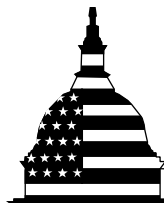




March 2013

DEFENSE CONTRACTING

Actions Needed to Increase Competition



G A O

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DEFENSE CONTRACTING

Actions Needed to Increase Competition

Why GAO Did This Study

Competition is the cornerstone of a sound acquisition process and a critical tool for achieving the best return on investment for taxpayers. In fiscal year 2012, DOD obligated \$359 billion through contracts and task orders, of which 57 percent was competed. DOD also obligates billions of dollars annually on contracts that are awarded competitively, but for which the government received only one offer. DOD implemented the Better Buying Power initiative in 2010, in an effort to increase competition.

The conference report for the National Defense Authorization Act for Fiscal Year 2012 directed GAO to report on DOD's non-competitive and one-offer contracts. GAO examined (1) trends in DOD's use of noncompetitive awards; (2) factors influencing DOD's competition rate; (3) the extent to which justifications provided insight into the reasons for noncompetitive awards; and (4) the impact of DOD's new requirement for competitive solicitations that only elicit one offer. GAO analyzed federal procurement data for fiscal years 2008 through 2012, reviewed DOD policy and competition reports, examined nongeneralizable samples of awards, and interviewed DOD officials.

What GAO Recommends

GAO recommends that DOD identify, track, and consider the specific factors that affect competition when setting competition goals; develop guidance to apply lessons learned from past procurements to help achieve competition in the future; and collect reliable data on one-offer awards. DOD concurred with these recommendations.

View [GAO-13-325](#). For more information, contact Michael J. Courts at (202) 512-4841 or courtsm@gao.gov.

What GAO Found

The Department of Defense's (DOD) competition rate for all contract obligations declined over the past five fiscal years, from 62.6 percent in fiscal year 2008 to 57.1 percent in fiscal year 2012. GAO also found that the competition rate in fiscal year 2012 varied by specific DOD component with the Air Force having the lowest at 37.1 percent and the Defense Logistics Agency the highest at 83.3 percent. The majority of the noncompetitive awards cited the availability of only one responsible source to meet the government's needs as the reason for using noncompetitive procedures.

A number of factors affect DOD's competition rate, but these factors are not always considered when setting DOD's annual competition goals. For example, reliance on an original equipment manufacturer throughout the life cycle of a program has been a long-standing challenge for DOD competition, and budget uncertainty can also hinder DOD's ability to compete. Noncompetitive purchases that DOD makes on behalf of foreign governments can also affect DOD's competition rate. DOD does not systematically consider these and other factors when setting its annual competition goals. For example, it sets competition goals for individual DOD components by simply adding two percentage points to the rate achieved in the previous year. Without identifying and tracking the specific factors affecting competition DOD cannot set meaningful goals for improving competition or accurately gauge its progress toward achieving them.

Many of the noncompetitive justifications GAO reviewed included the required elements as defined by the Federal Acquisition Regulation; however, the level of insight into the reasons for noncompetitive awards varied. For example, some justifications included clear descriptions of market environments where only one source was available to meet the government's needs or described planned actions that could help improve competition in the future. However, other justifications provided limited insight into the reasons for the noncompetitive award or did not fully describe actions that the agency could take to increase future competition. Without this information, DOD may be missing opportunities to gain a fuller understanding of why past acquisitions were not competitive and may be unable to apply those lessons to effectively facilitate competition for future acquisitions.

In 2010, DOD introduced a new requirement that applies to competitive awards that elicit only one offer (one-offer awards); however, the impact of the requirement is unknown because of unreliable data. To address the risk associated with one-offer awards, the requirement established rules that were intended to help ensure adequate solicitation time, ensure that contract requirements are not unnecessarily restrictive, and verify that offers received are fair and reasonable. However, GAO's analysis of 35 one-offer awards determined that contracting officers had incorrectly coded 10 of these awards in the procurement database that DOD relies on to measure the impact of its new requirement. Six of the 10 awards were noncompetitive awards and the remaining 4 had received multiple offers. As a result, GAO determined that DOD's data cannot be used to accurately calculate the amount obligated on one-offer awards during fiscal year 2012. Without reliable data, DOD cannot accurately measure the impact of its new requirement.

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Abbreviations

CICA	Competition in Contracting Act
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FMS	foreign military sales
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Service Administration
IDIQ	indefinite delivery/indefinite quantity
NASA	National Aeronautics and Space Administration
OMB	Office of Management and Budget
R&D	research and development

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United States Government Accountability Office
Washington, DC 20548

March 28, 2013

The Honorable Carl Levin
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Howard P. "Buck" McKeon
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

Competition is the cornerstone of a sound acquisition process and a critical tool for achieving the best return on investment for taxpayers. The benefits of competition in acquiring goods and services from the private sector are well established. Competitive contracts can help save taxpayer money, conserve scarce resources, improve contractor performance, curb fraud, and promote accountability for results. In fiscal year 2012, the Department of Defense (DOD) obligated \$359 billion through contracts and task orders, of which 57 percent was competed. Recognizing the need to make more efficient use of resources, DOD's 2010 "Better Buying Power" initiative placed an emphasis on maximizing opportunities for competition in the acquisition of products and services.

While federal statute and acquisition regulations generally require that contracts be awarded on the basis of full and open competition, they also permit federal agencies to award noncompetitive contracts in certain circumstances, for example, when only one vendor can supply the requirements or when a sole-source award is made under specified small business programs. Generally, noncompetitive contracts must be supported by written justifications and approvals (justifications) that address the specific exception to full and open competition that is being applied to the procurement. Also, the government obligates billions of dollars annually under contracts and task orders that are awarded using competitive procedures but for which the government receives only one offer—situations the Office of Management and Budget (OMB) has recently cited as high risk. DOD has termed this "ineffective competition"

and has issued a new policy requiring that additional steps be taken before a contract may be awarded when only one offer is received.

Since 2009, OMB and DOD have implemented initiatives to increase competition—including actions to address some opportunities we previously identified.¹ The conference report for the National Defense Authorization Act for Fiscal Year 2012 directed us to report annually for the next three years on DOD's noncompetitive awards and competitive awards based on receipt of only one offer.² Accordingly, we examined (1) the trends in DOD's use of noncompetitive awards; (2) the factors affecting DOD's competition rate; (3) the extent to which justifications for exceptions to competitive procedures provided insight into the reasons for noncompetitive awards; and (4) the impact of DOD's new requirement on contracts awarded using competitive procedures but for which only one offer was received.

To identify trends in DOD's use of noncompetitive awards, we used the Federal Procurement Data System-Next Generation (FPDS-NG) to identify DOD obligations under competitive and noncompetitive contracts in fiscal years 2008 through 2012.³ For the purposes of this report, we defined noncompetitive obligations to include obligations through contracts that were awarded using the exceptions to full and open competition listed in Federal Acquisition Regulation (FAR) Subpart 6.3, orders issued under multiple award indefinite delivery/indefinite quantity (IDIQ) contracts under the exceptions to the fair opportunity process in section 16.505(b) of the FAR, or under limited sources provisions for orders issued under the General Service Administration's (GSA)

¹GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010).

²H.R. Conf. Rep. No. 112-329, at 676 (2011).

