

Congressional study finds increase in noncompetitive contracts

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The percentage of government contracts let without full competition is on the rise, according to a report published last week by House Democrats.

In fiscal 2003, federal agencies awarded 43,131 contracts worth \$107 billion without opening the work to bids from a wide array of companies, researchers on the minority staff of the House Government Reform Committee found. Noncompetitive contracts accounted for 37 percent of the \$290 billion the government spent on procurements that year.

Three years earlier, agencies granted 33 percent of contract dollars on a noncompetitive basis, the congressional investigators [reported](#). The Democratic staff members drew these statistics from the Federal Procurement Data System, a repository of acquisition information housed at the General Services Administration.

"Increasingly, the administration is turning over essential government functions to the private sector, and it has jettisoned basic safeguards like competition and supervision that are needed to protect the public interest," said Rep. Henry Waxman, D-Calif., in a statement accompanying the report. Waxman, the ranking member on the Government Reform Committee, requested the study to gain a broader perspective on how the Bush administration's procurement policies are playing out, a committee staff member said.

Most of the report's findings aren't particularly surprising or troubling, said Christopher Yukins, an associate professor of government contract law at George Washington University. The government is buying more, he noted, and the percentage of noncompetitive contract dollars awarded hasn't significantly outpaced the expansion in contracting.

"I'm not sure the increase...is that significant," said former federal procurement administrator Angela Styles, a partner at Miller & Chevalier, a Washington firm specializing in contract law. "There's nothing illegal that was done here."

Most of the noncompetitive agreements reached in fiscal 2003 were defense-related, the report found. The Air Force, Navy and Army spent a total of \$79 billion on noncompetitive contracts, accounting for 73 percent of spending on these agreements. Non-Defense agencies awarding more than \$1 billion in noncompetitive contracts that year included NASA and the Energy and Veterans Affairs departments, according to the report.

Alongside an overall rise in noncompetitive contracts, defined as those let without conducting a "full and open" competition where all "responsible contractors" have an opportunity to vie for work, the congressional study notes an "explosion" in sole-source contracts. These are agreements for which acquisition officials consider only one company.

"The sole-source process is in fact pretty transparent," Yukins said. "You know ahead of time that an agency's going to buy sole-source."

Lawmakers should be more worried about task-order contracts, which are also noncompetitive but lack transparency, Yukins said. For instance, the Army [acquired private-sector interrogators](#) for Iraq prisons through a prenegotiated contract designed for information technology purchases.

Such contracts are noncompetitive, but aren't captured in the congressional report. The study leaves out governmentwide contracts known as GWACs and purchases off the GSA schedule, a set of prenegotiated agreements, Styles said.

At the same time, the noncompetitive contracts captured in the report include those awarded to small or minority-owned businesses, or granted for other legitimate reasons, Styles noted. The majority are defense or homeland security-related, she added, and not surprisingly, since "a good amount of that has to happen quickly."

As such, the report both over- and understates causes for concern, Styles said. Congressional staff members also avoided discussing how Clinton administration reforms may have contributed to the trends, she said.

The report does note that there are times when noncompetitive contracts are appropriate, the committee staff member said. For instance, such practices are necessary and acceptable when there is only one company providing a good or service, the report explains.

John Threlkeld, a lobbyist for the American Federation of Government Employees, acknowledged there are times when noncompetitive contracts are justified, but said agencies find too many excuses to enter into these agreements. "The number of exceptions [to competitive contracting] must be sharply reduced, the discretion to use those exceptions must be severely limited, and the use of those exceptions must be very aggressively supervised," he said.

Waxman has not decided how to follow up on the study, or whether any legislative changes are needed, the committee staff member said.

The committee's Republican leadership questioned the motivations for the report and criticized the Democrats for failing to involve investigators from both parties in the research. "They're all about sensationalizing and sound bites," said David Marin, a spokesman for committee chairman Tom Davis, R-Va. "That may be good politics, but it's not good government."