow-on waivers. It states that if the agency uses the logical follow-on exception, the decision documentation for orders shall include the rationale for placement and price as well as why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

order to be a logical follow-on for two or more consecutive procurements. The absence of additional guidance makes it more difficult for contracting officers to question program office requests for follow-on waivers. In one case, however, we found that the contracting officer requested additional information to justify a waiver because the order was the fourth consecutive order without competition. Specifically, the contracting officer said that the justification should discuss why the specific requirement was continuing and why it would be a benefit to the government to continue this work as a logical follow-on.

The following is an example of a follow-on waiver for a continuing requirement:

- In March 2003, the Naval Inventory Control Point awarded a \$1.2 million order under the federal supply schedule to provide information technology services for the Portsmouth Naval Shipyard. The program office prepared a sole-source justification, which the contracting officer used to waive competition on the basis of the logical follow-on exception. The waiver stated that the requirement was competed on two previous occasions. Based on further review, we found that the incumbent contractor was the only offeror in the two previous competitions, the last of which was in 1999, and had provided continuous services since 1992.

In addition, the DOD regulations do not explain what may be considered a unique and highly specialized service. We found examples in which contractors had provided their customers with the same services for multiple years. The documentation supporting the waivers said that the incumbent contractors had experience and knowledge gained through work on prior orders and that a change in contractors would result in increased cost or program delay. Often, documentation supporting the waiver focused on the qualities of the contractor (experience and knowledge gained over time), not the uniqueness of the services provided. The following is an example:

- In February 2003, Naval Inventory Control Point awarded a \$263,000 order under the federal supply schedule for the maintenance of hardware and software for an engineering program. The basis of the waiver of competition stated that only one contractor was capable of providing unique or highly specialized services. However, the justification supporting the waiver focused on the qualities of the contractor, such as system and software operating knowledge that would ensure the operation at existing levels. The justification said that

the cost to duplicate the contractor's expertise could not reasonably be expected to be recovered through competition and that the time necessary to develop another source would delay the program past published milestones.

Another factor relevant to addressing program office requests for waivers is the lack of specific requirements for the documentation needed to support a waiver. The DOD regulations state that each order for services exceeding \$100,000 must be awarded on a competitive basis unless the contracting officer waives this requirement on the basis of a "written determination" that one of the exceptions applies to the order. The regulations do not specify a particular format or the type of information that is needed to support a waiver. In particular, there is no requirement that the written determination describe the specific facts and circumstances that justify waiving competition.¹⁰ The determinations and supporting documentation we reviewed varied greatly among the 34 waiver cases. Written support for the waivers was in various types of documents and at various levels of specificity. Although some contract files contained detailed justifications to support a waiver, many files contained merely conclusions. For example, one contract file for an order exceeding \$17.4 million included only a statement in the price negotiation memorandum that the task monitor in the program office requested, and the contracting officer approved, the order as a logical follow-on to a previously competed action. The absence of detailed support for waivers makes it difficult for any reviewer to assess whether individual waivers were granted appropriately.

Finally, the DOD regulations do not require that waiver determinations be approved above the level of the contracting officer, regardless of the

¹⁰ FAR section 16.505(b)(4), which applies to multiple-award contract orders made by or on behalf of DOD, requires the contract file to identify the basis for using an exception to the fair opportunity process. Additionally, it generally provides that the contracting officer shall document in the contract file the rationale for the placement and price of each order, including the basis for the award and the rationale for any trade-offs among cost or price and noncost considerations in making the award decision. For federal supply orders under our review, the DOD regulation provides that the documentation procedures of FAR section 8.404(b)(7) apply. However, this FAR provision does not specify a particular format or the type of information that is needed to support a waiver. In June 2004, FAR subpart 8.4 was revised and FAR section 8.404(b)(7) was deleted. The revised FAR section 8.405-6 now provides that sole source orders be justified according to FAR section 6.303-2, modified for services. Additionally, revised FAR section 8.405-7 now provides for documentation of the circumstances and rationale for restricting consideration of schedule contractors to fewer than that required.

amount of the order. In contrast to section 803 requirements applicable to task orders, part 6 of FAR, which governs the use of other than full and open competition to award the underlying contracts, limits a contracting officer's approval of a sole-source justification to contracts that do not exceed \$500,000. Part 6.304 specifies a higher approval authority based on the dollar amount of the contract. These requirements are intended to ensure that exceptions to competition on higher dollar-value contracts are reviewed to ensure that exceptions are used only in appropriate cases. In June 2004, FAR subpart 8.4 was revised to establish approval thresholds similar to part 6 for waivers of competition on federal supply schedule orders. The revised regulation did not extend these approval requirements to orders under multiple-award contracts.

