



UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM — MINORITY STAFF
SPECIAL INVESTIGATIONS DIVISION
MAY 2004

**NONCOMPETITIVE FEDERAL CONTRACTS
INCREASE UNDER THE BUSH ADMINISTRATION**

PREPARED FOR REP. HENRY A. WAXMAN

TABLE OF CONTENTS

Executive Summary i

Background 1

Methodology 2

Findings..... 3

 A. Federal Contracts Not Subject to Full and Open Competition 3

 B. Trends in Noncompetitive Contracting 3

 C. Noncompetitive Contracts by Federal Agency 4

 D. Monopoly Contracts..... 5

Conclusion 6

EXECUTIVE SUMMARY

At the request of Rep. Henry A. Waxman, this report examines trends in the award of noncompetitive contracts under the Bush Administration. It finds that the Administration entered into over 43,000 contracts worth \$107 billion without full and open competition in fiscal year 2003. The amount of taxpayer dollars spent on these noncompetitive contracts increased by \$40 billion — a 60% increase — compared to the final year of the Clinton Administration.

In fiscal year 2003, the federal government paid private contractors almost \$300 billion for a wide range of goods and services, over \$86 billion more than the federal government spent in the final year of the Clinton Administration. To protect the interests of the taxpayer, these federal contracts are supposed to be awarded with full and open competition. The federal government is required to provide public notice of contract opportunities, invite bids from all qualified bidders, and evaluate the bids using objective criteria to determine which will provide the best value to the government.

Federal law recognizes a limited number of exceptions to the requirement for full and open competition. For example, contracts can be awarded without competition when there is a unique source for a product or service or when the contract serves vital national security interests that would be compromised by a full and open bidding process.

Under the Bush Administration, the use of these exceptions to full and open competition has grown significantly. This report finds:

- In FY 2003, the Bush Administration issued 43,131 contracts without full and open competition. These contracts were worth \$107 billion, representing 37% of all federal procurement spending.
- In many cases, the noncompetitive contracts were awarded on a sole-source basis. Of the \$107 billion in noncompetitive contracts, \$88 billion was awarded under a contracting process that involved just one bidder. The purported rationale for the majority of these contracts (\$60 billion) was that there was only one supplier for the good or service.
- Federal spending on noncompetitive contracts has risen dramatically under the Bush Administration. In FY 2000, the last full year of the Clinton Administration, the federal government spent \$67 billion on noncompetitive contracts. Over each of the first three years of the Bush Administration, the value of noncompetitive federal contracts increased steadily. By FY 2003, federal spending on noncompetitive contracts (\$107 billion) was 60% greater than in FY 2000.

NONCOMPETITIVE FEDERAL CONTRACTS INCREASE UNDER THE BUSH ADMINISTRATION

- The three military service branches spent the most on noncompetitive contracts in FY 2003, accounting for over 72% of all federal government spending on noncompetitive contracts. The Air Force awarded \$28 billion in noncompetitive contracts, representing 53% of its procurement spending. The Navy awarded \$26 billion in noncompetitive contracts, representing 50% of its procurement spending. And the Army awarded \$24 billion in noncompetitive contracts, representing 53% of its procurement spending.

In addition to the increase in contracts awarded without full and open competition, the Bush Administration has also increased its use of a form of anticompetitive contract known as the “single-award indefinite-delivery/indefinite-quantity” contract. Under these contracts, the government commits to purchase an undefined range of goods or services from a single contractor, precluding competition and effectively making the contractor a monopoly provider. In FY 2003, the Bush Administration issued 15,800 of these monopoly contracts worth \$5.9 billion, an increase of \$1.7 billion (40%) compared to the final year of the Clinton Administration.

BACKGROUND

In recent years, the federal government has relied increasingly on private contractors. In FY 2003, the federal government paid private contractors a total of \$291 billion for goods and services. Overall, federal procurement spending increased by \$86 billion between 2000 and 2003.

Under federal procurement laws, competition is supposed to determine who receives these federal contracts. Competition allows the federal government to use the marketplace to help ensure that it gets the best price and value for the goods and services it buys. It also provides a level playing field for contractors, and it helps prevent fraud, favoritism, and abuse.

“Full and open competition” has been the standard in federal contracting since the passage of the Competition in Contracting Act in 1984.¹ Under full and open competition, all responsible contractors are permitted to compete for a contract, either through the use of sealed bids or, more often, the submission of competitive proposals. Under this process, the government must publish a notice that it intends to award a contract and then give contractors a reasonable amount of time to submit bids. Once bids are received, they are evaluated using a set of established criteria, including price, technical expertise, and past performance. The government then makes a selection based on a determination of which bid will provide the government with the best value.

