

August 2003

CONTRACT  
MANAGEMENT

Civilian Agency  
Compliance with  
Revised Task and  
Delivery Order  
Regulations



G A O

Accountability \* Integrity \* Reliability



Highlights of [GAO-03-983](#), a report to Congressional Committees

## CONTRACT MANAGEMENT

# Civilian Agency Compliance with Revised Task and Delivery Order Regulations

### Why GAO Did This Study

Multiple-award task and delivery order contracts were intended to streamline the acquisition of goods and services. Prior GAO reviews cited concerns that some agencies using these contracts were not attaining the level of competition Congress had initially envisioned. In response, Congress required that additional guidance be published in the Federal Acquisition Regulation and asked GAO if the guidance conformed to the law and agencies were complying with it.

To evaluate compliance, GAO examined how agencies provided vendors with a fair opportunity to be considered for orders, clearly described the services or supplies needed, and complied with capital planning requirements.

### What GAO Recommends

The Departments of Veterans Affairs and Health and Human Services should review the guidance and training provided to their acquisition personnel on using the fair opportunity process to ensure that agencies receive the best value through task and delivery orders. The Office of Management and Budget should clarify the responsibilities of acquisition and other staff regarding capital planning for information technology products and services.

[www.gao.gov/cgi-bin/getrpt?GAO-03-983](http://www.gao.gov/cgi-bin/getrpt?GAO-03-983).

To view the full product, including the scope and methodology, click on the link above. For more information, contact William Woods at (202) 512-8214 or [woodsw@gao.gov](mailto:woodsw@gao.gov).

### What GAO Found

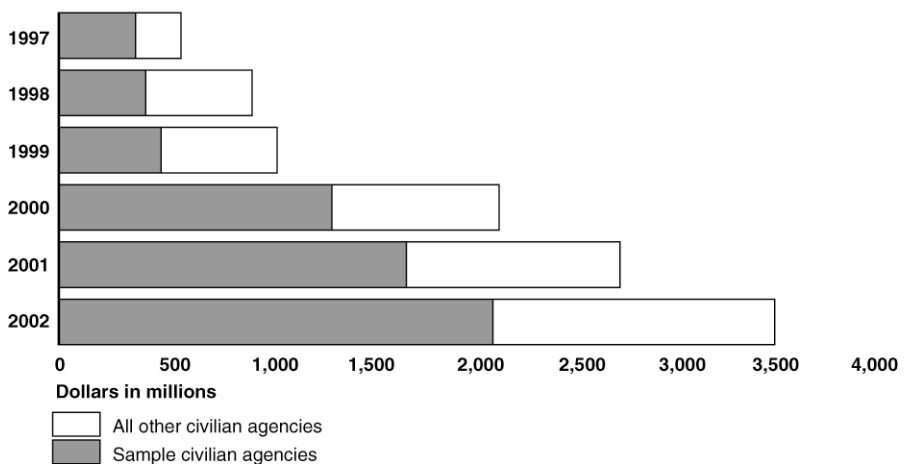
The revisions to the Federal Acquisition Regulation conform to statutory requirements. The revisions provide additional, though generally limited, guidance on how agencies should implement the fair opportunity process, describe the supplies and services needed, and meet capital planning requirements. Agency officials did not view the regulatory changes as significant, and made minimal changes in their internal policies and procedures.

The agencies GAO reviewed provided eligible contractors a fair opportunity to be considered for award of an order in 18 of 26 selected cases. The remaining eight orders were issued using exceptions to the fair opportunity process. Four of those were not adequately justified.

The orders GAO reviewed appeared to clearly describe the supplies and services required. However, statements of work for four information technology (IT) services orders were defined broadly, and required subsequent sub-task orders or modifications to completely define the work. Although agencies are required to use performance-based statements of work as widely as possible, only 3 of 22 orders for services met the performance-based criteria.

Regulations on capital planning and investment controls for purchases of IT products and services went into effect in August 2002, and agencies are still trying to determine how they will comply with them and who is to be responsible for them. As part of these efforts, several agencies plan to require that their chief information officer certify that the capital planning requirements have been met.

**Multiple-Award Contracts by Civilian Agencies**  
Fiscal year



Source: Federal Procurement Data System "Federal Procurement Reports" for fiscal years 1997 through 2002, the latest data available.

---

# Contents

---

---

## Letter

Results in Brief	1
Background	3
Revised Regulations Conform to Law	4
Most Orders Awarded through Fair Opportunity; Some Exceptions Not Adequately Justified	8
Most Orders Clearly Described Requirements, but Few Met Performance-Based Criteria	10
Agencies Are Just Beginning to Address Capital Planning Issues	13
Conclusions	14
Recommendations for Executive Action	16
Agency Comments and Our Evaluation	17

---

## Appendixes

<b>Appendix I: Objectives, Scope, and Methodology</b>	19
<b>Appendix II: Key Multiple-Award Contract Legislation and Administrative Actions</b>	21
<b>Appendix III: GAO, Agency Inspector General, and Other Reviews</b>	22
<b>Appendix IV: Information on Selected Orders</b>	25
<b>Appendix V: Comments from the Department of Veterans Affairs</b>	28
<b>Appendix VI: Comments from the Department of Health and Human Services</b>	30
<b>Appendix VII: Comments from the General Services Administration</b>	33

---

## Figure

Figure 1: Multiple-award Contract Obligations by Civilian Agencies, Fiscal Years 1997 through 2002, (Inflation-adjusted dollars)	6
--	---

---

**Abbreviations**

CIO	chief information officer
DOE	Department of Energy
FAI	Federal Acquisition Institute
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act of 1994
FDA	Food and Drug Administration
FPDS	Federal Procurement Data System
FTS	Federal Technology Service
GSA	General Services Administration
HHS	Health and Human Services
ID/IQ	indefinite delivery/indefinite quantity
IG	inspector general
IT	information technology
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
TVA	Tennessee Valley Authority
VA	Veterans Affairs

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



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

---

August 29, 2003

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

The Honorable Susan M. Collins  
Chairman  
The Honorable Joseph I. Lieberman  
Ranking Minority Member  
Committee on Governmental Affairs  
United States Senate

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

The Honorable Tom Davis  
Chairman  
The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives

The Federal Acquisition Streamlining Act of 1994 (FASA)<sup>1</sup> provided statutory authority for federal agencies to enter into multiple-award, task and delivery order contracts. These are contracts for indefinite quantities of supplies or services that are awarded to multiple firms from a single solicitation. Requests for delivery of specific supplies or services are made through individual task or delivery orders. This type of contract was one of several innovative procurement methods authorized by FASA for streamlining the acquisition of goods and services. Since the enactment of

---

<sup>1</sup> P.L. No. 103-355 (Oct. 13, 1994).

---

FASA, however, we have reported that some federal agencies were not obtaining the level of competition for orders Congress had envisioned.<sup>2</sup>

Congress responded to these and other reports by enacting section 804 of the National Defense Authorization Act for Fiscal Year 2000.<sup>3</sup> Section 804 directed that the Federal Acquisition Regulation (FAR) be revised to provide specific guidance to agencies on the appropriate use of task and delivery order contracts. Regulations implementing the statute were issued in two installments, the first in April 2000, and the second in August 2002. The act required that GAO evaluate (1) conformance of the regulations with existing law and (2) compliance by federal agencies with the regulations. In assessing compliance at selected agencies, we focused on whether these agencies provided the multiple-award contractors a fair opportunity to be considered for orders, clearly described the services or supplies needed, and complied with capital planning requirements.

As agreed with staffs of the committees, we focused our review on five civilian agencies: the Departments of Energy (DOE), Health and Human Services (HHS), and Veterans Affairs (VA); the General Services Administration (GSA); and the National Aeronautics and Space Administration (NASA). These agencies accounted for two-thirds of the total contract dollars obligated in fiscal year 2001 by all civilian agencies.<sup>4</sup> We used a judgmentally selected sample of large orders placed by these five agencies; our findings are not projectable to the universe of all orders they awarded. We selected for review the two largest orders reported as

---

<sup>2</sup> 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) and *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders*, [GAO/NSIAD-00-56](#) (Washington, D.C.: Mar. 20, 2000).

<sup>3</sup> P.L. 106-65 (Oct. 5, 1999).

<sup>4</sup> We limited our review to civilian agencies because Congress subsequently enacted additional legislation applicable only to defense agencies prescribing procedures to be used in placing orders against multiple-award contracts. We have initiated a separate review of the use of such contracts by defense agencies.

