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# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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## Review of Contracting Practices

Audit #01-01

Prepared By  
**Office of Inspector General**

Allen Vann, Inspector General  
Dan Sooker, Lead Consulting Auditor  
Tim Beirnes, Lead Consulting Auditor



## **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

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3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574  
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

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January 4, 2001

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RE: Review of  
Contracting Practices –  
Audit # 01-01

This audit was performed pursuant to the Inspector General's authority set forth in Chapter 20.055, F.S. The audit focused on the propriety of competitive strategies used by the District to contract for goods and services. Fieldwork was conducted October 2000 through December 2000. This report was prepared by Tim Beirnes and Dan Sooker.

Sincerely,

Allen Vann  
Inspector General

AV/ds  
Enclosure

c: Frank Finch  
James E. Blount

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## INTRODUCTION

In an effort to assist Executive Management with improving procurement processes, the District's Governing Board asked that we perform a review of the propriety of the practices used by the District to contract for goods and services. Parallel to our own effort, District Management created a Procurement Process Improvements Team that included our active participation.

## BACKGROUND

District procurement should be made under conditions that foster a level of competition appropriate for the items or services purchased. According to the District's Procurement policy<sup>1</sup> the agency is committed to "follow generally accepted public procurement practices, and to the extent practicable and applicable, implement the legislative intent of Section 287.001, Florida Statutes." Both the Statute<sup>2</sup> and District policy commit the agency to "provide an efficient, effective, economical and equitable means of procuring needed commodities, equipment and services."<sup>3</sup> The Statute favors obtaining goods and services by competitive sealed bid/RFB (Request for Bids). The Florida Statute in §287.057 *Procurement of commodities or contractual services* states that:

(1) ... all contracts for the purchase of commodities or contractual services ... shall be awarded by competitive sealed bidding. An invitation to bid shall be issued which shall include a detailed description of the commodities or contractual services sought; the date for submittal of bids; and all contractual terms and conditions

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<sup>1</sup> SFWMD Procurement Policy §07.10003.

<sup>2</sup> Florida Statute, §287.001 states: The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and the contractor to specific ethical considerations be required.

<sup>3</sup> SFWMD Procurement Policy §07.10003.

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applicable to the procurement of commodities or contractual services, including the criteria which shall include, but need not be limited to, price, to be used in determining acceptability of the bid ...

(2) When an agency determines in writing that the use of competitive sealed bidding is not practicable, commodities or contractual services shall be procured by competitive sealed proposals. A request for proposals which includes a statement of the commodities or contractual services sought and all contractual terms and conditions applicable to the procurement of commodities or contractual services, including the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability of the proposal shall be issued. If the agency contemplates renewal of the commodities or contractual services contract, it shall be so stated in the request for proposals...

According to the delegation of authority matrix in the Procurement Policy, overall procurement responsibility rests with the Executive Director's delegatee, the Director of Procurement. The Procurement Department is charged with ensuring fairness and fostering competition. It is intended that the Department serve as a check and balance within the procurement process on the user Departments. Except for sole source and waivers of competition for certain procurements, the Department performs various functions to solicit competition.

Total District contracting during Fiscal Year 2000 was \$72 million, of which approximately \$38 million was non-competitively solicited with other governments or revenue contracts. The balance of \$34 million was competed using the following methods of procurement.

<b>Fiscal Year 2000</b>		
<b>Solicitation</b>	<b>Number of Solicitations</b>	<b>Total (Millions)</b>
Request for Bid (RFB)	42	\$ 11
Request for Proposal (RFP)	52	9
CCNA (Professional Services)	7	3
Amendments and Change Orders	171	9
Non-Competitive & Special Procurements	42	2
<b>Total</b>	<b>314</b>	<b>\$ 34</b>

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To encourage an independent and diversified Evaluation Committee for evaluation of RFP's (Request for Proposal), Procurement has developed written procedures. Committee membership must be approved by Procurement and consist of the following:

- Members with expertise required to evaluate all technical aspects of the project.
- Members with diverse backgrounds.
- Staff who have not served within the last year on the same or similar project.
- Have at least one committee member from outside the initiating division including one member from a service center if the work will be performed within its boundaries.
- An odd number to minimize tie situations.

For RFP evaluations, Procurement has also developed an evaluation matrix that includes categories for rating the technical abilities and staff qualifications of the respondent, pricing and diversity participation. Point values of the different categories can vary.

Excluding the time to prepare a scope of work, a bid solicitation takes approximately six weeks from the time it is advertised to a completed contract, while a non-CCNA RFP takes about three months.