³FPDS-NG is the government's procurement database. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) comparing reported data from FPDS-NG to information from contract files in our review. We determined that the data were sufficiently reliable for the purposes of this report, except where noted. For additional information, see appendix I.

schedules program in section 8.405-6 of the FAR.⁴ We also used FPDS-NG data to identify the specific exceptions to full and open competition that were cited for noncompetitive awards in fiscal year 2012. We calculated the competition rate as the dollars obligated annually on competitive contracts and orders as a percentage of dollars obligated on all contracts and orders. For the purposes of this report, we divided DOD into five components: Air Force, Army, the Defense Logistics Agency (DLA), Navy, and other defense agencies.⁵

To understand the factors affecting DOD's competition rate, we used FPDS-NG data to examine obligations for new awards and foreign military sale awards to understand the impact on the competition rate across DOD and within each component included in our review. We also spoke with component competition advocates and other DOD officials to understand how DOD calculates its competition rate and how various factors may impact it.

To assess the extent to which justifications for exceptions to competitive procedures provided insight into the reasons for noncompetitive awards, we randomly selected a nongeneralizable sample of 56 contracts and orders coded as noncompetitive in FPDS-NG. Our sample included the largest noncompetitive contracts and task orders, measured by obligations, as well as a random selection of awards across DOD. For awards in our sample, we reviewed documentation in the contract files such as the signed justification and approval memorandum, the acquisition plan, documentation of market research, the price negotiation memorandum, and other key information. We reviewed the justifications for these awards to determine whether they met criteria in the FAR for the

⁴IDIQ contracts do not procure or specify a firm quantity (other than a minimum or maximum) and provide for the issuance of task orders (services) or delivery orders (supply) during the contract period. FAR §§ 16.501-1;16.504. Multiple award IDIQ contracts are awarded to multiple contractors through one solicitation. For task orders subject to fair opportunity, generally the contracting officer must provide each contractor a fair opportunity to be considered for each order under multiple-award IDIQ contracts, with certain statutory exceptions which must be documented in writing. For task orders not subject to fair opportunity, including those on single award IDIQ contracts, the competition data for task orders in FPDS-NG is derived from the competition data for the underlying IDIQ contract.

⁵Other defense agencies data include obligations made by any DOD contracting office that are not part of the Air Force, Army, DLA, or Navy. These include, but are not limited to: Defense Contract Management Agency, Missile Defense Agency, TRICARE Management Activity, and Defense Threat Reduction Agency.

contents, timing, approval, and whether they were made publicly available. In particular, we assessed whether the justifications contained sufficient information to justify the use of the specific authority cited as required by the FAR. In addition, we conducted e-mail and telephone follow-up with contracting and program officials involved in these awards to obtain additional information as needed.

To examine the impact of DOD's new requirement on contracts awarded using competitive procedures but for which only one offer was received, we reviewed a nongeneralizable sample of 25 contracts and task orders. The sample included the 25 largest awards, measured by obligations, made between April 1, 2011, and March 31, 2012. Only awards for which one offer was received in response to a solicitation issued using competitive procedures, as coded in FPDS-NG, were included in the sample. For each selected award, we obtained evidence of the solicitation issuance and response due date, price negotiation memorandum, and other key information. If necessary, we contacted contracting and program officials to obtain additional information. We also reviewed FPDS-NG data to determine if there had been a decline in the number of contract awards for which only one offer had been received in response to the competitive solicitation. In addition, we spoke with DOD officials about the implementation and impact of the new requirement.

A more detailed description of our scope and methodology is presented in appendix I. We conducted this performance audit from May 2012 to March 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Federal agencies are generally required to use full and open competition to award contracts, with certain exceptions. The Competition in Contracting Act (CICA) of 1984 requires agencies to obtain full and open competition through the use of competitive procedures in their procurement activities unless otherwise authorized by law.⁶ Using

⁶Pub. L. No. 98-369, § 2701.

competitive procedures to award contracts means that all prospective contractors that meet certain criteria are permitted to submit proposals. Agencies generally are required to perform acquisition planning and conduct market research to promote full and open competition.

While CICA generally requires federal agencies to award contracts using full and open competition, agencies are allowed to award contracts noncompetitively under certain circumstances. Generally, these awards must be supported by written justifications that address the specific exception to full and open competition that is being used in the procurement. In addition, federal agencies can establish IDIQ contracts with one or more contractors and may issue orders under these contracts. For multiple award IDIQ contracts, agencies are generally required to provide all contractors on the IDIQ contract a fair opportunity to be considered for each order above certain dollar thresholds; however, agencies can award noncompetitive orders under a process called an exception to the fair opportunity process—which must be supported with a documented justification. Also, GSA administers IDIQ contracts with vendors for commercially available goods and services, and federal agencies place orders under the contracts. When doing so noncompetitively, procuring agencies must justify the need to restrict the number of vendors considered, known as a limited sources justification and approval. Finally, agencies can also competitively award contracts after limiting the pool of available contractors—a process called full and open competition after exclusion of sources. For example, agencies are required to set aside procurements for small businesses if there is a reasonable expectation that two or more responsible small businesses will compete for the work and will offer fair market prices.

The justifications are to provide sufficient facts and rationale to justify the use of the specific exception to competition. For example, under FAR part 6, justifications must include, at a minimum, 12 elements.⁷ Examples of these required elements include:

- a description of the supplies or services required to meet the agency's needs and their estimated value;

⁷FAR § 6.303-2(d). The FAR requires that justifications for noncompetitive awards under Subpart 8.4 (Federal Supply Schedules) and 16.5 (Indefinite-Delivery Contracts) contain similar information. See FAR § 8.405-6(c)(2) and FAR § 16.505(b)(2)(ii).

- identification of the statutory authority permitting other than full and open competition;
- a determination by the contracting officer that the anticipated cost to the government will be fair and reasonable;
- a description of market research conducted, if any; and
- a statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisitions for the supplies or services required.

Examples of allowable exceptions to full and open competition include circumstances when the contractor is the only source capable of performing the requirement or when an agency's need is of such unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources. The FAR generally requires that justifications be published on the Federal Business Opportunities (FedBizOpps.gov) website and be approved at various levels within the contracting organization. These levels vary according to the dollar value of the procurement (see table 1).

Table 1: Organizational Level of Approval for Justifications for Other than Full and Open Competition

Estimated value of proposed contract action	Approval by
\$650,000 or less	Contracting officer ^a
Over \$650,000 but not exceeding \$12.5 million	Competition advocate for the procuring activity ^b
Over \$12.5 million but not exceeding \$62.5 million (\$85.5 million for DOD, NASA, and Coast Guard) ^c	Head of the procuring activity, or designee
More than \$62.5 million (or \$85.5 million for DOD, NASA, and Coast Guard)	Agency senior procurement executive

Source: GAO analysis of FAR § 6.304, Approval of the justification.

^aAgency procedures may require approval of the justification at a level higher than what is required by the FAR.

^bThe justification may be approved by the competition advocate of the procuring activity, the head of the procuring activity or the agency senior procurement executive. Competition advocates are responsible for promoting the acquisition of commercial items, promoting full and open competition, and challenging barriers to the acquisition of commercial items and full and open competition, such as unnecessarily restrictive statements of work or unnecessarily detailed specifications among other things. FAR § 6.502(a).

^cNational Aeronautics and Space Administration.