---

exceeding \$1 million for each unique organizational entity<sup>5</sup> within each of these five agencies.<sup>6</sup> In total, we reviewed 26 task and delivery orders.<sup>7</sup> The orders covered a range of products and services; nine were for information technology (IT) services. Appendix I contains a detailed description of our scope and methodology.

---

## Results in Brief

The revised regulations on the appropriate use of multiple-award task and delivery order contracts conform to statutory requirements. The revisions provide additional, though generally limited, guidance on how agencies should implement the fair opportunity process, describe the supplies and services needed, and meet capital planning requirements. Agency procurement officials generally did not view the regulatory changes to be significant and made only minimal changes in their internal policies and procedures.

The agencies included in our review provided eligible contractors a fair opportunity to be considered for award for 18 of the 26 selected orders. Of the remaining eight orders that were issued using an exception to the fair opportunity process, four were not supported by adequate justification:

- In two cases, the VA placed orders with pre-selected vendors for medical equipment, but provided no documentation in the file to justify the sole-source orders.
- In another case, the Centers for Disease Control and Prevention did not provide the necessary documentation for an order for vaccine placed with the only vendor licensed to produce the vaccine.

---

<sup>5</sup> The organizational entities included the Federal Technology Service and Public Building Service within GSA; the Centers for Disease Control, National Institutes of Health, and Food and Drug Administration within HHS; Kennedy Space Center, Langley Research Center, and Ames Research Center within NASA; the Central Office, National Acquisition Center, Austin Automation Center, and a medical center within VA; the Procurement Office, an operations office, and a river protection office within DOE.

<sup>6</sup> As reported by the Federal Procurement Data System. Subsequent file reviews showed that some orders included in our review were actually less than \$1 million.

<sup>7</sup> We used the Federal Procurement Data System to identify 30 transactions coded as task or delivery orders. Upon review, four were actually single award indefinite delivery/indefinite quantity (ID/IQ) contracts and were excluded from this survey.

- 
- In the fourth case, the Food and Drug Administration (FDA) justified a sole-source award as a logical follow-on to an original order, but the justification did not meet the criteria for such an award.

In general, the orders we reviewed appeared to clearly describe the supplies and services required. The statements of work for four IT service orders, however, were defined only in broad terms and required subsequent sub-task orders or modifications to completely define the work. Although the revised FAR requires agencies to use performance-based statements of work for task orders to the maximum extent practicable, only 3 of 22 orders for services met the requirements for performance-based contracting, such as providing measurable outcomes for contractor performance.

Regulations concerning capital planning and investment controls for purchases of IT products and services did not go into effect until August 2002, and agencies are still trying to determine how they will comply with them. Agency officials said they have not yet fully identified how their acquisition and IT communities will meet capital planning requirements for IT orders. However, as part of their efforts to meet the new requirements, several agencies plan to require their chief information officer (CIO) to certify that capital planning requirements have been met.

This report contains recommendations to the Secretaries of Veterans Affairs and Health and Human Services to review the guidance and training provided to their acquisition personnel and to the Director of the Office of Management and Budget (OMB) to work with the Federal Acquisition and CIO Councils to promote enhanced compliance with FAR requirements concerning capital planning.

---

## Background

Multiple-award task and delivery contracts are contracts for indefinite quantities of goods and services that have been awarded to a number of firms under one solicitation. The purpose of such contracts is to establish a group of pre-qualified contractors to compete under streamlined administrative procedures for orders to perform work or deliver products during the contract period. Orders may be placed by the agency awarding the contract or, in the case of multi-agency contracts, by other authorized agencies. These interagency orders can be an advantageous and cost-effective way to meet an agency's requirements using another agency's existing contract. Multiple-award task and delivery order contracts do not specify a firm quantity of supplies or services, but



---

instead identify minimum quantities for each contractor and maximum quantities overall. Orders for specific services or goods must be within the general scope of the contract.

In 1994, Congress enacted FASA<sup>8</sup> to establish requirements for the use of multiple-award task and delivery order contracts to promote competition and streamline the acquisition process. To ensure that agencies continued to receive the benefits of competition, FASA required agencies placing orders against a multiple-award contract to ensure that—except under specified circumstances—contract-holders are given a fair opportunity to be considered for the award of task or delivery orders under the contract. In addition, FASA required that orders placed under these contracts have statements of work that clearly specify all tasks to be performed or products to be delivered. To help contacting officers implement FASA, the Office of Federal Procurement Policy (OFPP) provided a guidebook on best practices when using task and delivery order contracts.<sup>9</sup>

The Clinger-Cohen Act of 1996<sup>10</sup> facilitated the use of multiple-award contracts by authorizing multi-agency contracts<sup>11</sup> and governmentwide acquisition contracts<sup>12</sup> to acquire IT products and services. These contract vehicles were intended to reduce the overhead associated with individual acquisitions while helping the government increase its leverage to encourage vendors to offer lower prices. In addition, the Clinger-Cohen Act requires that agencies manage IT multiple-award contracts by establishing a capital planning process to select, control, and evaluate IT products and services and requires that the CIO and procurement officials work together to establish clear lines of accountability to realize the acquisition's benefits.

---

<sup>8</sup> P.L. No. 103-355 (Oct. 13, 1994).

<sup>9</sup> See Office of Federal Procurement Policy, *Best Practices for Multiple Award Task and Delivery Order Contracting*, (Washington, D.C.: July 1997).

<sup>10</sup> The Clinger-Cohen Act was enacted as Divisions D and E of the National Defense Authorization Act for Fiscal Year 1996 (P.L. No. 104-106, Feb. 10, 1996).

<sup>11</sup> Multi-agency contracts are task and delivery order contracts established by one agency for use by government agencies to obtain supplies and services, including information technology.

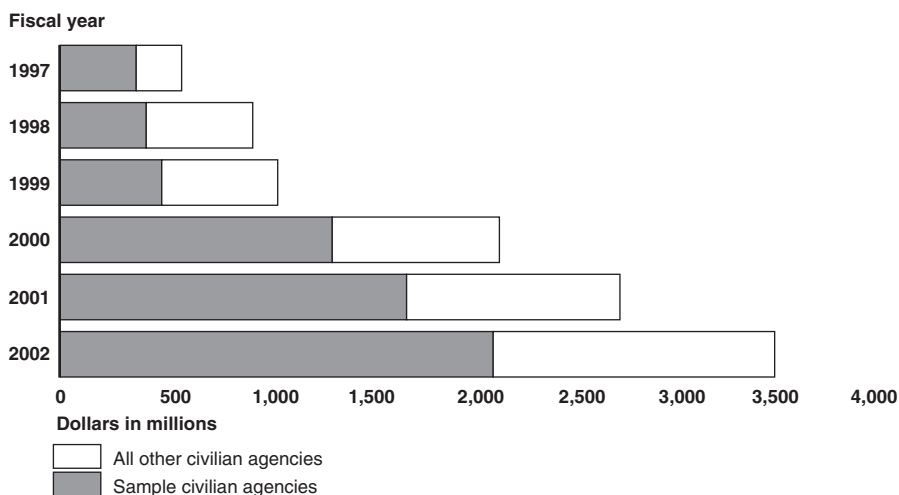
<sup>12</sup> Governmentwide acquisition contracts are task and delivery order contracts for information technology established for use governmentwide by an executive agent designated by OMB.

Appendix II provides information on FASA, Clinger-Cohen, and other key legislation and administrative actions governing the use of multiple-award contracts.

## Use of Multiple-award Contracts Increased but Abuses Identified

Multiple-award contracts can be an expedient way for the government to acquire goods and services. As can be seen in figure 1, agencies are increasingly turning to these contract vehicles. For the five agencies we reviewed, orders placed against multiple-award contracts increased from over \$300 million in 1997 to about \$2.1 billion in 2002. Moreover, task and delivery orders account for an increasing share of procurement dollars, increasing from 4 percent of dollars obligated in 1997 to over 7 percent in 2002 governmentwide.

**Figure 1: Multiple-award Contract Obligations by Civilian Agencies, Fiscal Years 1997 through 2002, (Inflation-adjusted dollars)**



Source: Federal Procurement Data System "Federal Procurement Reports" for fiscal years 1997 through 2002, the latest data available.