As a general matter, federal procurement law requires full and open competition for all contracts. Under the Competition in Contracting Act, however, there are a limited number of exceptions to these rules.² These include cases where:

- Only one source is available for the necessary goods or services;
- There is an unusual and compelling urgency to the federal government’s need for a good or service;
- The government needs to ensure that suppliers are maintained in the case of national emergency or to achieve industrial mobilization; establish or maintain an engineering, research, or development capacity, or obtain expert services;
- Competition is precluded by international agreement;

¹ Deficit Reduction Act of 1984, Division B, Title VII (P.L. 98-369).

² See Congressional Research Services, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes* (June 23, 2003); 10 U.S.C. § 2304(c); 40 U.S.C. § 253(c); 48 C.F.R. § 6.302.

- A statute authorizes or requires that the acquisition be made through an agency or from a specified source;
- Disclosure of the agency's needs would compromise national security
- The public interest is better served by other than full and open competition.

In addition, in certain cases noncompetitive follow-on contracts are permitted. A follow-on contract is a type of sole-source award to a contractor who has previously been awarded a contract for the same good or service.

These exemptions are intended to be limited. The Federal Acquisition Regulation provides that “contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.”³

METHODOLOGY

At the request of Rep. Henry A. Waxman, this report analyzes the award of noncompetitive contracts by the Bush Administration. For purposes of this report, a “noncompetitive” contract is defined as a contract awarded under an exception to the requirements of full and open competition.

The report is based on information contained in the Federal Procurement Data System (FPDS) database for the four-year period from FY 2000 through FY 2003. According to GAO, the FPDS is the best available data set for assessing “the impact that governmentwide acquisition policies and processes are having . . . with respect to specific geographic areas, markets, and socio-economic goals.”⁴

The FPDS contains a record of each contract action entered into by the federal government, including details on the agency signing the contract, the contractor, the amount of the contract, and important details on the contract type and the way in which the contract was bid. This database contains over two million records detailing almost \$1 billion worth of federal government contracts since FY 2000. The report uses the database to identify the type and value of contracts that were awarded without full and open competition. The report is the first comprehensive analysis of FY 2003 contracting data.

³ 48 C.F.R. § 6.101

⁴ Letter from GAO Acquisition and Sourcing Management Director William T. Woods to Office of Management and Budget Director Joshua B. Bolten (Dec. 30, 2003).

FINDINGS

Federal Contracts Not Subject to Full and Open Competition

In FY 2003, the federal government spent \$290 billion on 313,399 contracts for goods and services.⁵ Of this \$290 billion, \$107 billion was spent on 43,131 contracts that were executed without full and open competition.⁶ These noncompetitive contracts represented 37% of all federal procurement spending in FY 2003.

In many cases, the noncompetitive contracts were awarded on a sole-source basis. Of the \$107 billion in noncompetitive contracts, \$88 billion (82%) was awarded under a contracting process that involved just one bidder. The rationale for the majority of these contracts (\$60 billion) was that there was only one supplier for the good or service.

Trends in Noncompetitive Contracting

In the three years between FY 2000 and FY 2003, federal procurement spending has increased significantly, from \$205 billion in FY 2000 to \$291 billion in FY 2003. This represents an increase of 42%. However, the value of noncompetitive contracts has increased at an even faster rate.

In FY 2000, the federal government spent \$67 billion on 32,500 contracts that were awarded without full and open competition. These contracts represented 33% of all federal procurement spending in FY 2000.

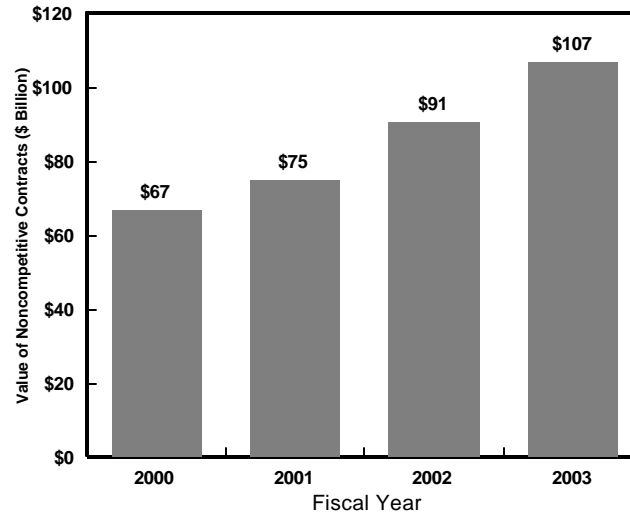
The value of these noncompetitive contracts increased steadily in each of the next three years, reaching \$75 billion in FY 2001, \$91 billion in FY 2002, and \$107 billion in FY 2003. Figure 1. In total, the value of the contracts that were awarded

⁵ Each individual contract can contain many different contract actions — discrete steps or parts of the contract. For example, a contract for delivery of military services could be structured so that the contractor is paid on a monthly basis, with each monthly payment counting as a contract action. Overall, there were one million discrete contract actions taken by the federal government in 2003.