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## **OBJECTIVE, SCOPE, AND METHODOLOGY**

Our objective was to review the methods and processes used by District Project Managers and Procurement to determine that the appropriate solicitation for services and commodities is selected and competitive standards are consistently applied. To understand this process, we selected eight recently issued solicitations that were protested by losing respondents or where there was a question as to the type of solicitation used by the District. Therefore, our sample should not be considered to be representative of all procurement solicitations performed during the audit period<sup>4</sup>. (See appendix for list of solicitations reviewed.)

- Review of the relevant State Statutes, District's Procurement Policy, and procedures and guidelines for procuring services and commodities.
- Review of solicitations for services and commodities transacted in FY 00.
- Interview of Project Managers, Contract Specialists and Evaluation Committee Members.

Our audit was conducted in accordance with generally accepted government auditing standards.

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<sup>4</sup> Management offered the following general comment to our draft report, "In FY2000, there were fifty-two (52) standard Request for Proposals (RFPs) released by the District and seven (7) Consultant Competitive Negotiation Act (CCNA) RFPs. Of the eight solicitations reviewed in this audit report, one RFP was conducted in accordance with CCNA statutory negotiated requirements and one project was awarded based on a Waiver of Competition. The findings of this audit report, accordingly, are based on a total of six standard RFPs within the fifty-two released. Although the report indicates that the "...sample should not be considered to be representative of all procurement solicitations performed during the audit period", the findings appear to be applied to the entire spectrum of procurements conducted by the District rather than a few solicitations that might have been handled differently after further review of project requirements."

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## **FINDINGS AND RECOMMENDATIONS**

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### **Executive Brief**

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Generally, services are solicited as a proposal, while commodities and construction contracts are solicited as bids. The RFPs have also been used for commodity acquisitions that have service, performance or warranty components. In most all of the RFPs we reviewed, there were insufficient justifications for their use. The Procurement Department should make a written determination for their use.

Our review of RFPs demonstrated that these procurements could have been solicited using competitive sealed bids/RFB, but user department preferences or the general rule of using the proposal method for services prevailed. In practice, the Contract Specialist with input from the Project Manager should determine the appropriate contracting method. However, Procurement staff lacks the organizational support customarily found in an environment with good controls.

The high turnover in the Procurement Director position has also contributed to weaknesses in the normal checks and balances within the process. Most importantly, the Procurement Director should be the trustee of District procurement process and responsible for ensuring fair and open competition. Without a strong Director and empowered procurement staff, decisions over which method to use, i.e. RFB, RFP or sole source, will continue to be unduly influenced by other District staff.

To some extent the liberal use of RFPs, the conduct of evaluation committees, and vendor perceptions have led to a number of protests. Evaluation committees that were convened often included staff that were familiar with the work of incumbent contractors. Our discussions with evaluation committee members and review of the scoring patterns of the panels revealed that incumbents had an advantage over newcomers. In order to ensure a level playing field, panel members who have had prior business relationships with a proposer should be avoided.

Finally, our review of one RFP found that a thorough cost analysis was performed after the evaluation was completed to satisfy a protesting party. Fortunately, the evaluation process resulted in selecting the proposal offering the best value for the District. Evaluation of financial aspects in an RFP should be scored based on an objective financial analysis that considers all relevant costs. Because there are no qualitative factors to be judged, the Contract Specialist, and not the evaluation panel, should objectively assign these points.



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## **Eliminate Subjectivity in Contractor Selection**

In order to assure themselves of less uncertainty in the vendor selection process, District staff in user departments appears to have a preference for the proposal method over the bidding method in the award of District contracts. The proposal method provides Project Managers and Evaluation Committee members an opportunity to scrutinize a respondent's credentials through proposal review and oral interviews with the intent of obtaining the best value for the District. However, this approach may be shortsighted in that small businesses may not have the resources to put together a well-written proposal document that communicates their qualifications.

Generally, services are solicited as a proposal, while commodities and construction contracts are solicited as bids. The RFP process has also been used for commodity acquisitions that have service, performance or warranty components. This practice is inconsistent with State Statutes and the Procurement Policy in which the preferred method for obtaining goods and services is the use of competitive sealed bids/RFB unless it can be proven not practical. The Procurement Department should make this determination in writing.