Notes: Obligations adjusted to constant fiscal year 2002 dollars. Figures exclude obligations for the Tennessee Valley Authority (TVA) because TVA discontinued reports to the Federal Procurement Data Systems on September 30, 2000. TVA's reported obligations for orders were \$2.3 billion, \$4.1 billion, and \$1.7 billion for fiscal years 1997, 1998, and 2000 respectively. Those figures represented between 40 to 84 percent of the agency's total obligations in the same years. Also, TVA reported a negative \$1.0 billion for its obligations in fiscal year 1999.

---

Although use of multiple-award contracts is increasing, awards have not always been made in a manner consistent with regulations. Our prior work, agencies' inspector general (IG) reports, and other internal agency reviews have shown that agencies are not consistently promoting competition nor justifying exceptions to competition. These reviews have also concluded that agencies define the work for many task orders too broadly. (See app. III for a list of prior GAO and agency IG reports.)

To address these ongoing problems, Congress enacted section 804 of the National Defense Authorization Act for Fiscal Year 2000.<sup>13</sup> The act directed that the FAR be revised to provide guidance to agencies on the appropriate use of task and delivery order contracts. The mandated guidance, at a minimum, was to identify specific steps that agencies should take to ensure that (1) all contractors are afforded a fair opportunity to be considered for the award of task and delivery orders; (2) the statement of work for each order clearly specifies all tasks to be performed or property to be delivered; and (3) Clinger-Cohen Act requirements for capital planning and investment control for IT products and services purchases are met.

The FAR implemented the statutory mandate in two parts. The first, published in April 2000, was intended to provide improved guidance on providing a fair opportunity to compete for orders, and preparing clearer statements of work.<sup>14</sup> The second, published in August 2002, addressed capital planning requirements for IT acquisitions<sup>15</sup> and incorporated certain changes made to address issues raised by a GAO report on the use of multiple-award contracts to procure IT services.<sup>16</sup>

---

<sup>13</sup> P.L. No. 106-65 (Oct. 5, 1999).

<sup>14</sup> FAC 97-17; FAR Case 1999-014; Item I (Apr. 25, 2000).

<sup>15</sup> FAC 2001-09; FAR Case 1999-303, Item I (Aug. 30, 2002).

<sup>16</sup> See U.S. General Accounting Office, *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders*, [GAO/NSIAD-00-56](#) (Washington, D.C.: Mar. 20, 2000). The report raised concerns about (1) large and inadequately defined orders, (2) misuse of logical follow-on awards, and (3) reliance on cost reimbursable rather than fixed-price orders.

---

---

## Revised Regulations Conform to Law

The revisions to the FAR published in response to section 804 of the National Defense Authorization Act for Fiscal Year 2000 conform to statutory requirements. The revisions provide additional, though generally limited, guidance for each of the areas mentioned in the statute. Some procurement officials at the agencies we reviewed advised us that they viewed the revisions to the FAR as minimal, and consequently made few, if any, changes to their guidance or training.

---

## FAR Revisions Provide Additional Guidance

Pursuant to the direction of section 804, the FAR was revised to provide additional guidance concerning the award of task and delivery orders. With respect to fair opportunity, the guidance added provisions making the consideration of price mandatory, and specifying a few additional elements to be considered when developing fair opportunity procedures. Specifically, the contracting officer should consider (1) the potential impact on other orders placed with the contractor and (2) the minimum ordering requirements contained in the contract.<sup>17</sup> In addition, the FAR now requires that contracting officers document in the contract file any trade-offs among cost and non-cost considerations. Further, if the agency is using the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical in terms of scope, period of performance, or value. According to OFPP officials, this additional guidance was inserted to respond to a GAO recommendation that the FAR discourage agencies from awarding follow-on orders whose scope or costs significantly exceed those orders for which contractors were provided an opportunity to be considered.<sup>18</sup>

With respect to describing the services or supplies to be provided under task or delivery orders, the FAR now stresses the importance of clearly describing the requirements so that the full cost or price for the performance of the work can be established when the order is placed.<sup>19</sup> The regulation also provides that agencies should use performance-based statements of work for services to the maximum extent practicable.

---

<sup>17</sup> FAR § 16.505(b)(1)(iii).

<sup>18</sup> See U.S. General Accounting Office, *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders*, [GAO/NSIAD-00-56](#) (Washington, D.C.: Mar. 20, 2000).

<sup>19</sup> FAR § 16.505(a)(2).

---

On capital planning, the Clinger-Cohen Act<sup>20</sup> requires agencies to design a process for maximizing the value of IT purchases and for assessing and managing the risks associated with them. The revised regulations explicitly identify certain steps that must be taken for each order for IT products and services placed against the Federal Supply Schedule, or against either another agency's governmentwide acquisition contract or multi-agency contract. These steps include documenting (1) how the capital planning and investment control requirements of the Clinger-Cohen Act will be met<sup>21</sup> and (2) why placing an order benefits the government.<sup>22</sup> Pre-existing regulations, however, permit agencies to continue using previously developed plans rather than revise those plans to include the new requirements specified by the section 804 revisions.<sup>23</sup>

---

## Agencies Made Limited Changes to Guidance and Training

Representatives from the agencies in our review told us they did not view the regulatory revisions published in response to the authorization act requirement as significantly different from what was previously in the FAR and, therefore, generally made minimal, if any, changes to their guidance and training. DOE and HHS sent to their contracting officials supplemental notices on the use of multiple-award contracts and proper statements of work. GSA sent a supplemental notice on the requirement that contract-holders be given a fair opportunity to be considered for orders. DOE also added a section on fair opportunity in its guidance on the use of multiple-award contracts as a result of section 804.

With respect to training, only DOE acquisition officials saw a need to revise their training materials to provide additional focus on the requirements to provide a fair opportunity to be considered for orders, and to develop clear statements of work. DOE provided specific training on providing a fair opportunity. Other agency officials explained that they saw no need for specific training on those issues because problems that may have been identified earlier had been addressed through memoranda and other means. None of the agencies we spoke with incorporated capital planning

---

<sup>20</sup> The capital planning requirements of the Clinger-Cohen Act are now codified at 40 U.S.C. § 11312.

<sup>21</sup> FAR § 7.105(b)(4)(ii)(A).

<sup>22</sup> FAR § 7.105(b)(4)(ii)(B).

<sup>23</sup> FAR § 7.102(b).

---

and investment control requirements into their training on multiple-award contracts or task and delivery orders. An official for the Federal Acquisition Institute, which, under OFPP's direction, is charged with supporting and developing the civilian acquisition workforce, stated that the Institute also does not currently provide specific training on capital planning and investment requirements.<sup>24</sup> According to a GSA official, the Federal Acquisition Institute is reviewing all of its courses to validate their conformance to current laws and regulations and plans to update its course on acquisition planning to address capital planning and investment requirements.

---

### Most Orders Awarded through Fair Opportunity; Some Exceptions Not Adequately Justified

For 18 of the 26 orders we reviewed, the agencies provided all eligible vendors a fair opportunity to be considered for the award. For the remaining eight orders, the agencies used exceptions to the fair opportunity process. On four of those eight orders, however, the agency did not comply with the requirements for excluding contract-holders from an opportunity to be considered for the order. Appendix IV contains details of all the orders we reviewed.

---

### Most Orders Awarded Through Fair Opportunity Process

Eighteen of 26 orders were awarded through the fair opportunity process. In these 18 cases, the agency notified every eligible vendor of the intent to place an order, provided them a copy of the statement of work, and gave them an opportunity to submit an offer.<sup>25</sup> In some cases, this notice was provided electronically. The notices of upcoming orders we reviewed appeared to allow sufficient time—ranging from 5 to over 30 days—for vendors to prepare their offers. Some notices allowed contractors to express initial interest, and then provided additional time for proposal development. In other cases, contracting officers held question and answer sessions with vendors to help them prepare their proposals. For construction and renovation orders, the agencies usually provided drawings and specifications and conducted tours of the sites.

---

<sup>24</sup> According to a defense official, the Defense Acquisition University, which sometimes provides training to civilian agencies, addresses Clinger-Cohen capital planning requirements in its general training on preparing acquisition plans.

<sup>25</sup> For one VA order, worth \$2.3 million for modular buildings, a contracting officer stated that all vendors were notified, but we were unable to verify the notification from the contract file. Only one bid was received.

---

We noted one case, however, where the contracting officer prematurely awarded an order before the response period identified in the opportunity notice had expired. In that instance, the VA awarded a \$1.2 million order for leased satellite bandwidth 9 days prior to the 18-day response period deadline. Agency officials acknowledged that the action was a breach of their procurement procedures, and said the mistake resulted from a miscommunication between the two contracting officers involved. The VA officials also said that only one offer had been submitted, and no other sources had responded to the solicitation, either before or after the award. VA officials indicated that they would include this case in the agency's annual quality control program to determine if the problem we noted was systemic.