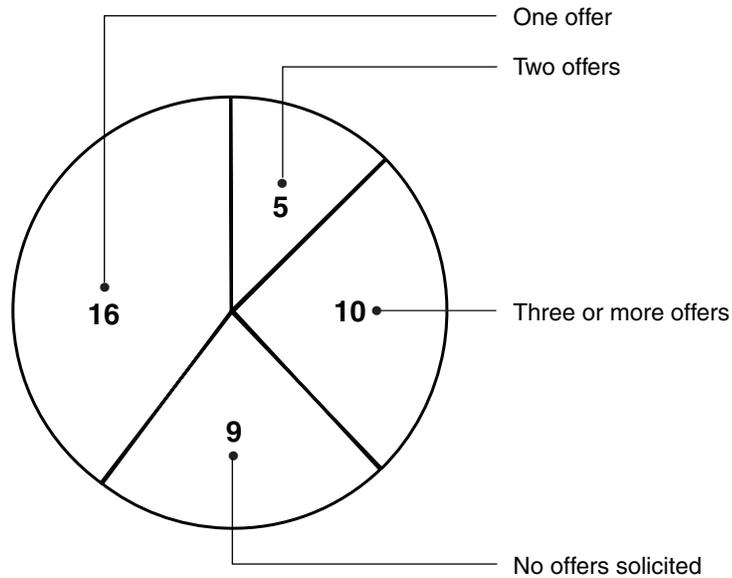
Few Offers Received on Orders Available for Competition

Competition was limited on the 40 orders available for competition. Contracting officers generally awarded these orders based on solicitations to contractors and the receipt and evaluation of offers. These 40 orders represented over \$38.9 million, or about 42 percent of the total dollar value of the 74 orders we reviewed.

The level of competition for the 40 orders is summarized in figure 1 below.¹¹ For 16 of the orders, the buying organization received only one offer in response to a solicitation. The buying organizations received two or more offers for 15 of the 40 orders available for competition. For the remaining nine orders, contracting officials did not solicit competitive offers. Instead, the nine orders were awarded based on data previously submitted to the government. We question whether the procedures used for these nine orders are consistent with the requirements of section 803, and we are continuing to pursue this issue with appropriate agency officials.

¹¹ Appendix II provides detailed tables that characterize the results of this analysis.

Figure 1: Offers for 40 Orders Open to Competition



Sources: DOD (data); GAO (analysis).

Orders Based on One Offer

In 16 cases, the buying organizations awarded orders on the basis of receiving only one offer, even though multiple contractors were solicited. The following are examples of orders awarded on the basis of a single offer:

- In July 2003, the Defense Contracting Command-Washington awarded an order for about \$1.4 million to provide education and training for the Air Force Management School. The only two contractors on the multiple-award contract were given an opportunity to submit offers. One contractor, the incumbent, submitted a \$1.4 million offer, but the second contractor declined. The contract file included information stating that both companies under the multiple-award contract had been acquired by the same parent company and that the second contractor rarely submits offers for work under this contract.
- In February 2003, the Naval Inventory Control Point awarded a \$300,000 order to remove and replace existing wiring and cables in a Marine Corps facility. The only two contractors on a multiple-award contract were given an opportunity to bid on this urgent requirement. The contractors had only 1 working day to respond to the request for a quote. One contractor was working at the facility on another project

and was able to respond to the government's 1-day deadline. The other contractor did not submit a proposal because, according to the contracting officer, its competitor was already in the building conducting work. The Naval Inventory Control Point requested that the sole offeror lower its proposed price of \$545,000 and granted an extension. Ultimately, the contractor agreed, and the award was made about 3 weeks after the contractor's initial offer. According to the contracting officer, the other multiple-award contractor was not contacted about the work after it initially declined to submit an offer.