Justifications can be made on an individual or class basis; a class justification generally covers programs or sets of programs and has a dollar limit and time period for all actions taken under the authority. Each

justification, individual or class, must be approved through the same process. Once a class justification has been approved, award of an individual contract can generally be approved for sole-source award by the local procuring activity, as long as the amount is within the scope of the class justification.⁸

Contracts that are awarded using competitive procedures but for which only one offer is received (one-offer awards) recently have gained attention as an area of concern. OMB's Office of Federal Procurement Policy noted that competitions that yield only one offer in response to a solicitation deprive agencies of the ability to consider alternative solutions in a reasoned and structured manner. In DOD's September 2010 Better Buying Power initiative memorandum, competitive procurements for which only one offer to a solicitation was received even when publicized under full and open competition are termed "ineffective competition." In November 2010, DOD introduced a new policy containing two new requirements concerning competitive one-offer awards. In June 2012, DOD codified the policy in the Defense Federal Acquisition Regulation Supplement (DFARS) adding a third requirement as follows:⁹

- If a solicitation allowed for fewer than 30 days and only one offer is received, then the contracting officer shall:
 1. consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition, and
 2. resolicit for an additional period of at least 30 days.
- If a solicitation allowed for at least 30 days and only one offer is received, the contracting officer shall determine through cost or price analysis whether the offered price is fair and reasonable and that adequate price competition exists or if cost and price data have not been waived obtain necessary cost and pricing data and enter into negotiations with the offeror to establish a fair and reasonable price.

⁸When a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken under that authority is within the class justification's scope and must document the contract file for each contract action accordingly. FAR § 6.303-1(d). The approval level within an organization for class justifications is determined by the estimated total dollar value of the class. FAR § 6.304(c).

⁹DFARS § 215.371; 77 Fed. Reg. 39126, (June 29, 2012).

DOD's Better Buying Power initiative also outlines a series of actions and directives to achieve greater efficiencies in part through the promotion of competition, such as:

- presenting a competitive strategy at each program milestone for defense acquisition programs;
- removing obstacles to competition; and
- establishing rules for the acquisition of technical data rights.

The Better Buying Power initiative increased the role of the DOD competition advocates by directing them to develop a plan to improve the overall rate of competition for each component by at least 2 percent per year, and the rate of effective competition—when more than one offer is received under a competitive solicitation—by at least 10 percent per year.

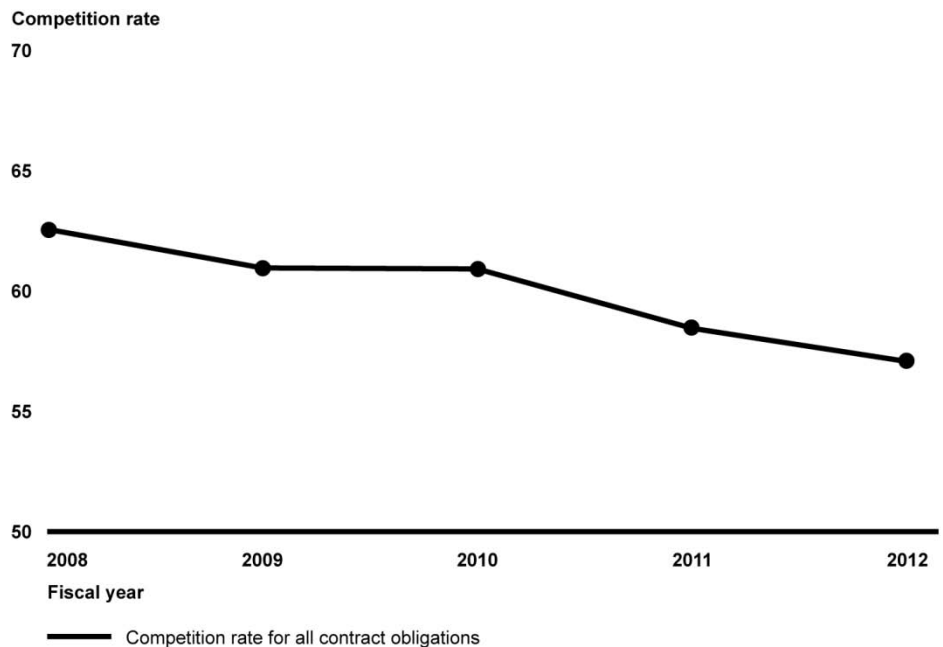
DOD's Competition Rate Continues to Decline

DOD's overall competition rate has declined over the past five years, and the competition rate differs among the specific DOD components. Among the components, in fiscal year 2012, DLA had the highest competition rate for all awards, while the Air Force had the lowest. Based on FPDS-NG data we found that noncompetitive awards cited several exceptions from competitive procedures.

Competition Rate Has Declined and Varies by Component

DOD's competition rate for all contract obligations generally has declined over the last five fiscal years. Since fiscal year 2008 the competition rate has declined 5.5 percentage points, from 62.6 percent in fiscal year 2008 to 57.1 percent in fiscal year 2012 (see figure 1). In fiscal year 2012, DOD obligated \$205.3 billion on competitive awards from a total of \$359.7 billion for all contract obligations.

Figure 1: DOD Competition Rate for All Contract Obligations from Fiscal Years 2008 through 2012



In fiscal year 2012, the majority of DOD's new noncompetitive award obligations were on contracts or task orders issued under single award contracts (see table 2).

Table 2: New Noncompetitive Awards in Fiscal Year 2012

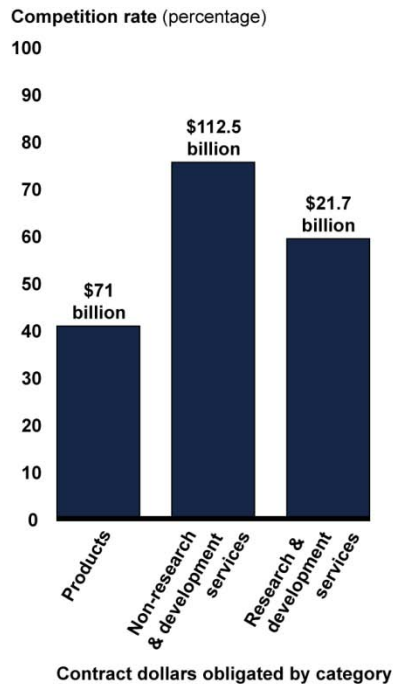
Type of new noncompetitive award	Number of awards	Dollars obligated (in billions)
Contracts	86,734	\$29.6
Task orders issued under single award contracts	1,818,545	33
Task orders issued under multiple award contracts and subject to the fair opportunity process	16,725	3.9

Source: GAO analysis of FPDS-NG data.

We found that a majority of all DOD's obligations in fiscal year 2012 were to purchase services (\$185.7 billion, or 51.6 percent). As we have

previously reported, DOD's competition rate for non-research and development (R&D) services was higher than the competition rate for products.¹⁰ Specifically, the competition rate was 75.5 percent for non-R&D services compared to 40.8 percent for products. The competition rate for R&D services was 59.3 percent (see figure 2).