---

### Exceptions to Fair Opportunity Not Always Justified

Our review of selected orders found problems with four of the eight orders awarded using exceptions to the fair opportunity process. There are four authorized exceptions to the requirement that all contract-holders receive a fair opportunity to be considered for an award of a task or delivery order:<sup>26</sup>

- **Urgency:** the need for the supplies or services is so urgent that providing for fair opportunity would result in an unacceptable delay;
- **Unique source:** only one contract-holder is capable of providing the supplies and services at the level of quality required because they are unique or highly specialized;
- **Logical follow-on:** the order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a previous order under the contract, provided that all contract-holders were given a fair opportunity to be considered for the original order; and
- **Minimum guarantee:** the order must be placed with a specific contract-holder in order to satisfy a contractual minimum guarantee.

---

<sup>26</sup> FAR § 16.505(b)(2).

---

Three orders awarded using the unique source exception were not supported by adequate justification in the contract files. Specifically:

- Two cases—worth \$971,029 and \$327,259 respectively—involved the purchase of medical equipment at two VA Medical Centers. The contracting officers asked that the requesting facilities select one of the contract-holders on the multiple-award contract to receive the order. One of the contracting officers explained that having the facility staff pre-select the contract-holders to be awarded the order was equivalent to having conducted a technical evaluation, and therefore saved time. Although contracting officials classified the two orders as exceptions to fair opportunity, they could not provide adequate documentation justifying awarding the orders on a sole-source basis. In discussing these two cases with VA National Acquisition Center officials, the officials said that the improper use of exceptions was an ongoing problem and provided a VA directive issued in January 2003 that addressed use of exceptions to fair opportunity, among other things. Although the directive discussed the fair opportunity process, it did not specifically address the type of issue we found on the orders we reviewed.
- In a third case, involving a Centers for Disease Control and Prevention order worth \$16.8 million, the contracting officer solicited the only vendor on the multiple-award contract that could supply a particular polio vaccine. The contracting officer did not provide necessary justification to support the use of the unique source exception to fair opportunity. In the contracting officer's view, this action did not require a justification because he had notified the only vendor capable of supplying the vaccine. In our view, however, this order should have been supported by a written justification for using the unique source exception.
- The fourth problematic order, for IT services worth \$2.8 million, was issued by the FDA using the logical follow-on exception to fair opportunity. This exception is only available when the original order had been awarded using the fair opportunity process. Although FDA sought to justify its sole-source order in the interest of economy and efficiency, the use of the logical follow-on exception was improper because the original order had not been awarded through the fair opportunity process.

Reviews by GSA, NASA, and the VA IG conducted since the implementation of the new FAR guidelines have also found that contracting officers did not



---

always adequately document their justifications for the use of exceptions to the fair opportunity process. Appendix III provides more information on these reviews.

---

### Most Orders Clearly Described Requirements, but Few Met Performance-Based Criteria

The orders we reviewed generally appeared to comply with the requirement of the revised regulation to clearly describe the supplies or services needed. Four of the 22 orders for services, however, contained broadly defined statements of work that required the issuance of subsequent sub-task orders or modifications to better define the work. Although the revised FAR encourages agencies to use performance-based statements of work to the maximum extent practicable, only 5 of the 22 services task orders reported using performance-based requirements; and only 3 of those met the performance-based contracting criteria, such as providing measurable outcomes for contractor performance.

---

### Some Statements of Work Required Clarifying Sub-Task Orders or Modifications

Four of the 22 task orders for services we reviewed, all involving IT services, contained broadly defined statements of work that needed to be further clarified through the use of sub-task orders or modifications. For example,

- NASA's Langley Research Center, using a GSA contract, awarded a \$5.4 million task order to provide IT services to support basic and applied research in such areas as aeronautics, earth sciences, space technology, structures and materials. The statement of work identified general requirements and indicated that the agency would issue task assignments for specific tasks within the work areas.
- The FDA issued a \$500,000 IT service order to develop a decision support system. The original statement of work was broad, and the agency modified the order 6 months later to better define the existing requirements and to add new requirements. A year later, the agency modified the order further by adding more requirements and increasing the level of effort required. Each of these modifications increased the order by \$1.5 million, bringing the total cost for the order to about \$3.6 million, or a 7-fold increase.

---

---

## Revised FAR Encourages the Use of Performance-Based Statements of Work, but Few Orders Met Criteria

Both OFPP guidance<sup>27</sup> and the revised FAR<sup>28</sup> encourage agencies to use performance-based criteria to develop statements of work for service contracts and task orders to the maximum extent practicable. A performance-based statement of work defines the government's requirements in terms of objectives and measurable outputs. As such, performance-based contracts and orders clearly spell out the desired end result expected of the contractor. The precise manner in which the work is to be performed is left up to the contractor. Contractors are given as much freedom as possible in figuring out how best to meet the government's performance objective.

Of the 22 orders for services in our review, only 5 reported using the performance-based service contracting approach. Of those, we found that three actually met the performance-based criteria. The other two did not meet the criterion requiring measurable outcomes to assess contractor performance. An earlier GAO review of performance-based contracting also found that many contracts agencies characterized as performance-based did not meet all the criteria and that more guidance and study were needed to understand how effectively agencies are applying this technique.<sup>29</sup> In July 2003, after the completion of our review, OFPP adopted recommendations developed by an inter-agency task force to improve agency use of performance-based contracting.<sup>30</sup>

---

## Agencies Are Just Beginning to Address Capital Planning Issues

Revised regulations concerning capital planning requirements for purchases of IT products and services went into effect August 2002, and agencies have only recently begun to determine how they will meet them. Agencies are currently revising their capital planning and investment control processes, but to date are uncertain about who or what entity within each agency will be accountable for enforcing compliance at the IT order level. Three of the agencies require certifications from the

---

<sup>27</sup> See Office of Management and Budget (OMB), *Competition Under Multiple Award Task and Delivery Order Contracts*, Memorandum (Washington, D.C.: May 21, 1999).

<sup>28</sup> FAR § 16.505(a)(3).

<sup>29</sup> U.S. General Accounting Office, *Contract Management: Guidance Needed for Using Performance-Based Service Contracting*, GAO-02-1049 (Washington, D.C.: Sept. 23, 2002).

<sup>30</sup> See Office of Federal Procurement Policy, *Performance-Based Service Contracting*, (Washington, D.C.: July 2003).

---

customer agencies' CIO attesting that capital planning has been done for the order.

The August 2002 FAR revisions clarified that the Clinger-Cohen Act requirements for capital planning and investment control apply to orders, as well as contracts, for IT products and services. The FAR requires agency acquisition personnel to state in acquisition plans<sup>31</sup> how capital planning and investment control requirements will be met for IT orders and how the orders benefit the government.<sup>32</sup> Agencies recently began revising and implementing their capital planning and investment control acquisition processes to address these requirements. For example, the CIOs at VA, DOE, and HHS recently established policies that require CIO certification for IT acquisitions. These certification requirements are limited to certain purchases. For example, DOE requires certifications for all headquarters purchases of IT services in excess of \$200,000; HHS requires approval for IT contracts and orders over \$500,000; and VA's CIO certifies and approves all IT purchases above \$250,000. In addition, VA reviews IT purchases below \$250,000 to ensure compliance with technical and security standards before they are approved by the CIO's office. All three agencies' acquisition offices are revising their acquisition policies to reflect the new requirements. NASA and GSA plan to incorporate capital planning requirements in their program managers' guidance.

OMB's 1997 guidance on the Clinger-Cohen Act requires agency heads to ensure that CIO and senior procurement officials work together to assign responsibilities and establish clear lines of accountability for orders placed against multi-agency contracts.<sup>33</sup> In addition, OMB officials informed us that its Capital Planning and Investment Control policy requires that contracting officers be part of the project team. However, based on our discussions with agency officials about responsibility for task and delivery orders, acquisition and capital planning officials are still not clear about who will be accountable for ensuring compliance with capital planning requirements.

---

<sup>31</sup> An acquisition plan addresses all technical, business, management and other significant considerations that control an acquisition. It also summarizes all acquisition planning deliberations and identifies milestones for decisions in the acquisition process.

<sup>32</sup> FAR § 7.105(b)(4)(ii).

