



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 3, 1982

The Honorable Jack Brooks, Chairman
Committee on Government Operations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with the statutory obligation to respond to recommendations by the General Accounting Office (GAO) within 60 days of publication, we hereby submit our responses to the recommendations made by the GAO in their report entitled, "Less Sole-Source, More Competition Needed on Federal Civil Agencies' Contracting," (PLRD-82-40).

The Commission concurs in all of the GAO recommendations except Recommendation 2. This recommendation suggests the use of the Federal Procurement Data System to establish numerical goals for increased competition. The Commission is not persuaded that quantitative considerations in the form of a numerical goal for increased competition should be permitted to influence individual decisions of a qualitative nature. Decisions on competition vs. sole-source must be made on the basis of an examination of the particular circumstances surrounding the specific action without reference to whether it will advance the agency toward the accomplishment of a numerical goal.

As you can see in the enclosed responses, the Nuclear Regulatory Commission (NRC) has already implemented all of GAO's remaining recommendations. Additionally, the Commission is committed to competition in the NRC's contracting activity. We believe, as does the GAO, that this may be the most important action of all.

Specific comments on the GAO recommendations are presented in the enclosure.

Sincerely,

Nunzio J. Palladino

Enclosure:
Responses to GAO
Recommendations

cc: Rep. Frank Horton

NRC Response to Recommendations to the Final GAO Report Entitled "Less
Sole-Source, More Competition Needed on Federal Civil Agencies' Contracting"

Recommendation 1

Install effective management procedures or controls to ensure agency compliance with the new regulatory requirements adopted in response to our recommendations. (See pp. 22 and 32 of the full report.)

NRC Response

The recommendations referred to here by the GAO were those which it made to the Administrator of the General Services Administration (GSA). Under the provisions of the Federal Property and Administrative Services Act of 1949, the GSA is responsible for maintaining the Federal Procurement Regulations. The first of these recommendations (p. 22) relates to describing the conditions which must be operative to justify a sole-source procurement. The Federal Procurement Regulations (FPR) currently state (FPR 1-3.210(a)(1)) simply that negotiation is authorized "when property or services can be obtained from only one person or firm (sole-source of supply)." The GAO has further defined this area in its decisions on protests lodged with the Comptroller General. The NRC concurs in and is already in compliance with this GAO recommendation as it details circumstances supportive of sole-source procurement in its system of management directives, specifically, NRC Appendix 5101, "NRC Procurement of Goods and Services," Part II, Paragraph D.1.b, "Circumstances Supportive of Noncompetitive Procurement."

The second recommendation (p. 22) would require a written sole-source justification for each sole-source action over \$10,000 which would document the circumstances surrounding the action and describing the market search that was conducted. The description of the market search would also indicate whether a preaward notice inviting competition was published in the Commerce Business Daily (CBD). The NRC concurs and is already in compliance with this recommendation. The NRC's documentation requirements are set forth in NRC Appendix 5101, Part II.D., "Noncompetitive Procurement" and Procurement Compliance Notice 78-13.

The third recommendation (p. 23) would require the establishment and maintenance of a procurement planning system in agencies obligating over 5 million dollars annually. Again, the NRC concurs and is already in compliance with this recommendation. Paragraph 031.a. of NRCM 5101 establishes a requirement for the submission and revision of an annual procurement plan by each NRC office. Bulletin 5101-3, "Advance Procurement Planning, Lead-Time and Cut-Off Dates, and Review of Year-End Procurement Actions," provides additional procedures for the development and maintenance of an annual advance procurement plan (APP).

The fourth recommendation (listed as no. 1 on p. 33) would require that a market search for competitive sources be made before a sole-source justification be approved. The NRC concurs and is already in compliance with this recommendation. The "sources sought" procedure utilized by the Department of Health and Human Services and lauded by the GAO (see pp. 27-29 of the report) is paralleled by the sources sought procedure in use at the NRC. This procedure is detailed in NRC Appendix 5101, Part II, Paragraph D.1.d, "Use of 'Sources Sought' Announcement in Sole-Source Situations."

The fifth recommendation (listed as no. 2 on p. 33) would require that the market search include a CBD notice inviting competitive offers on the specific prime contract and other reasonable steps, such as soliciting capable firms and contacting local business, where appropriate. The NRC concurs with this recommendation and is already in compliance with it.

The last recommendation (listed as no. 3 on p. 33) would require that, especially in potential sole-source situations, the agency requesting officials notify procurement offices as soon as requirements become known, to maximize the time available for conducting the market search and obtaining competition. The NRC concurs and is already in compliance with this recommendation. Bulletin 5101-3 referenced above requires the program office to identify sole-source requirements in its APP. This allows sufficient lead-time to examine the merits of the sole-source and to conduct a market search where appropriate.

In addition to these specific management controls, the NRC has established an Internal Control Committee in accordance with OMB Circular A-123, "Internal Control Systems," which, by virtue of its responsibility to promote operational economy and efficiency, will clearly be concerned with promoting an increase in competition in the NRC's procurement actions.