In a prior report, we discussed insights from contractors about factors they consider when deciding whether to submit a proposal for an order.¹² Contractor representatives emphasized that such decisions entail a business judgment about the prospects of winning the award because preparing a proposal can be costly. Contractor representatives cited several factors that can contribute to a decision not to submit a proposal. For example, a company may be reluctant to pursue an opportunity if an incumbent exists, is perceived as having strong qualifications, and is performing well. If the company does not excel in that particular type of work, it may be inclined not to submit a proposal. Other factors that can discourage a company from submitting a proposal are unreasonably short time frames for preparing proposals and starting work, and selection criteria that appear to favor incumbent contractors.

Our current review also demonstrates that obtaining competition for services can be difficult when there is an incumbent contractor that may be perceived as having advantages over nonincumbents. For example, incumbent contractors might have built strong working relationships with program offices from meeting the needs of program offices. In addition, incumbent contractors may be more likely to understand the work requirements, particularly when the order involves continuing services. Of the 40 orders available for competition, 21 were for continuing services. The incumbent contractor received the order in 19 of these 21 cases.

¹² See [GAO/NSIAD-00-56](#).

Orders Based on Two or More Offers

Fifteen of the 40 orders available for competition were awarded following the receipt of two or more offers.¹³ The following examples describe orders awarded on the basis of multiple offers:

- In April 2003, the Defense Information Systems Agency awarded an order for about \$346,000 for database technical support services. The 1-year award included options for 4 additional years, which could add an additional \$1.4 million to the value of the award. The new requirement was competed among all nine contractors on a multiple-award contract. Six of the nine contractors submitted an offer. The prices (with options) ranged from about \$1.75 million to about \$3.4 million. All of the proposals were technically acceptable. The selection was based on the lowest-priced, technically acceptable offer.
- In February 2003, the Oklahoma City Air Logistics Center awarded an order for about \$145,000 for information technology support. The 1-year award included options for 3 additional years of work, which could add an additional \$463,000 to the award. The center requested quotes from eight contractors, including the incumbent contractor. The incumbent contractor failed to submit a proposal prior to the due date and requested an extension, which was denied. The center received three offers—one at about \$145,000 for the first year and two others at about \$200,000 and \$190,000. The program office wanted the order to be awarded to the highest offeror because any other choice would have an adverse impact on various projects. In response, the contracting officer worked to resolve various matters (such as security issues) and ultimately awarded an order to the lowest offeror.

Orders Awarded without Solicitations

Section 803 and the DOD regulations require DOD's buying organizations to provide all contractors under a multiple-award contract with a notice of the intent to make a purchase—including a description of the work to be performed and the basis on which the selection will be made. For nine orders, however, two buying organizations did not solicit competitive offers for individual orders. Instead, the nine orders were awarded under a selection process that based the award on data previously submitted to the government.

¹³ Some multiple-award contracts that we reviewed had only two contractors that were eligible to compete for awards.

Six of these nine orders were awarded at the Oklahoma City Air Logistics Center under a multiple-award contract called Contractor Field Teams. Under this multiple-award contract, the four participating contractors were not solicited for individual orders. Instead, the procedures outlined in the contract called for the contracting officer to make the selections on the basis of 10 factors: (1) price; (2) manning; (3) experience; (4) availability of skills; (5) site location; (6) continuity of program; (7) security clearance; (8) selected factors such as special requirements; (9) contractor performance; and (10) diversity. Each of the four contractors was scored from zero to four points for each factor, and the contractor with the highest total received the task order. An internal file memorandum stated that the contracting officer had all the needed information on all four contractors already in place prior to making the selections. The memorandum also stated that if the program were to issue an additional solicitation each time a requirement was submitted, it would result in lost time in accomplishing the work.

Five of the six orders that we reviewed under the multiple-award contract at Oklahoma City were awarded to incumbent contractors for the continuation of existing services. To further assess the impact of this source selection process, we requested that representatives of the Oklahoma City Air Logistics Center provide us with data on all awards under this multiple-award contract for fiscal year 2003. The data showed that 103 of 112 orders were awarded to incumbent contractors for the continuation of ongoing services.