<sup>33</sup> See Office of Management and Budget (OMB), *Multiagency contracts under the Information Technology Management Reform Act of 1996*, M-97-07, (Washington, D.C.: Feb. 26, 1997).

---

---

## Conclusions

The government is increasingly relying on multiple-award task and delivery order contracts to obtain goods and services because, when used appropriately, these contracts can streamline the procurement process while maintaining competition. Some agencies, however, notably VA and HHS, did not always comply with requirements to provide a fair opportunity to be considered for orders or adequately justify an exception. We believe that these problems point to the need for VA and HHS to ensure that their acquisition personnel receive appropriate training in the use of task and delivery order contracts.

Capital planning for IT acquisitions helps to ensure that IT products and services are acquired in an economical and efficient manner consistent with an overall acquisition strategy. However, we found that agency policies and procedures do not yet clearly delineate the roles and responsibilities of IT and acquisition officials to ensure accountability for capital planning and investment control for IT goods and services. Consequently, without clear lines of responsibility, the benefits of capital planning provisions may not be achieved.

---

## Recommendations for Executive Action

Because of the limited nature of our sample, we do not know the extent to which the problems identified are systemic or unique to our review. Nevertheless, these findings are of sufficient concern that both the Secretaries of Veterans Affairs and Health and Human Services should review the guidance and training provided to their contracting officials to ensure that the regulations are properly understood and applied.

Also, to ensure accountability for capital planning and investment control requirements for IT goods and services, we recommend that the Director of the Office of Management and Budget, working with the Federal Acquisition Council and the CIO council, clarify the roles and responsibilities of the acquisition and information technology communities for capital planning for IT products and services.

---

---

## Agency Comments and Our Evaluation

We received written comments on a draft of this report from VA, HHS, and GSA. NASA informed us by e-mail that it concurred with the report. DOE did not provide comments. OMB provided e-mail comments suggesting a number of technical changes, which we incorporated where appropriate.

VA concurred with our recommendation, but took exception to our conclusions on two of the cited cases. Specifically, in the two cases where VA medical centers pre-selected the multiple-award vendor to receive delivery orders, VA did not agree with our conclusion that the orders were issued on a sole-source basis. VA apparently believes that all of the vendors on the contracts had a fair opportunity to be considered for the orders. We do not agree. While we recognize that the FAR provides agencies with flexibility in developing ordering procedures, the FAR expressly provides that agencies may not use any method that involves the designation of preferred awardees.<sup>34</sup> In addition, agency documents and contracting officials at the VA National Acquisition Center characterized the two orders as being awarded through an exception to fair opportunity. Accordingly, there should have been documentation justifying the use of an exception. In neither of the two cases could the contracting officers produce the required documents. We modified the report to make clearer that VA officials at the National Acquisition Center considered these orders to be awarded through the use of an exception. On the matter of capital planning, the VA noted that its CIO not only certifies but also approves IT purchases above \$250,000. We included that information in our report. VA also provided updated status on some of its IG and internal audit reviews, which we also reflected in the report. VA's comments appear in appendix V.

HHS did not concur with our recommendation regarding its training and guidance. The department noted that it had adequate training for its contracting officials. In our view, however, HHS needs to review the adequacy of the training provided its contracting officials, given the problematic orders noted in the report. HHS also took exception to two of our cited examples. Specifically, HHS disagreed with our conclusion that an order it characterized as being awarded through the fair opportunity process should have, more appropriately, been characterized as being awarded as an exception to fair opportunity. Because there was only one supplier of that particular vaccine being bought, we believe that this

---

<sup>34</sup> FAR, section 16.505(b)(ii)(B).

---

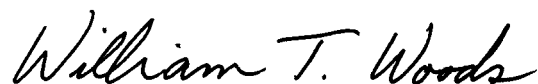
order required the use of the unique source exception along with the documentation justifying this exception. In the other case, where we determined the logical-follow exception was used inappropriately, HHS stated that the order was not awarded using that exception. However, all contract file documentation, including the sole source justification, referred to this order as a logical follow-on to previous work. HHS' comments appear in appendix VI.

GSA agreed in general with our findings, but suggested additional language concerning efforts by the Federal Acquisition Institute (FAI) to update its training offerings. We revised our report to acknowledge FAI's efforts. GSA's comments appear in appendix VII.

---

We are sending copies to interested congressional committees; the secretaries of Energy, Health and Human Services, and Veteran's Affairs; the Administrator of General Services; and the administrators of the National Aeronautics and Space Administration, and the Office of Federal Procurement Policy. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Please contact me at (202) 512-8214, or Hilary Sullivan at (214) 777-5652, if you have any questions regarding this report. Major contributors to this report were Thom Barger, John Clary, Judith Collins, Lester Diamond, Robert Swierczek, and Ralph O. White.



William T. Woods  
Director  
Acquisition and Sourcing Management

---

# Objectives, Scope, and Methodology

---

The National Defense Authorization Act for Fiscal Year 2000 required that the Federal Acquisition Regulation be revised to provide agencies guidance on the use of task and delivery order contracts and that GAO evaluate whether (1) the revised regulations conform to the law, and (2) federal agencies are complying with the regulations.<sup>1</sup> To evaluate whether the regulations conform to the law, we analyzed the regulations written to implement section 804 to determine if all of the statutory obligations were addressed in the regulations. In addition, we compared the regulations as they existed prior to and after the revisions to determine the extent to which the revised regulations provided specific additional guidance on the steps agency should follow in awarding and using multiple-award task and delivery order contracts.

As agreed with staff from the congressional committees to which this report is addressed, in order to assess agency compliance with the regulations we focused our review on the five largest agencies, excluding the Department of Defense, in terms of total annual procurement expenditures: DOE, HHS, VA, GSA, and NASA. Together, these agencies account for two-thirds of procurement spending by all civilian agencies. In addition, these agencies are among the largest in terms of the number of orders placed against multiple-award contracts. In fiscal year 2001, these agencies obligated nearly \$1 billion through these vehicles.<sup>2</sup> Based on a judgmental sample, we determined whether these selected agencies (1) provided eligible multiple-award contractors a fair opportunity to be considered for orders and adequately justified the use of exceptions for sole source orders, (2) provided clear and specific statements of work, and (3) complied with capital planning requirements for contracts and orders for IT products and services. We reviewed policies and procedures and interviewed acquisition, procurement, and Chief Information Office officials at DOE, VA, HHS, GSA, and NASA.

In selecting a judgmental sample, we first identified 142 Federal Procurement Data System (FPDS)<sup>3</sup> records representing task and delivery orders for \$1 million or more awarded by the five agencies in fiscal

---

<sup>1</sup> Section 804, P.L. No. 106-65 (Oct. 5, 1999).

<sup>2</sup> As reported by FPDS.

<sup>3</sup> The FPDS is the government's central repository of statistical information on federal contracting. The system contains detailed information on contract actions over \$25,000 and summary data on procurements of less than \$25,000.

year 2001, the latest data available. We next selected the two (one if only one was awarded) largest orders awarded by each unique organizational entity within the five agencies—resulting in the selection of 25 cases. In addition, we included the five orders over \$1 million that were used to prepare and verify our methodology for reviewing contract files and preparing our case studies. As a result, we initially selected 30 orders for review. In reviewing the contract files, however, we determined that four orders were actually placed against single award indefinite delivery/indefinite quantity contracts. We excluded those four orders, leaving us with 26 case studies. We provided each location with summaries of the orders we had reviewed and obtained their concurrence on our findings. Appendix IV contains information on the 26 orders selected for our review.

In addition to the errors noted above, we identified numerous other FPDS data errors during the course of our review. We, therefore, limited our use of FPDS data to identifying general multiple-award contract trends, as shown in figure 1, and to selecting our sample. We will be providing additional information on FPDS errors in a separate letter.

We conducted our review between October 2002 and August 2003 in accordance with generally accepted government auditing standards.