Our review of RFP solicitations verified that most of these procurements could have alternatively been solicited using competitive sealed bids/RFB but user department preferences or the general rule of using the proposal method for services prevailed. In practice, the Contract Specialist and Project Manager determine the method of procurement. However, in our view the bid method is not given enough consideration in the procurement process. Furthermore, Procurement is viewed as an administrative service function and its staff lacks the organizational support to make the final determination of the appropriate method of solicitation for goods and services.

To illustrate this point, a Contract Specialist and Project Manager differed as to the procurement method for a solicitation. The Contract Specialist recommended a bid, but the project manager overruled the recommendation. The dispute was settled through intervention at a level higher than the Procurement Director and a RFP was used. Our review of this particular solicitation concluded that the justification for using a RFP was weak and it should have been bid.

Procurement staff also needs to be independent of user departments. The practice of a manager other than the Procurement Director performing performance evaluations of Procurement staff impairs the procurement staff's independence and effectiveness by trying to balance the conflicting goals of

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loyalty to the project management staff with integrity of the Procurement process.

In August 1999, the District selected Motorola's proprietary Moscad equipment to upgrade and standardize the telemetry systems. The vendor was selected using the RFP process and is the only authorized reseller for this equipment in Florida. A year later the contract was amended with the intent to triple the not-to-exceed contract price from \$1.5 million to \$4.61 million in order to accommodate the demands for the Everglades Restoration Project (ECP) and the Comprehensive Everglades Restoration Project (CERP). This contract extension was done as a waiver-of-competition procurement in order to continue standardizing the telemetry system with the proprietary Motorola technology, and was structured as a workorder type contract. The contract was also structured as a turnkey operation including work (like installing panel boxes, conduit, cables, and antennas) which is not proprietary equipment. Although the proprietary equipment was housed inside this infrastructure, installation of the non-proprietary equipment should have been broken out and bid separately. The waiver-of-competition contract was used as a means of expediting the procurement process for work that should have been bid<sup>5</sup>. Only Governing Board intervention prompted staff to separate and bid out the non-proprietary work elements.

Our discussions with Project Managers and Contract Specialists concerning re-solicitations revealed that the customary practice is to use the procurement method previously employed. For the aerial spraying services RFP, valued at approximately \$4.7 million, a competitive sealed bid method was not considered. It has been renewed every three years for a twenty-year period and the method of solicitation has always been a proposal. This solicitation could have been a RFB. We surveyed the Florida Game and Fresh Water Fish agency, which contracts for the same service as the District, to determine the procurement methodology they used. While the District uses a RFP to solicit these services, the Florida Game and Fresh Water Fish agency used the RFB method of procurement. The winning contractor was the same in both the District's and Florida Game and Fresh Water Fish solicitations.

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<sup>5</sup> Management responded as follows, "The *Waiver of Competition* (reference on pg. 7) was properly justified and approved in accordance with established District policies and procedures. The need for a turnkey operation was based on the hardware compatibility, software continuity and installation deadlines for an expanded SCADA system that included proprietary equipment. The reference to the Motorola Moscad equipment upgrade incorrectly shows the final contract price as \$4.61M when it was really \$2.5M after governing board direction at a subsequent board meeting."

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An empowered Procurement Department with a strong Director would help provide a more balanced procurement process and strengthen the normal checks and balances within the process that are customarily in an environment with good controls. Most importantly, the Procurement Director is trustee of District procurement and responsible for ensuring fair and open competition. Without an empowered Procurement Department and strong Director, decisions over which method to use i.e. RFB, RFP or sole source, will continue to be influenced by employees outside of Procurement.

The results of our review indicate that because the RFP process is more subjective than competitive sealed bidding it is more likely to be protested by losing respondents. Of the six RFP solicitations reviewed, four were protested. We also found that the RFP process can be subject to biases and lack independence particularly when Evaluation Committees are made up of District employees who have worked closely with a proposing or incumbent contractor.

Our discussions with Evaluation Committee members and review of solicitation documentation, including evaluation score sheets, revealed that the incumbent contractor for re-solicitations appears to have an advantage over other respondents, particularly when the contractor has performed well. The reverse is true for incumbent contractors who have performed poorly. The uncertainty of a new contractor can prove burdensome for project managers and procurement personnel. The close monitoring of the new contractor's performance and the learning curve adds to District personnel's workload, whereas a high-quality incumbent contractor provides the project manager with a level of assurance through previous experience that the work will be done in accordance with the contract.

The \$17 million solicitation for pump equipment included two evaluation team members that had served as project managers on a previous job with the winning firm. The divergence of these two members' scores between the incumbent and the number two ranked firm, was significantly larger than the other panel members. The following table demonstrates this fact.