Figure 2: DOD's Competition Rate and Competitive Contract Dollars Obligated for Products, Non-R&D Services and R&D Services in Fiscal Year 2012



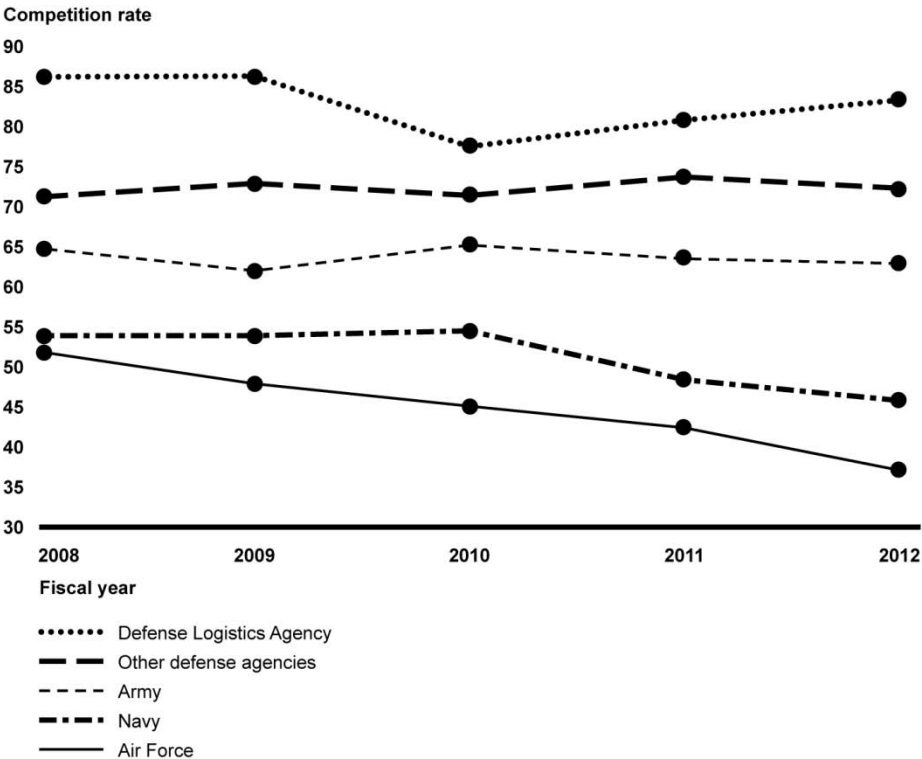
Source: GAO analysis of FPDS-NG data.

We also found that the competition rate for all contract obligations varied by DOD component in fiscal year 2012. Of the five major components we reviewed—Air Force, Army, Navy, DLA and other defense agencies—in fiscal year 2012, the Air Force had the lowest rate of competition, 37.1 percent, whereas DLA had the highest, 83.3 percent. A 2011 Air Force report on competition highlights a number of challenges to competition, noting that reliance on original equipment manufacturers of existing major

¹⁰GAO, *Defense Contracting: Competition for Services and Recent Initiatives to Increase Competitive Procurements*, [GAO-12-384](#) (Washington, D.C.: Mar. 15, 2012).

weapon systems for large sole-source awards was a particular concern. Figure 3 outlines the competition rate by component for fiscal years 2008 through 2012.

Figure 3: Competition Rates by DOD Component for Fiscal Years 2008 through 2012

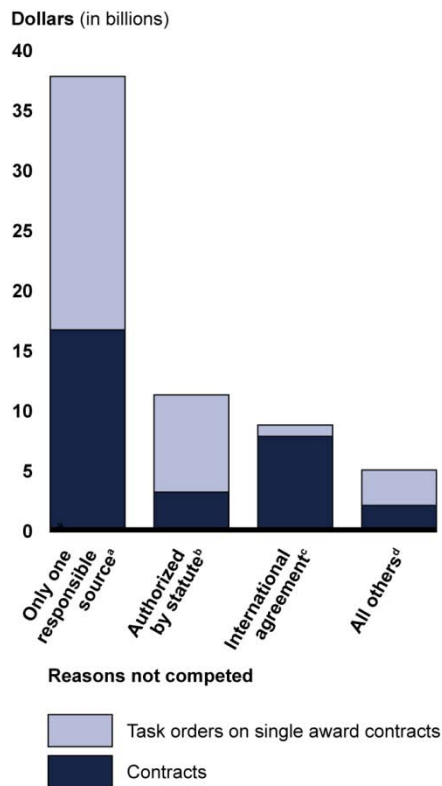


Source: GAO analysis of FPDS-NG data.

Majority of New Noncompetitive Awards Coded as “Only One Responsible Source”

Based on our analysis of FPDS-NG data in fiscal year 2012 the majority of DOD’s noncompetitive contracts and task orders on single award contracts were coded under the “only one responsible source” exception.¹¹ The next two most frequently cited exceptions were “authorized by statute” or “international agreement” (see figure 4).

Figure 4: Competition Exceptions for New Fiscal Year 2012 DOD Noncompetitive Contracts and Task Orders on Single Award Contracts



Source: GAO analysis of FPDS-NG data.

^a“Only one responsible source” includes contracts and orders placed on single award contracts that cited the following categories in FPDS-NG: unique source, follow-on contract, patent or data rights, utilities; standardizations; only one source-other; and brand name description. FAR § 6.302-1.

¹¹Not all task orders are subject to fair opportunity, including those on single award IDIQ contracts. In these cases, the competition data for task orders in FPDS-NG is derived from the competition data for the underlying IDIQ contract. Most fiscal year 2012 DOD noncompeted obligations on task orders were not coded as subject to fair opportunity in FPDS-NG.

^bFAR § 6.302-5.

^cFAR § 6.302-4.

^d“Other” includes contracts and orders placed on single award contracts that cited the following competition exceptions: urgency; industrial mobilization; engineering, developmental or research capability; expert services; national security; public interest, FAR §§ 6.302-2, 6.302-3, 6.302-6 and 6.302-7; and not competed using simplified acquisition procedures under FAR subpart 13.3.

Based on our analysis, the majority of noncompetitive task orders issued under multiple award contracts and subject to the fair opportunity process reported two exceptions to the fair opportunity process. Specifically, “follow-on actions,” orders for the same good or service with the original vendor, was cited for 41 percent of the obligations and “only one source” was cited for 40 percent.¹²

Multiple Factors Affect DOD’s Competition Rate, but They Are Not Always Considered When Setting Competition Goals

There are a number of factors that affect DOD’s competition rate. For example, reliance on an original equipment manufacturer throughout the life cycle of a program and budget uncertainty are long-standing challenges impacting DOD’s ability to compete. Noncompetitive purchases that DOD makes on behalf of foreign governments affect DOD’s competition rate as well. DOD does not systematically identify, track, and consider the specific factors that are affecting competition when setting its annual competition goals.

A long-standing factor impacting DOD’s competition rate is its reliance on an original equipment manufacturer throughout the life cycle of a program because of a previous decision not to purchase proprietary technical data. Technical data is recorded information used to define a design and to produce, support, maintain or operate an item.¹³ Prior GAO work has

¹²“Follow-on action following competitive initial action” captures awards made under FAR § 16.505(b)(2)(i)(C). Specifically, these awards are “issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.”