Similarly, for three orders, contractors were not solicited for individual orders in the process used at the Naval Inventory Control Point. Instead, they were notified of intended work at potential sites for the fiscal year. Contracting officers at the buying organization evaluated the contractors prior to the issuance of specific orders on the basis of previously submitted data. The evaluation was based on a cost model, which was developed in order to expedite the contract process and reduce administrative costs.

The selection procedures used at the Oklahoma City Air Logistics Center and by the Naval Inventory Control Point existed prior to the passage of section 803 requirements. In our opinion, these procedures were not designed to maximize competition for individual orders, and we question whether they are consistent with section 803 requirements in terms of providing fair notice of intent to make a purchase and fair opportunity to responding contractors to submit an offer and have it fairly considered.

We are reviewing this matter further, and will follow up with appropriate agency officials.

Conclusions

Striking the right balance between achieving the benefits of competition and retaining contractors that are satisfying customer needs is a challenge for DOD. On the one hand, the frequent use of waivers to competition requirements may be hindering DOD's ability to obtain innovative solutions to problems and the best value for the taxpayer. On the other hand, requests by program offices to waive competition to retain the services of incumbent contractors are strong indications that contractors are satisfying customer needs. Contracting officers would be aided in meeting program office needs while adhering to competition requirements through additional guidance on the proper use of competition waivers. In addition, requiring more thorough documentation by contracting officers of the circumstances that warrant the use of waivers and establishing an approval process for the use of waivers for multiple-award contracts would enhance oversight and help to ensure that waivers are used only when appropriate.

Recommendations for Executive Action

In order to promote more competition in the award of orders under multiple-award and federal supply schedule contracts and to ensure that waivers of competition are used only in appropriate cases, we recommend that the Secretary of Defense take the following three actions:

- develop additional guidance on the circumstances under which the logical follow-on and unique services waivers may be used,
- require that all waiver determinations be supported by documentation describing in detail the circumstances that warrant the use of a waiver, and
- establish approval levels for waivers under multiple-award contracts that are comparable to the approval levels for sole-source federal supply schedule orders under subpart 8.4 of the Federal Acquisition Regulation.

Agency Comments and Our Evaluation

In commenting on a draft of this report, DOD concurred with our recommendations. DOD has opened a Defense Federal Acquisition Regulation Supplement case to develop the necessary changes to the DFARS and any additional supplemental guidance that may be appropriate for procedures, guidance, and information. DOD anticipates the issuance of a rule and supplemental guidance within 180 days. Also, DOD will issue

direction within 30 days to implement approval levels for waivers under multiple-award contracts comparable to the revised approval levels at FAR 8.4 for federal supply schedule orders. These approval levels will be effective October 1, 2004.

Specifically, DOD will develop additional guidance on the circumstances under which the logical follow-on and unique and highly specialized services waivers may be used. DOD agrees that additional guidance will facilitate more consistent and appropriate use of waivers.

In addition, DOD will require that all waiver determinations be supported by documentation describing in detail the circumstances that warrant the use of a waiver. DOD agrees that it is appropriate that each waiver be accompanied by documentation that contains sufficient facts and rationale to demonstrate the propriety of the waiver.

Lastly, DOD said it will establish approval levels for waivers under multiple-award contracts comparable to the approval levels established in the FAR for sole-source federal supply schedule orders. DOD agrees that elevating the approval level above the contracting officer for higher-dollar orders increases the emphasis on the importance of competition. Furthermore, it ensures that orders are treated the same, whether a federal supply schedule or a multiple-award contract is used.

DOD's comments appear in appendix III.

We are sending copies of this report to the Administrator of General Services, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Management and Budget, and interested congressional committees. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Please contact me at (202) 512-4841, or Blake Ainsworth at (202) 512-4609, if you have any questions regarding this report. Major contributors to this report were Ken Graffam, Martin Lobo, Gary Middleton, Jeffrey Rose, Ralph Roffo, Paul Williams, Robert Ackley, and Marie Ahearn.

A handwritten signature in black ink that reads "William T. Woods". The signature is written in a cursive, flowing style.