# Key Multiple-Award Contract Legislation and Administrative Actions

Legislation or administrative action	Description and impact
The Federal Acquisition Streamlining Act of 1994 (FASA), P.L. No. 103-355.	Established a general preference for use of multiple-award contracts and required that contractors on multiple-award contracts have a fair opportunity to be considered for orders in excess of \$2,500. Made multiple-award contracts mandatory for advisory and assistance services contracts exceeding \$10 million and 3 years duration.
The Economy Act of 1932, relevant provision at 31 U.S.C. 1535.	Authorized agencies to enter into mutual agreements to obtain supplies or services by inter- and intra-agency acquisition. Stipulated the requirements and limitations for multi-agency task and delivery orders for purchases of goods and services.
Federal Property and Administrative Service Act of 1949, relevant provision at 41 U.S.C. 253j(c)	Required a statement of work in each task or delivery order issued that clearly specifies all tasks to be performed or property to be delivered under the order.
Clinger-Cohen Act of 1996, P.L. No. 104-106, section 5122, relevant provision at 40 U.S.C. 11312.	Established capital planning requirements for purchasing IT products and services. Required agency heads to establish a process, integrated with agency budget and financial processes, to maximize the value and manage the risks related to purchases of IT services and products.
Clinger-Cohen Act of 1996, P.L. No. 104-106, section 5124(a)(2) relevant provision at 40 U.S.C. 11314(a)(2).	Formerly known as the Information Technology Management Reform Act of 1996, this act authorized agencies to use multi-agency contracts to purchase IT services and products, and also authorized OMB to designate executive agents for governmentwide contracts for IT.
Office of Management and Budget (OMB) Policy Letter M-97-07.	Required agency heads to ensure that their CIOs and senior procurement executives work together to assign responsibilities and establish clear lines of accountability for multiple agency contracts.
National Defense Authorization Act for Fiscal Year 2000, P.L. No. 106-65, section 804.	Required at a minimum, the content of the FAR guidance on use of task and delivery order contracts provide specific guidance on the appropriate use of multiple-award contracts and steps agencies should take to ensure compliance with Clinger-Cohen Act, fair opportunity, and statement of work requirements.

Source: GAO analysis.

# GAO, Agency Inspector General, and Other Reviews

Agency	Report title	Reported findings
DOD	Department of Defense, <i>DOD Use of Multiple Award Task Order Contracts</i> , DOD IG 99-116, (Arlington, VA: Apr. 2, 1999)	<p><b>Unjustified exceptions to fair opportunity:</b> The DOD IG found 58 of 66 orders were awarded using unjustified exceptions to the fair opportunity process.</p> <p><b>Recommendation:</b> DOD should establish a goal that 90 percent of the orders for multiple-award contracts have multiple bidders and identify strategies to monitor and reduce the number of sole source awards over a 3-year period.</p>
	U.S. General Accounting Office, <i>Contract Management: Few Competing Proposals for Large DOD Information Technology Orders</i> , <a href="#">GAO/NSIAD-00-56</a> ; (Washington, D.C.: Mar. 20, 2000)	<p><b>Unclear statements of work and unjustified exceptions to fair opportunity:</b> GAO found that DOD made use of the statutory exceptions to the fair opportunity requirement in 10 of 22 orders reviewed and statements of work were generally defined too broadly.</p> <p><b>Recommendation:</b> Agencies should not award follow-on orders whose scope or costs significantly exceed former related orders and should not award large undefined orders and subsequently issue sole-source work orders for specific task orders.</p>
	Department of Defense, <i>Contracts for Professional, Administrative, and Management Support Services</i> , DOD IG D-2000-100, (Arlington, VA: Mar. 10, 2000)	<p><b>Unclear statement of work, award without fair opportunity and unjustified exceptions to fair opportunity:</b> The DOD IG found that it was impossible to determine how the scope of work on one task differed from that of other tasks. In addition, contracting officers did not provide contractors a fair consideration in 58 of 105 orders reviewed and used faulty justifications for sole-source exceptions another five orders.</p> <p><b>Recommendation:</b> DOD should develop a training course to define requirements and a time-phased plan with goals and performance measures to determine improvements in the acquisition of professional, administrative, and management support services.</p>
	Department of Defense, <i>Multiple Award Contracts for Services</i> , DOD IG D-2001-189, (Arlington, VA: Sept. 30, 2001)	<p><b>Unjustified exception to fair opportunity:</b> This was a review of 423 orders awarded in fiscal years 2000 and 2001. The DOD IG found that 264 of 304 orders awarded on a sole-source basis were improperly supported. The report also noted that 82 of 119 orders that were competed received multiple bids.</p> <p><b>Recommendation:</b> DOD should establish at least a 75 percent goal to compete orders and track progress of the use of competition in awarding orders.</p>
GSA	General Services Administration, <i>Audit of Federal Technology Service Use of Multiple Award Indefinite Delivery Indefinite Quantity Contracts</i> , A995288/T/H/Z00008, (Fairfax, VA: Sept. 19, 2000)	<p><b>Unclear statements of work:</b> A sample of 48 orders from Federal Technology Service (FTS) found that less than 15 percent contained performance-based statements of work.</p> <p><b>Recommendations:</b> GSA should advance fair opportunity and best value at FTS by using performance-based orders. Change several operational processes that inhibit fair opportunity.<sup>a</sup></p>

**Appendix III**  
**GAO, Agency Inspector General, and Other**  
**Reviews**

(Continued From Previous Page)

Agency	Report title	Reported findings
	U.S. General Accounting Office, <i>Telecommunications: GSA Needs to Improve Process for Awarding Task Orders for Local Service</i> , GAO-03-369, (Washington, D.C.: Apr. 4, 2003)	<b>Award without fair opportunity:</b> This report noted that GSA did not establish and follow a consistent process to ensure that each vendor was accorded a fair opportunity to be considered for each order. <b>Recommendations:</b> Establish a common process for GSA to consistently follow when considering fair opportunity for vendors. <sup>b</sup>
NASA	National Aeronautics and Space Administration, <i>Multiple Award Contracts</i> , IG-01-040, (Washington, D.C.: Sept. 28, 2001)	<b>Award without fair opportunity:</b> The NASA IG found that two NASA Centers, Langley and Johnson, awarded 51 sole source orders without fair competition. As a result, NASA had not received the benefits of competitive bids and may have paid more for goods and services than necessary. <b>Recommendations:</b> Center Directors should direct contracting officers to fairly consider all contractors who submit bids for orders under multiple-award contracts. <sup>c</sup>
VA	Department of Veterans Affairs, <i>Review of Management Consultant Contract</i> , VA IG 7R5-E03-014, (Washington, D.C.: Dec. 13, 1996)	<b>Unclear statements of work:</b> The VA IG found that the management consultant contract for IT services failed to yield requested deliverables due to, among other things, a nonspecific statement of work. <b>Recommendation:</b> The CIO and the contracting officer should review statements of work to ensure their specificity. <sup>d</sup>
	Department of Veterans Affairs, <i>Business Review, VAMC Cleveland, OH</i> , (Washington, D.C.: Nov. 9, 2001)	<b>Award without fair opportunity and full and open competition:</b> This business review of the VA Cleveland Medical Center found that 54 out of 63 (85 percent) orders and contracts were awarded without competition. <b>Recommendations:</b> Contracting officers must justify all sole-source procurements. <sup>e</sup>
	Department of Veterans Affairs, <i>Business Review, VAMC Cleveland, OH</i> , (Washington, D.C.: June 13, 2002)	<b>Award without fair opportunity and full and open competition:</b> This business review noted that 59 of 76 sole-source contracts and orders reviewed (78 percent) were inadequately documented to support the award decision. <b>Recommendations:</b> Contracting officers ensure that files contain adequate documentation supporting award decisions. <sup>e</sup>

**Appendix III**  
**GAO, Agency Inspector General, and Other**  
**Reviews**

(Continued From Previous Page)

Agency	Report title	Reported findings
DOD, HHS and others	U.S. General Accounting Office, <i>Acquisition Reform: Multiple-award Contracting at Six Federal Organizations</i> , GAO/NSIAD 98-215, (Washington, D.C.: Sept. 30, 1998)	<p><b>Award without fair opportunity:</b> GAO found that NIH had placed orders with preferred contractors rather than providing all contractors a fair opportunity. It also noted that DOD received only one proposal for about 44 percent of the orders placed on its multiple-award contracts for information technology services.</p> <p><b>No recommendation</b> but OFPP in its response to the report noted a need for regulations to prohibit the practice of designating preferred contractors when announcing orders for competition.<sup>1</sup></p>

Source: GAO analysis.

<sup>a</sup>According to GSA, corrective actions were completed and the audit was closed on April 9, 2002.

<sup>b</sup>In a March 31, 2003, letter GSA agreed with the reports' recommendations and stated that it had implemented new guidance to ensure that each vendor is accorded a fair opportunity to be considered for each order.

<sup>c</sup>According to NASA, management concurred with the recommendations and implemented them at the time the report was issued.