¹³DFARS § 252.227-7013 defines technical data as “recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation)... [but not including] computer software or data incidental to contract administration, such as financial and/or management information.” Technical data for weapon systems includes drawings, specifications, standards, and other details necessary to ensure the adequacy of item performance, as well as manuals that contain instructions for installation, operation, maintenance, and other actions needed to support weapon systems.

noted that technical data can help control costs and maintain flexibility.¹⁴ Without the technical data rights, it can be difficult to compete a new award, because another vendor would need the technical data in order to meet the government's needs. DOD has recognized the ownership of technical data as a challenge and is addressing this through its Better Buying Power initiative. DOD now requires program officials to present a business case analysis prior to the official start of the program that outlines an approach for purchasing technical data. For example, this business case analysis is intended to ensure consideration of competition throughout a weapon system's life cycle. The Better Buying Power initiative also added a new requirement that a competitive strategy be presented at each milestone for defense acquisition programs. These strategies may include identifying work currently performed by subcontractors and competing it separately. At the component level, a DOD official told us that they have begun to examine sole-source acquisitions to determine what pieces can be "broken out" from a noncompetitive requirement and competed separately. For example, a Navy surveillance system program identified an opportunity to break out commercial components. They noted that this resulted in lower pricing and a larger, more stable supplier base. While these initiatives are intended to reduce the use of noncompetitive procurements, the effect of this Better Buying Power initiative may not be felt for several years.

A more recent factor affecting DOD is budget uncertainty. GAO has previously reported on the impact of uncertain budget environments on agencies' ability to plan.¹⁵ DOD officials told us that continuing resolutions often delay new awards until later in the fiscal year because program offices do not know if they will receive funding for a new award. Also, with uncertain budgets, program offices may struggle to adequately plan for future procurements. For example, one official told us his program planned to compete a new award to replace aging equipment. However, due to budget issues, the program office may have to abandon competition plans for new equipment and continue with a noncompetitive award to maintain the existing equipment.

¹⁴GAO, *Defense Acquisition: DOD Should Clarify Requirements for Assessing and Documenting Technical-Data Needs*, [GAO-11-469](#) (Washington, D.C.: May 11, 2011).

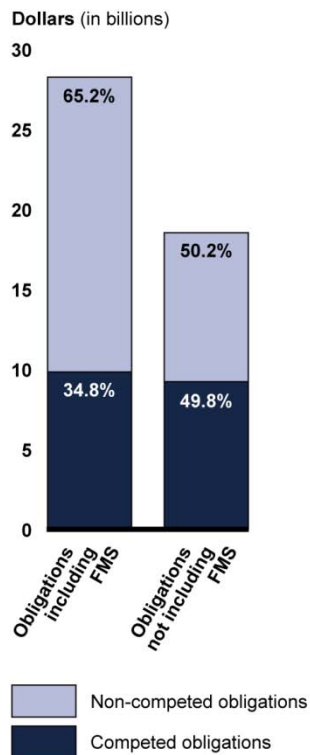
¹⁵GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, [GAO-09-879](#) (Washington, D.C.: Sept. 24, 2009).

Another factor that impacts DOD's competition rate is the amount of noncompetitive foreign military sales (FMS). FMS awards are government to government sales of defense articles or defense services, from DOD stocks or through new procurements under DOD-managed contracts, regardless of the source of financing.¹⁶ FMS awards may provide a benefit to DOD. For example, when an FMS award is in addition to products or services that DOD is already purchasing, it may help DOD to obtain a lower price with a vendor which can result in a better value for the government.

FMS awards are generally noncompetitive and are included in DOD's competition rate calculation. In fiscal year 2012, one-fifth of DOD's obligations on new, noncompetitive awards were for FMS. A DOD component competition advocate explained that to the extent a component has noncompetitive FMS obligations in a fiscal year it will lower the competition rates. We analyzed FPDS-NG data for fiscal year 2012 to determine the impact of FMS on component competition rates and noted a negative impact across DOD, with the Air Force being affected the most. Using DOD's method for calculating the competition rate by measuring all contract obligations, we noted an 8 percentage point increase in the Air Force competition rate by removing FMS awards from the calculation. An even greater improvement is indicated when calculating competition for new awards only. For example, we found that the Air Force's competition rate for new awards improves from 34.8 percent to 49.8 percent when FMS are removed from the calculation, almost a 15 percentage point increase (see figure 5).

¹⁶Defense Security Cooperation Agency, Security Assistance Management Manual, CO.7, Glossary, accessed February 15, 2013, <http://www.dsca.mil/samm/ESAMM/C00/0.07.htm>.

Figure 5: Impact of Foreign Military Sales Awards on the Air Force's Competition Rate and Noncompetitive Obligations for New Awards in Fiscal Year 2012



Source: GAO analysis of FPDS-NG data.

DOD does not currently consider the impact of these or other factors that affect the competition rate when establishing competition goals for each fiscal year. For example, DOD officials explained that a major noncompetitive weapon system contract award, such as the Joint Strike Fighter or an aircraft carrier, would have a significant impact on the component's competition rate. Currently, DOD sets component competition goals by increasing the prior fiscal year's achieved competition rate, as measured by all contract obligations, by 2 percentage points. However, a component competition advocate told us that this results in goals that are not as meaningful as they could be because they do not address nor account for the specific factors a particular component is facing. For example, in its fiscal year 2011 competition report, the Air Force noted that it expected a significant impact to its fiscal year 2012 competition rate as the result of an anticipated \$10 billion FMS award. DOD officials told us that individual components have an opportunity to discuss and raise concerns about the competition goals with the Defense

Procurement and Acquisition Policy officials who set the annual competition goals. For example, DOD officials noted that the Army raised concerns about the proposed monetary competition goal for fiscal year 2013 and noted that declining budgets would impact its ability to meet the goal. However, DOD does not systematically identify, track, and consider the key factors that may impact a component's competition rate when setting the annual competition goals.

Justifications Provided Varied Levels of Insight

Generally, noncompetitive awards must be supported by written justifications and approvals that contain the facts and rationale to justify the use of the specific exception to full and open competition. While justifications for the noncompetitive awards in our sample generally met FAR requirements, they varied in providing insight into the reasons for noncompetitive awards. Some justifications in our sample provided clear descriptions of sole-source environments where only one source was available to meet the government's needs, and others included detailed descriptions of planned actions that could help improve competition in the future.¹⁷ However, other justifications provided limited insight into the reasons for the noncompetitive award or did not fully describe actions that the agency could take to increase future competition.

Justifications Generally Met FAR Requirements

DOD contracting officials prepared a written justification for 55 of the 56 noncompetitive contract awards in our sample, as required by the FAR. However, in 1 instance a justification was not prepared due to an administrative oversight. Of the 55 awards with justifications, we reviewed 59 justification documents—2 awards had multiple justifications.¹⁸

Many—but not all—justifications typically met FAR requirements. Of the 59 justifications that we reviewed, we found a number of instances where justifications did not fully conform to FAR requirements. For example, nearly a third of the justifications in our sample were not made publicly available as required by the FAR. Generally, justifications are required to

¹⁷FAR § 6.303-2(d). The FAR requires that justifications under Subpart 8.4 (Federal Supply Schedules) and 16.5 (Indefinite-Delivery Contracts) contain similar information. See FAR § 8.405-6(c)(2) and FAR § 16.505(b)(2)(ii).

¹⁸One Army award in our sample had two justifications and a DLA award had four justifications. For more information on the number of contracts and justifications included in our review, see appendix I.

be made publicly available within 14 days of contract award except for information exempt from public disclosure.¹⁹ This is a relatively recent requirement that generally applies to contract actions awarded on or after February 17, 2009, the effective date of the rule. In some instances contracting officials told us that justifications were not made publicly available due to lack of familiarity with posting requirements or an administrative oversight. The public availability of justifications increases transparency into the contracting process and provides the opportunity for the review of justifications for contracts awarded noncompetitively.