⁶ Contracts can be structured so that some parts are competitive, while others are not. The \$107 billion includes the values of only the noncompetitive parts of these contracts.

without full and open competition increased by \$40 billion between FY 2000 and FY 2003, an increase of 60%. As a proportion of total procurement spending, noncompetitive contracts increased from 33% of all federal contracts in FY 2000 to 37% in FY 2003.

Figure 1: Federal Government Spending on Noncompetitive Contracts Has Increased by \$40 Billion under President Bush



Noncompetitive Contracts by Federal Agency

The Army, the Air Force, and the Navy are the three federal agencies that spend the most on contracting each year. In FY 2003, the Army spent \$55 billion on procurement contracts, the Air Force spent \$55 billion, and the Navy spent \$52 billion. Together, the three service branches accounted for 55% of all federal procurement spending in FY 2003.

For all three service branches, half or nearly half of their procurement spending was noncompetitive in FY 2003. The Air Force spent \$29 billion on noncompetitive contracts (53% of contract spending). The Navy spent \$26 billion (50% of contract spending), and the Army spent \$24 billion (53% of contract spending). Combined, the three service branches spent \$78 billion on noncompetitive contracts. This represents 73% of all federal spending on noncompetitive contracts.

Other federal agencies with over \$1 billion in noncompetitive contracts included the Department of Energy (\$6.5 billion, 31% of contract spending); NASA (\$5.7 billion, 52% of contract spending); the Defense Logistics Agency (\$4.6 billion, 27% of its contract spending); the Defense Department (\$3.4 billion, 22% of contract spending); and the Department of Veterans Affairs (\$1.0 billion, 16% of

contract spending). Table 1 contains detailed information on all federal agencies with over \$1 billion in noncompetitive contracts.

Table 1: Noncompetitive Contracts by Federal Agency in FY 2003			
Federal Government Agency	Total Procurement Spending (\$ Billions)	Spending on Noncompetitive Contracts (\$ Billion)	% of Spending on Noncompetitive Contracts
Dept. of the Air Force	\$54.4	\$29	53%
Dept. of the Navy	\$51.7	\$26	50%
Dept. of the Army	\$54.6	\$24	43%
Dept. of Energy	\$21.1	\$6.5	31%
NASA	\$11.7	\$5.7	49%
Defense Logistics Agency	\$17.2	\$4.6	27%
Dept. of Defense	\$15.4	\$3.4	22%
Dept. of Veterans Affairs	\$6.6	\$1.0	16%

Monopoly Contracts

In addition to awarding over one-third of federal contracts using noncompetitive procedures, the Bush Administration has also increased its use of a form of anticompetitive contract known as the “single-award indefinite-delivery/indefinite-quantity” contract. Under these contracts, the government commits to purchase an undefined range of goods or services from a single contractor, precluding competition and effectively making the contractor a monopoly provider. In FY 2003, the Bush Administration issued 15,800 of these monopoly contracts worth \$5.9 billion

These contracts are problematic because at the time of the bid and award of the contract, the total amount of work and specific projects to be completed under the contract have yet to be defined. As a result, if the contract is awarded to a single contractor, there is no real opportunity for price competition on specific projects. For this reason, federal procurement rules say that indefinite-delivery/indefinite-quantity contracts should be awarded to multiple contractors whenever possible, thereby enabling the federal agency to solicit competing bids from more than one contractor when specific projects are delineated.⁷

The value of these monopoly contracts has increased significantly over the last three years. In FY 2000, the federal government awarded \$4.2 billion in monopoly contracts. Between FY 2000 and FY 2003, the value of the monopoly contracts increased to \$1.7 billion, an increase of 40%.

⁷ 48 CFR 16.504(c) (“the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources”).

CONCLUSION

In recent years, federal procurement spending has increased significantly. In 2003, the federal government spent almost \$300 billion on procurement contracts. Over one-third of these contracts, \$107 billion, were noncompetitive contracts. Under President Bush, the value of noncompetitive federal contracts has increased by \$40 billion, an increase of 60% from the final year of the Clinton Administration.