<sup>d</sup>According to VA, the OIG closed this report on January 20, 1998, with the recommendations implemented.

<sup>e</sup>According to VA, an audit conducted after initiating a corrective action plan found that less than 1 percent of the procurements were sole source.

<sup>f</sup>According to the Director of Acquisition Policy and Evaluation, NIH subsequently discontinued this practice.

# Information on Selected Orders

Dollars in millions

Agency service—location	Order price <sup>a</sup>	Cost or fixed price	Fair opportunity (yes or no)	Number of vendors	Number of bids	Incumbent (yes or no)
Department of Energy						
Procurement Office Washington, DC	\$1.7	Cost	Yes	6	1	No
This order provided for IT services to provide operations support for six existing petroleum marketing survey systems and three new bi-weekly surveys. This order was reported on FPDS as a performance-based service contract.						
Operations Office Albuquerque, NM	\$0.2	Cost	Yes	3	3	No
This order provided for services to assist in the preparation of an Environmental Impact Statement.						
River Protection Office Richland, WA	\$1.5	Fixed	No	N/A	N/A	N/A
This order provided for services to assist in the preparation of an Environmental Impact Statement.						
General Services Administration						
Federal Technology Service New York, NY	\$15.3	Fixed	Yes	11	2	No
This order provided for IT services to develop a secure wireless local area network.						
Federal Technology Service Denver, CO	\$17.6	Cost	Yes	11	1	No
This order provided for IT services for the replacement of unsupportable legacy equipment and provision of interim support for new equipment.						
Federal Technology Service Fort Worth, TX	\$0.3	Fixed	No	N/A	N/A	N/A
This order provided for IT services for Bureau of Indian Affairs to administer logistics servers, integrated systems, maintain databases, operate a help desk, perform system analysis, and develop and enhance system interfaces.						
Public Building Service Washington, DC	\$1.8	Fixed	Yes	4	3	No
This order provided for services to replace perimeter chilled water piping at the J. W. Powell Building.						
Public Building Service Atlanta, GA	\$1.6	Fixed	Yes	5	5	No
This order provided for services to renovate floors 20 through 22 of the IRS Wage and Investment Headquarters in the Peachtree Summit Federal Building.						
Public Building Service Atlanta, GA	\$1.5	Fixed	Yes	5	5	No
This order provided for services to renovate floors 9, 12, and 15 of the IRS Wage and Investment Headquarters in the Peachtree Summit Federal Building.						
Public Building Service Fort Worth, TX	\$1.4	Fixed	Yes	6	3	No
This order provided for services to renovate the U.S. District Courthouse in Oklahoma City, OK.						

**Appendix IV  
Information on Selected Orders**

(Continued From Previous Page)

Dollars in millions

<b>Agency service–location</b>	<b>Order price<sup>a</sup></b>	<b>Cost or fixed price</b>	<b>Fair opportunity (yes or no)</b>	<b>Number of vendors</b>	<b>Number of bids</b>	<b>Incumbent (yes or no)</b>
Department of Health and Human Services						
Centers for Disease Control Atlanta, GA	\$16.8	Fixed	No	N/A	N/A	N/A
This order provided for 2.2 million doses of E-IPV Vaccine for the National Vaccine Stockpile.						
Centers for Disease Control Atlanta, GA	\$6.2	Fixed		Yes	5	4
This order provided for architectural and engineering services to design building 21 on the Roybal Campus.						
National Institutes of Health Bethesda, MD	\$4.8	Cost	Yes	3	3	No
This order provided for services to safety test seven HIV-1 DNA vaccine preparations as required for Investigational New Drug submission prior to initial clinical evaluation. This order was reported on FPDS as a performance-based service contract.						
National Institutes of Health Bethesda, MD	\$7.1	Cost	No	N/A	N/A	N/A
This order provided for IT services to maintain the Molecular Biology database.						
Food and Drug Administration Rockville, MD	\$2.8	Cost	No	N/A	N/A	N/A
This order provided for IT services to develop the requirements for a web-based portal infrastructure including the provision of strategic planning, system architecture, system and functional requirements, risk analysis and workforce process for the Operational and Administrative System for Import Support on one other unspecified application.						
Food and Drug Administration Rockville, MD	\$3.6	Cost	No	N/A	N/A	N/A
This order provided for IT services to develop the Office of Regulatory Affairs Decision Support System.						
National Aeronautics and Space Administration						
Kennedy Space Center Cape Canaveral, FL	\$3.0	Fixed	Yes	5	3	
This order provided for services to replace electrical equipment at power sub-stations and a utility annex.						
Kennedy Space Center Cape Canaveral, FL	\$2.4	Fixed	Yes	4	3	No
This order provided for services to construct replacement housing.						
Langley Research Center Hampton, VA	\$6.0	Cost	Yes	11	4	Yes
This order provided for IT services to operate the Computational Analysis and Programming Services. This order was reported on FPDS as a performance-based service contract.						
Langley Research Center Hampton, VA	\$1.3	Cost	Yes	3	1	No
This order provided for services to design the X-43C Research Vehicle. This order was reported on FPDS as a performance-based service contract.						

**Appendix IV  
Information on Selected Orders**

*(Continued From Previous Page)*

Dollars in millions

<b>Agency service–location</b>	<b>Order price<sup>a</sup></b>	<b>Cost or fixed price</b>	<b>Fair opportunity (yes or no)</b>	<b>Number of vendors</b>	<b>Number of bids</b>	<b>Incumbent (yes or no)</b>
Ames Research Center Moffett Field, CA	\$15.7	Fixed	Yes	7	4	No
This order provided for IT services to outsource the acquisition and maintenance of desktop computers. This order was reported on FPDS as a performance-based service contract.						
Department of Veterans Affairs						
National Acquisition Center Hines, IL	\$1.0	Fixed	No	N/A	N/A	N/A
This order provided for the purchase of a Computed Tomography Scanner.						
National Acquisition Center Hines, IL	\$0.3	Fixed	No	N/A	N/A	N/A
This order provided for the purchase of a diagnostic X-ray system and related equipment.						
Central Office Washington, DC		\$4.8	Fixed	Yes	2	1
This order provided for the purchase of IT equipment–Internet servers and related equipment.						
Austin Automation Center Austin, TX	\$1.2	Fixed	Yes	3	1	Yes
This order provided for the provision of satellite bandwidth for nationwide transmittal of educational courses.						
Medical Center–Denver Denver, CO	\$2.3	Fixed	Yes	4	1	No
This order provided for the construction of modular buildings for medical center complex.						

Source: GAO.

<sup>a</sup>Order prices are rounded and represent obligations as of the date of our review.

# Comments from the Department of Veterans Affairs



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

August 19, 2003

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

Dear Mr. Woods:

The Department of Veterans Affairs (VA) has reviewed your draft report, **CONTRACT MANAGEMENT: Civilian Agency Compliance with Revised Task and Delivery Order Regulations** (GAO-03-983). VA concurs with the General Accounting Office's (GAO) recommendation to provide guidance and training to contracting officials to ensure that the regulations governing task and delivery orders are properly applied. Indeed, VA's Office of Acquisition and Materiel Management is already providing such training on a regular basis.

VA believes that the examples presented in the draft report largely focus on conditions that VA officials had already recognized as needing correction. In fact, prior to GAO's review, VA had already resolved the problems. The following bullets address instances where VA either disagrees with GAO's conclusion or where VA has already taken corrective action.

- On page 12, the draft report refers to two cases at two VA medical centers. The contracting officers asked that the requesting facilities select one of the contract-holders on the multiple-award contract to receive the order. One of the contracting officers explained that having the facility staff pre-select the contract-holders to be awarded the order was equivalent to having held a technical evaluation panel, and, therefore, saved time. GAO asserts that there was no documentation in the file to support awarding the order on a sole-source basis. The Department takes exception to this conclusion. VA's Acquisition Policy Division has issued numerous training messages to VA's acquisition offices across the country clarifying that the Federal Acquisition Regulation 16.505 actually requires establishment of procedure to ensure fair opportunity to "be considered" not to "compete." VA believes there is an important distinction between the two terms. While these procedures have been commonly referred to as "the fair opportunity to compete rule," it should be recognized that fair opportunity procedures do not expressly require that each task order be competed, only that contractors have an opportunity to be considered. How contracting officers accomplish this is largely dependent upon the type of requirements under the contract and pool of awarded contractors available.