	<b>Scores</b>	
	<b>#1 Ranked Firm</b>	<b>#2 Ranked Firm</b>
Prior Project Manager A	85	44
Prior Project Manager B	74	57
<b>Average of Other 5 Members</b>	80	71

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Both of these panel members were experienced District staff in this technical area; however, the scoring, as well as interviews of the prior project managers for the #1 ranked firm, strongly suggests that these individuals lacked the independence to serve as objective evaluators.

In an attempt to provide new respondents with a competitive advantage, the District's evaluation matrix has an automatic 5 point score reduction to incumbent contractors who have recently performed work for the District. Such was the case for this RFP. Although the incumbent had a 5 point reduction because of previous work with the District, the divergence in technical scoring easily offset this 5 point disadvantage.

An interview of Evaluation Committee members for a recent RFP re-solicitation for furniture installation services indicated that previous experiences with an incumbent contract biased a member's proposal evaluation. All Evaluation Committee members had worked with the incumbent contractor and the contractor had performed well. One Evaluation Committee member acknowledged that the contractor's previous work history with the District weighed heavily in his scoring of the proposals. The other two Evaluation Committee members stated that they focused on the written proposals and were not prejudiced by previous experiences with the incumbent contractor. However, in our view, it is difficult to completely separate one's prior experiences from the evaluation process. At a minimum, the appearance of independent appraisal is lacking.

For the aerial spraying solicitation, the Evaluation Committee consisted of five members, three of which had a long history with the incumbent contractor. The incumbent contractor received high marks from the District's project manager and outside references. We reviewed the scores of each evaluation member and found that the two members who had not worked with the incumbent contractor rated the proposal of the other respondents higher than the incumbent. In fact, after the written proposals were evaluated, a non-incumbent contractor was rated first by a slim margin. The Evaluation Committee then decided to have oral presentations, after which the incumbent was rated first and received the contract. The reasons for the change of scores were that the incumbent contractor provided an excellent presentation and increased his technical and qualification scores. It was learned that the other respondent did not meet the specification required in the scope of work. Although not disqualified, the rating was decreased.

To increase competition and provide opportunities to small businesses we offer the following recommendations.

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## Recommendations

1. **Hire a strong Procurement Director empowered to approve the appropriate competitive strategy for obtaining goods and services. The Procurement Department should review and approve this determination in writing.**

**Management Response:** Management concurs that a strong Director would strengthen procurement procedures within the District. The procurement process improvement team is currently developing conceptual recommendations, which delineate the power, role and responsibility of this individual. We are also conducting interviews this month (Jan 2001) and hope to have a new Director in place early in the spring. Good controls and normal checks and balances within the procurement process will also require well established and properly enforced (senior management organizational support) planning and implementation phases. We concur that a written justification must be prepared for the proposed use of either solicitation method. This justification will also require rationale for other related actions, e.g., minority outreach, to accomplish the District's objective *vis a vis* the solicitation at hand. The procurement process improvements team is also addressing components of a *procurement planning* phase that will be essential in formulating the most appropriate competitive and outreach mechanisms. This phase will provide the governing board the opportunity to review individual acquisition strategies prior to the District initiating a procurement action.

Responsible Department: Procurement Process Improvements Team

Estimated Completion Date: June 2001

2. **Procurement Department should ensure independent Evaluation Committees.**

**Management Response:** Management concurs that it is critical for selection committee members to review proposals independently, with no conflicts of interest or potential bias in the evaluation process. Proposed changes to the District's committee selection process will promote consistent application of standard operating procedures and accountability that will ensure integrity in the procurement process, address public concerns and educate potential respondents on

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solicitation and evaluation procedures. While it is clear that all potential opportunities for bias and conflicts of interest must be eliminated as much as possible in the selection of committee members to serve on evaluation panels, it is equally important to note that past performance of contractors is a key element to be addressed in the evaluation of every proposal. Past performance is critical because it relates to the issue of responsibility. Evaluation factors pertaining to past performance are included in both the technical and qualifications components of the evaluation criteria as well as previous District work. While all panel members are enjoined to evaluate proposals on the merits of what is presented between the covers of the proposal, it is inevitable that over time panel members will have had exposure to certain contractors. Depending on the quality of that experience the potential “bias” they might bring could work either for or against a contractor. We believe the controls now being built will mitigate these effects. We also intend to make all past performance evaluations a part of the evaluation panel’s review.