In addition, one justification that we reviewed was not approved within required time frames.²⁰ Specifically, the contract action was awarded before the justification was approved by the authorized authority within the agency. This error was discovered by contracting officials during an annual contract file review, and at that point corrective action was taken to obtain the authorized approver's signature.

Some Justifications Provided Detailed Information

In addition to generally meeting FAR requirements, some justifications provided detailed descriptions of the reasons for noncompetitive awards. Further, in some instances justifications also described actions that could help improve future competition or documented lessons learned for future acquisitions. For example, we observed the following in our sample:

- Clear descriptions of sole-source environments where only one source was available to meet the government's needs. These circumstances were generally rooted in earlier competition decisions made at the outset of the program, especially for weapon systems acquisitions. For example, we reviewed justifications for 10 awards ranging from \$22.4 million to \$921.5 million that clearly described

¹⁹FAR § 6.305(a). In the case of noncompetitive contracts awarded on the basis of unusual and compelling urgency, the justification must be posted within 30 days after contract award.

²⁰The FAR states that a contracting officer shall not commence negotiations for a sole-source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer justifies, if required in section 6.302, the use of such actions in writing; certifies the accuracy and completeness of the justification; and obtains the required approval. FAR § 6.303-1.

sole-source environments where only one source could meet agency requirements because the government did not own the proprietary technical data.

- Detailed descriptions of proactive, future steps to move the procurement, or parts of it, to a competitive scenario for the follow-on contract, including efforts to develop new suppliers or acquire technical data. For example, we reviewed a justification for two Missile Defense Agency awards for radar hardware production for \$582.5 million and \$359.9 million. The justification for these awards stated that the government intended to compete future acquisitions and described a six-step process for determining the viability of competition including time frames.
- Thorough explanations of the cost-benefit analysis conducted to determine that the time and money required for purchasing technical data rights and developing a new supplier could not be recouped through savings from competition, and in some instances would result in unacceptable delays. For example, the Air Force awarded a noncompetitive contract for \$647.8 million for missile production. The class justification clearly described the cost-benefit analysis conducted to determine that the cost to purchase data rights and establish a second source—\$750 million—did not justify the investment.

Other Justifications Provided Limited Insight

Some justifications in our sample provided limited insight into the reasons for noncompetitive awards. In addition, justifications did not always fully describe actions that the agency can take to increase competition in the future. In our sample we observed the following:

- Justifications for lower-dollar awards—which only required certification by the contracting officer—typically contained less specificity and detail than higher-dollar awards, which are required to be approved by component competition advocates or senior procurement executives.²¹ Further, some lower-dollar awards in our sample had template justifications that allowed contracting officials to check applicable boxes for boilerplate language and fill in blanks with

²¹The FAR states that for a proposed contract not exceeding \$650,000, the contracting officer's certification required by 6.303-2(b)(12) will serve as approval unless a higher approving level is established in agency procedures. FAR § 6.304(a)(1).

information. While the template provided space for additional information, contracting officials did not consistently provide such information; thus, these justifications provided limited insight into the specific reasons why the particular award could not be competed or planned efforts to remove barriers to competition in the future. We have previously identified the importance of fully documenting acquisition decisions to provide insight for any subsequent awards given the frequent staff turnover in the acquisition workforce.²²

- One justification was not clearly written and cited an exception to competition that was not fully supported by the circumstances of the procurement. Specifically, a justification for a \$312,000 sole-source Army award for information technology equipment cited the exception “authorized or required by statute.” However, the information provided in the justification did not support the authority cited and a contracting official confirmed that the exception that appears to apply was “logical follow-on to an order already issued under the contract.” Further, the justification indicates that there were other manufacturers for this requirement; however, the requiring activity requested to stay with the existing equipment manufacturer. Therefore, it is unclear what circumstances warranted a noncompetitive order.
- Other justifications documented limited information about market research findings. For example, the Army awarded a \$200,000 sole-source contract for a specific dental gold alloy. The justification stated that market research was conducted via the internet but there was no additional information regarding market research findings. Further, the justification indicated that six different alloys could potentially meet the requirement, but it was unclear in the justification why these and other commercially available dental alloys were not considered. During a follow-up discussion, Army contracting and program officials explained that only one source was determined to meet the requirement because every gold alloy has a unique composition. Therefore, using an alloy from another source would require the development of new dental fabrication processes which officials determined would not be cost effective. As a result of our review, Army officials indicated that they would include additional information

²²GAO, *Acquisition Planning: Opportunities to Build Strong Foundations for Better Services Contracts*, [GAO-11-672](#) (Washington, D.C.: Aug. 9, 2011).

in future justifications to better document reasons for why only one source could provide a product that is commercially available.

- Awards contained varying documentation to support why the award was within the scope of a class justification. Whenever a contract award is made pursuant to the authority of a class justification, the contracting officer must ensure that the action is within the scope of the class justification and shall document the contract file accordingly.²³ We previously reported that concerns about the level of review of individual noncompetitive contracts under class justifications have led to efforts to revise the review process for activity under class justifications at the Air Force.²⁴ Our sample included 12 class justifications for awards ranging from \$266,000 to \$2.6 billion. The period of actions covered by these justifications ranged from 8 months to 9 years, and 3 contracts in our sample had justifications that were prepared 5 or 6 years prior to award. We identified that contracting officials have different methods for documenting that contract actions are within the scope of the class justifications. In some instances, officials told us that although there was no explicit documentation of a scope determination, this determination was documented by multiple references to the class justification in other contract file documents, such as the pre-business clearance memorandum.

DOD's Better Buying Power initiative guidance emphasizes the importance of removing obstacles from competition. Most noncompetitive awards are required to be supported by written justifications that among other things document the actions an agency may take to overcome such barriers to competition. Some of the justifications that we reviewed provided limited insight into the reasons for the noncompetitive award or did not fully describe actions that the agency could take to bring about competitive awards in future acquisitions of the same goods or services. Without this information, DOD may be missing opportunities to learn why past acquisitions were not competitive and to employ that knowledge to help remove obstacles to competition in future acquisitions.

²³FAR § 6.303-1(d). Class justifications can cover multiple awards made over many years and sometimes combine a complex mix of products and services, which streamlines the acquisition process.

²⁴GAO, *Defense Contracting: Improved Policies and Tools Could Help Increase Competition on DOD's National Security Exception Procurements*, [GAO-12-263](#) (Washington, D.C.: January 13, 2012).