---

**Appendix V**  
**Comments from the Department of**  
**Veterans Affairs**

---

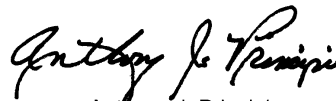
Page 2

Mr. William T. Woods

- On page 16 the draft report implies that VA's Chief Information Officer (CIO) certifies only those Information Technology (IT) acquisitions over \$250,000. In fact, VA's CIO certifies and approves all IT acquisitions over \$250,000. Moreover, IT acquisitions under \$250,000 are placed in an on-line IT tracking system where they are reviewed for technical compliance with the enterprise architecture as well as telecommunications and cyber security requirements and then approved by the CIO's office.
- On page 23, the draft report refers to a VA Office Inspector General (OIG) December 13, 1996, recommendation. You should be aware that VA's OIG closed that report on January 20, 1998, with the recommendations implemented. VA's CIO has been and will continue to partner with the contracting officers in the Office of Management/Office of Acquisition and Materiel Management to ensure statements of work regarding IT initiatives address specific tasks and include the appropriate justifications.
- Also on page 23, there is a reference to two FY 2002 business review audits. VA's Office of Acquisition and Materiel Management in VA Central Office conducts semiannual acquisition audits on the Cleveland Business Center, which supports the Veterans Health Administration's Office of Information acquisition program. Internal audits conducted in FY 2002 noted that sole source acquisitions were high, 85 percent and 78 percent respectively. Immediately after the first audit, the Center's Head of Contracting Activity (HCA) implemented corrective action. Noting the modest decrease, the HCA launched a more aggressive corrective action plan and communicated directly to Office of Information's senior management team. Subsequently, in April 2003, the Office of Acquisition and Materiel Management's next audit indicated that sole source was less than 1 percent (only one sole source acquisition was noted over a period of 9 months). The next audit of the Cleveland Business Center is anticipated in the fall of 2003.

The Department of Veterans Affairs appreciates the opportunity to comment you GAO's draft report.

Sincerely yours,



Anthony J. Principi

# Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG 20 2003

Mr. William T. Woods  
Director, Acquisition and Sourcing Management  
United States General  
Accounting Office  
Washington, D.C. 20548

Dear Mr. Woods:

Enclosed are the Department's comments on your draft report entitled, "Contract Management: Civilian Agency Compliance with Revised Task and Delivery Order Regulations." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dara Corrigan".

Dara Corrigan  
Acting Principal Deputy Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for General Accounting Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

**Appendix VI  
Comments from the Department of Health  
and Human Services**

**Comments of the Department of Health and Human Services on the General Accounting Office's Draft Report, "Contract Management: Civilian Agency Compliance with Revised Task and Delivery Order Regulations" (GAO-03-983)**

The Department of Health and Human Services (Department) appreciates the opportunity to review and offer comments on the General Accounting Office's (GAO) draft report. The report provides a thorough evaluation of the Department's compliance with the revised task and delivery order regulations.

Recommendation for Executive Action

"Because of the limited nature of our sample, we do not know the extent to which the problems identified are systemic, or are unique to our review. Nevertheless, these findings are of sufficient concern that both the Secretaries of Veterans Affairs and Health and Human Services should provide appropriate guidance and training to their contracting officials to ensure that the regulations are properly applied."

Department Response

In reviewing the report we were disappointed to note that you recommended that the Department should offer guidance and training to acquisition personnel on using the exceptions to the fair opportunity process. It is our opinion that we provide adequate training in that the Department considers the training of our contracting officials paramount in promoting the adherence to statutory requirements. In that regard, the agency has developed an extensive training program for acquisition professionals and project managers. Shown below are courses that include training on using the exceptions to the fair opportunity process:

<b>Course</b>	<b>Instruction</b>
Introduction to Contracting	Chapter 6
Acquisition Planning I	Chapter 10
Acquisition Planning II	Lesson G
Project Officer's Handbook	Chapter 3

The Department has the following response regarding two task and delivery order contracts cited by GAO in this draft report.

The GAO draft reports states on pages 12 through 13 that, "In a third case, involving a Centers for Disease Control and Prevention (CDC) order worth \$16.5 million." The Department takes exception to your statement that "a contracting officer did not provide necessary justification to support the use of the unique source exception to fair opportunity, because he apparently failed to recognize that his actions required the use of a justification." In fact, this award does not meet the definition of a unique source exception to fair opportunity. The solicitation used by CDC to acquire vaccines was competitive. Any manufacturer could propose to supply any of the 13 vaccines being acquired, or any combination of vaccines, over the 12-month performance period of the contract as long as the company had a Food and Drug Administration (FDA) license to

---

**Appendix VI**  
**Comments from the Department of Health**  
**and Human Services**

---

produce the product, GlaxoSmithKline, Wyeth, Merck, and Aventis-Pasteur (Aventis) each submitted proposals. Aventis was the only company to propose on E-IPV. Competition was never restricted. CDC accepted the Aventis proposal because none of the other competitors submitted a proposal for E-IPV. For the 12-month contract performance period starting in April 2002 and ending March 2003, per terms of the contract, Aventis was the only contractor supplying E-IPV. The E-IPV was not acquired under the "unique source" exception to fair opportunity; therefore, no justification was required. No one was precluded from competition, and the order was properly placed.

Regarding FDA's task and delivery order mentioned on page 13 of the draft report, it was the decision of the Contracting Officer (CO) to award the task orders based on the approved sole source justification. Since the circumstances surrounding the issuance of the original sole-source orders had not changed, this subsequently led to the CO's decision to award additional sole-source orders to these firms, even though the CO did not officially classify such orders as "logical follow-on" orders. The FDA's Office of Acquisitions and Grants Services will comply with the procedures required in the Federal Acquisition Regulations to ensure that the agency receives the best value through task and delivery orders.

The Department is pleased to be recognized as one of the agencies currently revising our capital planning and investment control processes.

The Department provided several technical comments directly to GAO, on this topic, at the June 24, 2003 exit conference.

# Comments from the General Services Administration



GSA Office of Governmentwide Policy

AUG 19 2003

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

Dear Mr. Woods:

We have reviewed the General Accounting Office's (GAO) draft report "Civilian Agency Compliance with Revised Task and Delivery Order Regulations" and we agree in general with the findings presented by the GAO Report except for the following:

Under the subheading "Revised Regulation provides Little Additional guidance, and agencies Made Limited Changes to Guidance and Training" paragraph 2, please add the following after the 4<sup>th</sup> sentence.

However, GSA is currently undertaking changing its acquisition planning order to highlight capital planning and investment control to agency program offices. An official for the Federal Acquisition Institute (FAI), which, under OFPP's direction, is charged with supporting and developing the civilian acquisition workforce, stated that the Institute does not presently provide specific training on capital planning and investment requirements. FAI is in the process of validating and updating on-line course content to conform to current law and regulations. Among the courses being validated is a course in acquisition planning which will address the capital planning and investment requirement.

As a member of the Federal Acquisition Council, we look forward to working with the Director of the Office of Management and Budget to clarify the roles and responsibilities as it pertain to capital planning and investment control in purchases of information technology products and services.

U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405-0002  
www.gsa.gov

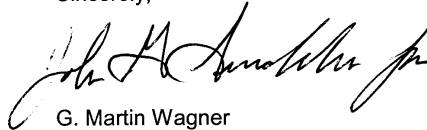
---

**Appendix VII  
Comments from the General Services  
Administration**

- 2 -

If there are any questions, your staff may contact Ms. Laura Auletta, Director,  
Acquisition Policy Division at (202) 501-1224 or [laura.auletta@gsa.gov](mailto:laura.auletta@gsa.gov).

Sincerely,



G. Martin Wagner  
Associate Administrator

---

## GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site ([www.gao.gov](http://www.gao.gov)) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to [www.gao.gov](http://www.gao.gov) and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

---

## Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office  
441 G Street NW, Room LM  
Washington, D.C. 20548

To order by Phone:   Voice: (202) 512-6000  
                              TDD: (202) 512-2537  
                              Fax: (202) 512-6061

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Public Affairs

Jeff Nelligan, Managing Director, [NelliganJ@gao.gov](mailto:NelliganJ@gao.gov) (202) 512-4800  
U.S. General Accounting Office, 441 G Street NW, Room 7149  
Washington, D.C. 20548

---

**United States  
General Accounting Office  
Washington, D.C. 20548-0001**

**Official Business  
Penalty for Private Use \$300**

**Address Service Requested**

---

**Presorted Standard  
Postage & Fees Paid  
GAO  
Permit No. GI00**