Responsible Department: Procurement Process Improvements  
Team

Estimated Completion Date: June 2001

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## **Financial Points Should Be Scored Objectively**

A financial analysis should be performed where multiple variables must be considered in assessing financial aspects of a proposal. Four proposals were received for the Okeechobee Service Center office space lease, including one from the existing lessor. The evaluation process resulted in selecting a new location. However, the financial section, worth 40% of the proposal, was evaluated by the committee without a financial analysis of all the relevant costs.

This proposal required considering many different variables, such as:

- The actual lease rate per square foot
- Who pays for utilities and maintenance services
- Moving costs
- Space configuration cost

In this proposal, all these factors (except moving cost) tilted in the same direction, so the conclusion was fairly clear. However, a comparative cost analysis was not performed during the evaluation process. A cost analysis was performed afterwards for the purpose of proving to a protesting party that the District's decision was justified. The analysis showed that the new location would result in a \$140,000 savings over the five year lease, even after considering the cost of configuring the space to the District's specifications and moving cost. It just as easily could have been a case where one proposal quoted a price per foot and included services, verses another quoting a lower rate that excluded services. In such a case, the decision would not have been as clear and a detailed analysis would have been necessary in advance to properly score the financial aspects.

Although in this case the RFP process resulted in the correct winner, the committee's subjective scoring of the 40 point financial section on the evaluation matrix could have potentially lead to the wrong conclusion. The evaluation committee needn't be responsible for scoring a proposal's financial aspects. There are no qualitative factors that need to be judged. A financial expert should be assigned the responsibility for evaluating the financial aspects of proposals based on objective analysis that consider all relevant cost. When scoring cannot be determined by a single number, an analysis

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should be performed comparing the proposals, using the net present value (NPV) approach. The proposal resulting in the lowest NPV cost should receive the maximum points, and the others should receive points based on their NPV compared to the lowest NPV. The procurement specialist or financial expert should then add the financial scores to the evaluation forms in the same manner that M/WBE and "Prior Work With the District" points are assigned where the same score is entered on each member's evaluation form.

### **Recommendation**

- 3. Procurement Department should develop guidelines with specific criteria for reviewing cost proposals and should delineate the roles and responsibilities of selection committee members and Procurement Specialists in evaluating the financial aspects of proposals submitted in response to an RFP.**

**Management Response:** Management concurs that specific guidelines and clear roles and responsibilities should be developed for reviewing cost proposals. The Procurement Process Improvements Team is currently reviewing alternative approaches to the cost evaluation of proposals, which will be consistent with the type of project being solicited by the District. We believe that a cost proposal review by both Procurement and selection committee members is critical for a thorough evaluation of the financial aspects of proposals. This is necessary because qualitative factors (level of expertise, prime/subcontractor team components, number of hours proposed, travel requirements, equipment needs, etc.) require review by the selection committee members to determine whether the technical aspects of the proposal (approach, methodology) are consistent with the proposed cost breakdown. Utilizing a formula based analysis only of the financial aspects of a proposal (as discussed in the report) will not allow for an examination of the relationship between cost and technical factors in determining the most qualified firm. If there is no need to review these factors in conjunction with the technical approach, a bid process may be more appropriate.

Responsible Department: Procurement Process Improvements  
Team

Estimated Completion Date: June 2001



<b>Review of Contracting Process</b>				
<b>Sample Summary</b>				
<b>Service</b>	<b>Solicitation Type</b>	<b>Winning Contractor</b>	<b>Dollar Value</b>	<b>Audit Issues Identified</b>
Pump Equipment	RFP	Ingersol-Dresser Pumps	\$ 16,900,000	Could have been RFB. Objectivity of Evaluation Committee.
Aerial Spraying	RFP	Helicopter Applicators	4,700,000	Could have been RFB. Objectivity of Evaluation Committee.
Pilot Dredging	RFP	EA Engineering	947,000	One evaluation committee member did not attend oral presentations.
Lease	RFP	Paramenter	712,000	Selection type appropriate - but financial analysis prepared after Evaluation Committee scored financial points.
Earthmoving	RFB	None - Rebid	1,200,000	None. Company protested District's determination to disqualify firm's bid bond. Staff correctly disqualification bid.
System Furniture	RFP	Herman Miller	200,000	Could have been RFB. Objectivity of Evaluation Committee.
Janitorial Service	RFP	Supreme Services	305,000	Could have been RFB. Objectivity of Evaluation Committee.
Telemetry	Waiver of Competition	DCR Engineering	4,610,000	Could have been RFB. Non-proprietary work bundled with proprietary work.
Total			\$ 29,574,000	