Recommendation 2

Use the Federal Procurement Data System to set goals for, and measure the progress of, increasing competition by agencies, components, and purchasing offices. The approach used should emphasize (1) periodically and thoroughly analyzing the system's data on noncompetitive awards by such categories as purchasing office and product or service code, (2) pinpointing areas having the greatest opportunity for increasing competition, (3) measuring incremental yearly progress, and (4) placing responsibility on program, technical, and procurement officials heading the various offices for making a "good faith" effort to meet agreed-upon goals.

NRC Response

The NRC agrees that the data it prepares and submits to the FPDS can provide useful information in assessing the efficiency of the NRC's contracting activity. It does not, however, agree that setting a specific numerical goal for increased competition is a useful exercise. Each request for a sole-source contract is and will be thoroughly examined; those which are not factually supported will be rejected. This process is qualitative. The NRC feels that there should be no pressure to meet a quantitative goal which would influence a qualitative decision. Indeed, the NRC, utilizing this qualitative approach, has increased the percentage of its dollars awarded competitively from 52% of all commercial contracting in FY-79 to 70% in FY-81 (Interagency contracting is not included).

Recommendation 3

Direct appropriate agency officials to use the competitive process, unless the government would be injured by doing so or agency officials demonstrate that competition is not feasible.

NRC Response

The NRC concurs and is already in compliance with this recommendation (NRC Appendix 5101, Part 11.D, "Noncompetitive Procurement")

Recommendation 4

Improve the procurement training provided to agency technical, program, and procurement personnel to better enable them to correct the types of problems identified in this report and avoid unnecessary sole-source awards.

NRC Response

The agency has a demonstrated commitment to the training of program and procurement personnel. For example, it has designed and developed a procurement course for the agency's project officers. By the end of FY-82 this course will have been delivered to approximately 250 of the agency's program personnel. In addition, procurement personnel are systematically trained in all aspects of the contracting function. A detailed and comprehensive training plan and profile is developed for each procurement professional. Such plan is implemented within the constraints of agency budget and workload needs. The efficacy of this training commitment is reflected in the agency's favorable ratio of competitive to sole-source awards.

Recommendation 5

Increase the effectiveness of the required reviews of sole-source decisions and ensure that they are made. Improving the documentation of sole-source justifications and implementing other recommendations suggested in this report should help improve the quality of these reviews.

NRC Response

The NRC concurs and agrees with the GAO that the implementation of its recommendations should help improve the quality of these reviews. As can be seen throughout this response, the NRC has already implemented GAO's recommendations. The NRC currently requires review of sole-source decisions at a level above that of the Contracting Officer for all procurements in excess of \$10,000.

Recommendation 6

Reduce the number of unjustified sole-source contracts evolving from unsolicited proposals by (1) requiring at a minimum the type of documentation and market research that we are recommending for other sole-source procurements, (2) educating agency personnel that unsolicited proposals are not acceptable if the substance is available to the Government without restriction from another source, and (3) requiring that potential offerors be provided with a solicitation document, such as a request for proposals, stating the Government's problem and minimum requirements as well as its evaluation criteria (but not the particular ideas, proprietary information, or solution contained in the unsolicited proposal), when competition is feasible and a valid requirement exists.

NRC Response

The NRC concurs in this recommendation and is already in compliance with it. NRC Manual Chapter 5102, "Receipt and Handling of Unsolicited Proposals" together with NRC Appendix 5101, Part II.D, "Noncompetitive Procurement" provide the coverage sought by the GAO.

Recommendation 7

Better ensure that (1) contract specifications are not unnecessarily restrictive and (2) competition is fostered to the maximum extent practical in subsequent procurements after previous noncompetitive awards, as required.

NRC Response

The NRC concurs and is already in compliance with this recommendation. NRC Appendix 5101, Part II.D. addresses this point as well as Part III.C.6.b.(1) of the Appendix.

Recommendation 8

Improve, in conjunction with the Director, Federal Procurement Data Center, and the Administrator, Office of Federal Procurement Policy, the accuracy and completeness of the Federal Procurement Data System by (1) instituting a quality control program, including periodic sampling of agency data, (2) improving data entry and correction procedures, (3) resolving inconsistencies between the system's requirements and the agencies' own systems, (4) providing training to appropriate personnel concerning system definitions and procedures, and (5) holding contracting officers accountable for ensuring that correct and complete data is promptly entered into the system on each of their contract actions by providing feedback on the coding errors for their contracts and assessing their performance.

NRC Response

The NRC concurs in this recommendation and has already taken action to upgrade its own system, which feeds the FPDS, by recently hiring an individual to specifically take responsibility for the day-to-day operation of the system. The concerns articulated by the GAO will form the basis for a program of action for system improvements.

Recommendation 9

Perhaps most importantly of all, effectively communicate a strong commitment to competition to personnel throughout their agencies.

NRC Response

The NRC concurs in this recommendation and has announced to its staff, the importance of and the commitment to competition in its contracting activities.