William T. Woods
Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

The Department of Defense (DOD) acquires billions of dollars worth of services each year using various multiple-award contracts and the General Services Administration's federal supply schedule. To enhance competition under such contracts, section 803 of the National Defense Authorization Act for Fiscal Year 2002 included new requirements to help increase the number of competitive offers on DOD orders for services worth more than \$100,000. Our objectives were to (1) identify the extent to which the buying organizations waived the competition requirements of section 803, and (2) determine the level of competition for orders available for competition. These objectives allowed us to focus on the outcome that section 803 was intended to achieve. We did not independently determine the validity of the competition waivers, nor did we assess whether the buying organizations complied with each of the specific requirements of section 803.

To determine the locations to visit, we obtained a computer file from DOD, which listed DOD's contracting actions using DOD's Individual Contracting Action Report (DD-350). The database provided contracting actions from January 1 to June 30, 2003. From these data, we were able to identify the largest users during this period of multiple-award orders and federal supply schedule orders. We selected five buying organizations that were large users of both multiple-award contracts and the federal supply schedule. The selected buying organizations represented a mix of Army, Navy, Air Force, and DOD-wide buying organizations—including the Communications-Electronics Command, Fort Monmouth, New Jersey; Defense Contracting Command-Washington, Washington, D.C.; Defense Information Systems Agency, Scott Air Force Base (AFB), Illinois; Naval Inventory Control Point, Mechanicsburg, Pennsylvania; and Oklahoma City Air Logistics Center, Tinker AFB, Oklahoma.

We also used the DD-350 Individual Contracting Action Report's database to randomly select the orders for review at the five buying organizations. These data represented contracting actions from January 1 to June 30, 2003, that were subject to the section 803 requirements—multiple-award contract and federal supply schedule orders for services worth more than \$100,000. We prepared two lists of contracting actions for each of these five buying organizations: one for orders under multiple-award contracts and one for orders under the federal supply schedule. Orders were

selected for review using random numbers tables.¹ At each location, our goal was to review 16 randomly selected orders, 8 multiple-award orders, and 8 federal supply schedule orders. For each contract, we reviewed the order file, and in many cases, interviewed the contracting officer and other contracting officials to discuss the file.

Ultimately, we reviewed 74 randomly selected orders at five DOD buying organizations to determine the level of competition for orders subject to the section 803 requirements.² As table 4 shows, the basic awards for these 74 orders (without options for additional work) represented over \$92.3 million.

Table 4: Number and Dollar Value of Orders GAO Reviewed at Five DOD Buying Organizations

Dollars in millions

Buying organizations	Orders under multiple-award contracts		Orders under federal supply schedule		Total number of orders	Total dollars
	Number of orders	Dollars	Number of orders	Dollars		
Communications-Electronics Command	8	\$7.2	6	\$7.7	14	\$14.9
Naval Inventory Control Point	5	7.8	8	9.3	13	17.1
Defense Contracting Command-Washington	7	7.3	8	13.6	15	20.9
Defense Information Systems Agency	8	28.8	8	2.4	16	31.2
Oklahoma City Air Logistics Center	8	5.2	8	3.0	16	8.2
Total	36	\$56.3	38	\$36.0	74	\$92.3

Sources: DOD (data); GAO (analysis).

¹ We did not assess the reliability of the database used to select the sample. For several reasons, some of the originally selected orders had to be replaced with other randomly selected orders. For example, some orders were incorrectly coded as services rather than products. Also, some contracting actions were solely to provide additional funding for existing contracts.

² At the Naval Inventory Control Point, all multiple-award contract orders in the DD-350 database were miscoded and discarded. However, Control Point staff members were able to identify five orders meeting our criteria (not listed in DD-350), which we reviewed. Also, at the Communications-Electronics Command, many orders were discarded for several reasons. We found only six federal supply schedule orders that met our criteria; we reviewed all six orders.

We conducted our review from May 2003 through May 2004 in accordance with generally accepted government auditing standards.

Appendix II: Summary Tables on Orders Selected for Review

The three tables below provide a summary of the orders selected for review at the five buying organizations we visited. Table 5 shows a breakdown of the orders with waivers to competition and orders open to competition at the various buying organizations. Tables 6 and 7 show the level of competition (number of offers) for orders open to competition under the federal supply schedule and multiple-award contracts.