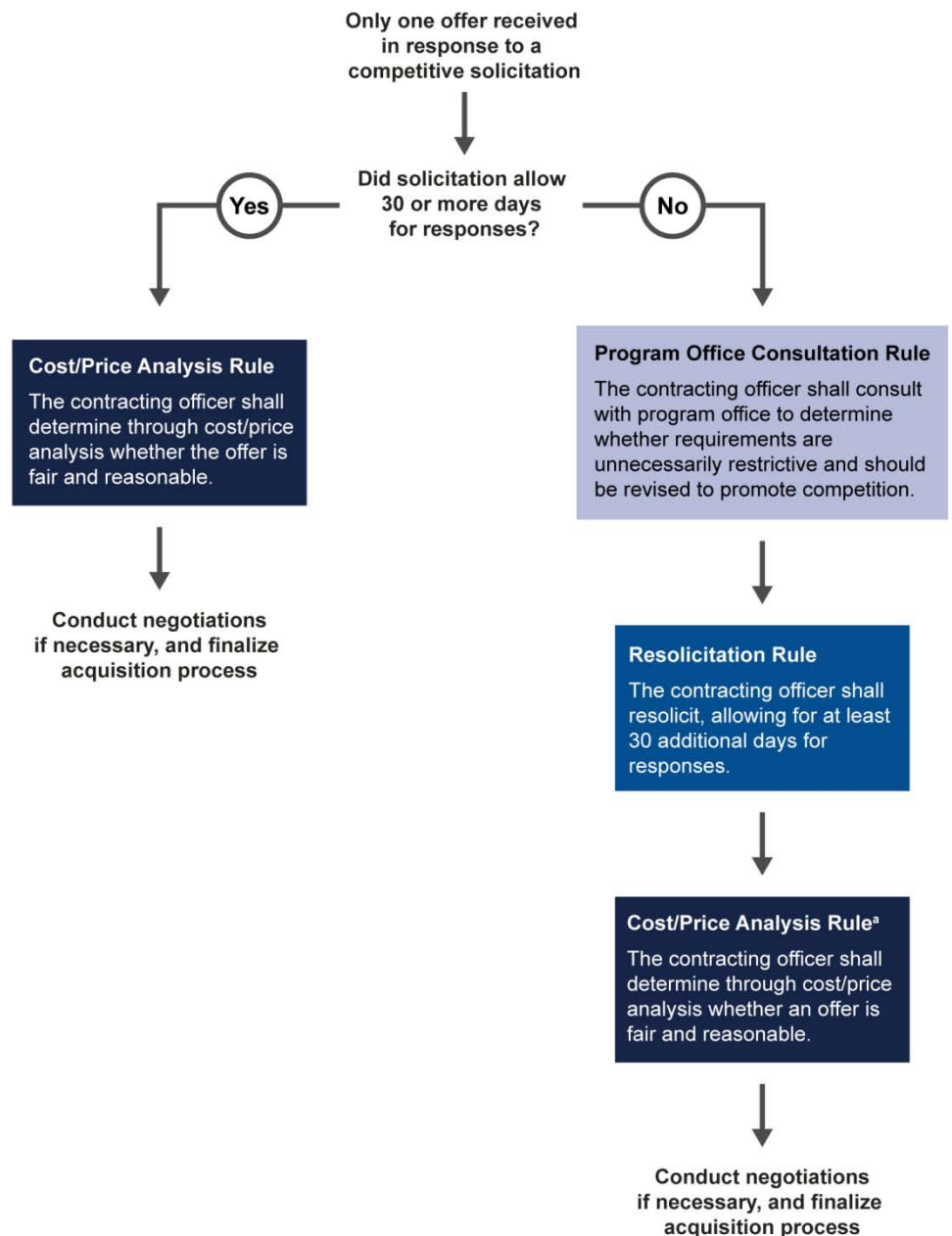
Impact of DOD'S One-Offer Requirement Is Unknown

DOD's one-offer requirement is intended to reduce the number of contracts awarded using competitive procedures but for which only one offer is received. Although the one-offer requirement has the potential to promote multiple offers, some awards are not subject to all of the rules established by the requirement. In addition, DOD's ability to accurately measure the impact and effectiveness of the requirement is limited by unreliable data.

DOD Introduced New Rules, but Some Awards Are Not Subject to All of Them

DOD's new one-offer requirement seeks to reduce the number of, and amount obligated on, one-offer awards by establishing three rules. The new rules attempt to ensure adequate solicitation time (i.e., resolicitation rule), ensure that contract requirements are not unnecessarily restrictive (i.e., program office consultation rule), and verify that offers received are fair and reasonable (i.e., cost/price analysis rule). Based on our review of one-offer awards, we determined that the awards generally complied with the new requirement; however, some awards did not comply with the resolicitation rule. We also found that the one-offer requirement will likely have a limited impact on unnecessarily restrictive solicitation requirements because many awards are not subject to the program office consultation rule. Figure 6 illustrates the three rules included in DOD's one-offer requirement.

Figure 6: DOD's One-Offer Requirement Includes Three Rules



Source: GAO analysis of DFARS Subpart 215.371.

^aThis cost/price analysis rule only applies to solicitations that result in one offer. Thus, if multiple offers are received after completing the resolicitation rule, then the contracting officer should conduct negotiations, if necessary, and finalize the acquisition process.

Our analysis of 25 one-offer awards from April 1, 2011, to March 31, 2012, shows that all 25 contract awards were conducted in accordance with the new cost/price analysis rule; however, 5 contracts were awarded despite failing to comply with the resolicitation rule. Specifically, in the case of two contract awards, contracting officials simply did not resolicit after receiving just one offer during the initial solicitation period; in the case of three contract awards, agency officials resolicited for a period shorter than the required 30 days. Our analysis did not consider whether the awards complied with the program office consultation rule because the rule was not implemented until June 2012 and did not apply to the awards in our sample. In addition to our review, the DOD Inspector General performed a similar compliance review on 78 one-offer awards from fiscal year 2011. The review found that 15 awards did not comply with the cost/price analysis rule and 23 did not comply with the resolicitation rule.²⁵

The new one-offer requirement may result in lower prices and more accurate cost information when only one offer is received. For example, during our review of one-offer awards, we identified a proposal that initially requested a 10 percent profit rate. Cost and price analyses determined that the rate was unreasonable, and subsequent negotiations resulted in a 1.4 percentage point reduction in the profit rate. In addition, as a result of the analyses, the government identified a discrepancy in the offeror's cost data that further reduced the price.

Officials at multiple DOD components told us that, since the implementation of the new requirement, more contracting officers allow at least 30 days for responses in order to avoid the resolicitation and program office consultation rules. Specifically, as illustrated in figure 6, if a solicitation allows 30 or more days for responses, the contracting officer is required to follow only one of the three rules established in the new requirement. Senior DOD officials said that allowing for 30 days is a positive outcome of the requirement. In the past, some solicitations allowed less than a week for responses, potentially discouraging contractors from submitting offers. According to the officials, the new requirement incentivizes contracting officers to keep solicitations open for at least 30 days, while still allowing the flexibility for fewer than 30 days

²⁵Inspector General, Department of Defense, *Improvement Needed With DOD Single-Bid Program to Increase Effective Competition for Contracts* (Alexandria, Va.: Oct. 4, 2010).

when multiple offers are likely—for example, routine procurements that consistently elicit multiple offers.

Although DOD's one-offer requirement has potential to result in contracts at lower prices and to lengthen the period for responding to solicitations, the impact on overly restrictive requirements is limited because many awards are not subject to the program office consultation rule. We previously reported that the government's requirements can influence the number of offers received if the requirements are written too restrictively.²⁶ DOD established the new program office consultation rule which could potentially ensure that solicitation requirements language does not discourage multiple offers; however, as illustrated in figure 6, this requirement applies only to solicitations that require responses in fewer than 30 days. Due to unreliable data within FPDS-NG, we cannot quantify the number of one-offer awards in fiscal year 2012 that were not subject to the program consultation rule.²⁷ However, the following bullets highlight some of the reasons why a solicitation would not be subject to the program consultation rule, in effect reducing the impact of DOD's effort to increase the number of offers received by revising overly restrictive requirements:

- The FAR generally requires that solicitations allow at least 30 days for responses. Although there are many exceptions—for example, commercially available items, and orders under IDIQ contracts and Federal Supply Schedules—awards that comply with the FAR requirement to advertise for 30 days or more will not be subject to the program office consultation rule.²⁸
- DOD officials in multiple components told us that prior to the one-offer requirement, their contracting branch already had a policy or long-

²⁶GAO-10-833. FAR § 11.105 states “agency requirements shall not be written so as to require a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.”