Table 5: Summary of the Orders Selected for Review at Five Buying Organizations

Buying organizations	Number of orders on federal supply schedule		Number of orders on multiple-award contracts		Total number orders
	Waivers	Open to competition	Waivers	Open to competition	
Communications-Electronics Command (CECOM)	3	3	1	7	14
Naval Inventory Control Point (NICP)	8			5	13
Defense Contracting Command-Washington (DCCW)	5	3	3	4	15
Defense Information Systems Agency (DISA)	4	4	4	4	16
Oklahoma City Air Logistics Center (OC-ALC)	4	4	2	6	16
Total	24	14	10	26	74

Sources: DOD (data); GAO (analysis).

Table 6: Extent of Competition for 14 Orders Open to Competition under the Federal Supply Schedule at Five Buying Organizations

Buying organizations	Number of orders under the federal supply schedule			
	Open to competition	One offer	Two offers	Three or more offers
CECOM	3	2	1	
NICP				
DCCW	3	1	1	1
DISA	4	1	1	2
OC-ALC	4			4
Total	14	4	3	7

Sources: DOD (data); GAO (analysis).

Table 7: Extent of Competition for 26 Orders Open to Competition under Multiple-Award Contracts at Five Buying Organizations

Buying organizations	Number of orders under multiple-award contracts				
	Open to competition	One offer	Two offers	Three or more offers	No offers solicited
CECOM	7	4	2	1	
NICP	5	2			3
DCCW	4	4			
DISA	4	2		2	
OC-ALC	6				6
Total	26	12	2	3	9

Sources: DOD (data); GAO (analysis).

Appendix III: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 19 2004

DPAP/DARS

Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense response to the GAO draft report, "CONTRACT MANAGEMENT: Guidance Needed to Promote Competition for Defense Task Orders," dated June 22, 2004 (GAO Code 120245/GAO-04-874).

I appreciate the opportunity to comment on the draft report. I concur with the GAO recommendations as discussed in the enclosure. I have opened a Defense Federal Acquisition Regulation Supplement (DFARS) case to develop necessary changes to the DFARS and any additional supplemental guidance that may be appropriate for procedures, guidance and information. I anticipate issuance of a rule and supplemental guidance within 180 days.

Additionally, I will issue direction within the next 30 days to implement approval levels for waivers comparable to the revised approval levels at FAR 8.4 for Federal Supply Schedules. I will extend these same approval levels for waivers on orders against multiple award contracts to be effective October 1, 2004.

Please contact Ms. Teresa Brooks, 703-602-0326, teresa.brooks@osd.mil, should you have any questions.

Sincerely,

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated



GAO DRAFT REPORT - DATED JUNE 22, 2004
GAO CODE 120245/GAO-04-874

“CONTRACT MANAGEMENT: GUIDANCE NEEDED TO PROMOTE
COMPETITION FOR DEFENSE TASK ORDERS”

DEPARTMENT OF DEFENSE COMMENTS
TO THE RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense develop additional guidance on the circumstances under which the logical follow-on and unique services waivers may be used. (p. 16/GAO Draft Report)

DOD RESPONSE: Concur. The Department will develop additional guidance on the circumstances under which the logical follow-on and unique or highly specialized services waivers may be used. The Department agrees that additional guidance will facilitate more consistent and appropriate use of waivers.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense require that all waiver determinations be supported by documentation describing in detail the circumstances that warrant use of a waiver. (p. 16/GAO Draft Report)

DOD RESPONSE: Concur. The Department will require that all waiver determinations be supported by documentation describing in detail the circumstances that warrant the use of a waiver. The Department agrees it is appropriate that each waiver be accompanied by documentation that contains sufficient facts and rationale to demonstrate the propriety of the waiver.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense establish approval levels for waivers under multiple-award contracts that are comparable to the approval levels for sole-source federal supply schedule orders under subpart 8.4 of the Federal Acquisition Regulation (p. 16/GAO Draft Report)

DOD RESPONSE: Concur. The Department will establish approval levels for waivers under multiple award contracts, comparable to the approval levels established in the Federal Acquisition Regulation (effective July 19, 2004) for sole source federal supply schedule orders. The Department agrees that elevating the approval level above the contracting officer for higher dollar orders increases the emphasis on the importance of competition. Further, it ensures that orders are treated the same, whether a federal supply schedule or a multiple award contract is used.

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