²⁷As described later in the report, we identified unreliable one-offer award data within FPDS-NG and determined that the data were not sufficient for certain analysis.

²⁸FAR § 5.203(c).

standing practice to advertise for 30 or more days. Thus, even when a shorter period is permitted, these branches may advertise for 30 days in any case, thereby avoiding the program office consultation rule.

- Since the implementation of the one-offer requirement, DOD officials told us that more contracting officers allow 30 or more days to respond to solicitations in order to avoid the program office consultation rule.

Unreliable Data Make It Difficult to Measure New Requirement's Impact

Unreliable data within FPDS-NG hinder DOD's ability to accurately measure the impact of its one-offer requirement. According to FPDS-NG, DOD awarded 115,242 one-offer contracts and task orders in fiscal year 2012. The agency obligated \$14.7 billion on new one-offer awards in fiscal year 2012, representing 13.8 percent of all new contract obligations during the period. Our analysis of 35 one-offer awards determined that 10 of these awards were incorrectly coded in FPDS-NG by contracting officers. As a result, we determined that DOD's data were unreliable for certain analyses. Furthermore, we believe DOD cannot use the data to accurately calculate the amount obligated on one-offer awards during fiscal year 2012. Thus, the agency is not in a position to accurately measure the quantitative impact of the one-offer requirement since it was implemented.

Based on our analysis of 35 one-offer awards, 10 awards totaling \$271.8 million were incorrectly coded in FPDS-NG. Six of the 10 awards were incorrectly coded as subject to competition in FPDS-NG, when they were actually noncompetitive awards. The remaining 4 awards received multiple offers, but the contracting officer incorrectly coded them as receiving one offer. Since our review focused on large dollar awards, which are typically subject to a more rigorous review process within DOD, the results of our assessment suggest that more errors may exist in unselected awards. In 2010 we reported that similar coding errors existed in FPDS-NG one-offer award data.²⁹ In addition, the DOD Inspector General determined that 27 percent of the 107 one-offer awards it reviewed from fiscal year 2011 were miscoded in FPDS-NG.

DOD relies on FPDS-NG data to make important decisions regarding its new requirement on one-offer awards. For example, DOD directed the

²⁹ [GAO-10-833](#).

services to increase their effective competition rates—the proportion of competitive obligations based on multiple offers—by 10 percent per year as part of the Better Buying Power initiative. The one-offer requirement is intended to be a means to achieve this goal. However, DOD’s ability to calculate the quantitative impact of the requirement and improvements toward effective competition goals is limited by unreliable FPDS-NG data. Without reliable data, DOD cannot accurately measure the impact of the new requirement.

Conclusions

The competition indicators that DOD currently employs shed insufficient light on the department’s efforts to maximize full and open competition for the goods and services that it acquires. Although DOD’s overall and individual component competition rates provide broad indicators of competitive contracts and task orders, they provide limited insight into the underlying reasons for competition or its decline since fiscal year 2008. For example, while foreign military sales accounted for about a fifth of new, noncompetitive obligations in fiscal year 2012, DOD’s current calculations do not consider their impact on its competition rates. We found the Air Force competition rate for new awards increased by 15 percentage points in fiscal year 2012, when foreign military sales were removed from the calculations. DOD does not systematically identify, track, and consider the specific factors that may be affecting competition when setting its annual competition goals. Lacking a set of measures that provide meaningful insight into the specific factors that drive competition rates, it is difficult for DOD to accurately gauge the relative effectiveness of its multifaceted efforts to enhance competition. Without this information it is also more difficult for DOD to chart a path to improved competition that offers a greater likelihood of success and to make the necessary course corrections along the way.

While the justifications and approvals for noncompetitive awards that we reviewed generally met FAR requirements, they varied in the level of insight that they provided into the reasons for noncompetitive awards. In addition, some justifications did little to describe planned actions to bring about competitive awards in future acquisitions of the same goods or services. Others provided little information about the market research findings that helped justify the decision to pursue a noncompetitive award. Without this information, DOD may be missing opportunities to gain a richer understanding of why past acquisitions were not competitive and to apply those lessons to effectively facilitate competition for future acquisitions.

Lastly, due to unreliable data in FPDS-NG, DOD's ability to measure the effectiveness of its new one-offer requirement is limited. Without knowing its impact, DOD risks continued investment in a requirement that may not address the most significant factors leading to one-offer awards.

Recommendations for Executive Action

To better inform DOD's efforts to enhance competition, we recommend that the Secretary of Defense take the following three actions:

- identify and track the specific factors that affect the competition rate, such as foreign military sales, and consider this information when setting annual competition goals for each DOD component;
- develop guidance that could enable DOD components to apply lessons learned from past procurements to increase competition for the same good and services in the future; and
- develop an action plan for DOD components to collect reliable data on competitive procurements for which only one offer is received, so that the department can determine the effect of its new requirement on one-offer contracts.

Agency Comments

We provided a draft of this report to DOD for review and comment. In written comments, DOD concurred with our recommendations. DOD's comments are reprinted in appendix II. DOD described actions it plans to take to address the recommendations. In particular, DOD indicated that it will consider specific factors affecting competition in setting annual competition goals. In addition, the department noted that it will work with components to develop guidance and tools to analyze procurement data to apply lessons learned to increase competition for the same good and services in the future. To address our third recommendation, the department indicated that it will take two actions. First, it will review existing training and procedures for reporting of contract actions in FPDS-NG. Second, it will update guidance on the reporting of competitive procurements in which only one offer is received to increase the reliability of the data and better understand the impact of the new requirement on one-offer contracts.

We are sending copies of this report to the Secretary of Defense and interested congressional committees. This report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841 or by e-mail at courtsm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Michael J. Courts". The signature is written in a cursive, flowing style.

Michael J. Courts
Director, Acquisition and Sourcing Management

Appendix I: Objectives, Scope, and Methodology

The objectives for this review were to examine (1) trends in the Department of Defense's (DOD) use of noncompetitive awards; (2) factors influencing DOD's competition rate; (3) the extent to which justifications for exceptions to competitive procedures provided insight into the reasons for noncompetitive awards; and (4) the impact of DOD's new requirement on contracts awarded using competitive procedures but for which only one offer was received.

To address these objectives, we used data in the Federal Procurement Data System-Next Generation (FPDS-NG), which is the government's procurement database. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) comparing reported data to information from the contract files we sampled. We determined that the data were sufficiently reliable to examine the trends in DOD's use of noncompetitive awards and the factors influencing DOD's competition rate, including the number of awards, dollar amount obligated, and the percentage of contracts awarded competitively overall and by component. However, as described in this report and later in this appendix, we found the data on one-offer awards not sufficiently reliable.

To further examine the trends in DOD's use of noncompetitive awards, we used data from FPDS-NG to identify DOD obligations under competitive and noncompetitive contracts from fiscal year 2008 through 2012. Specifically, we identified contracts and task orders funded by DOD. For competitive contract actions, we included contracts and orders coded as "full and open competition," "full and open after exclusion of sources," and "competed under simplified acquisition procedures" as well as orders coded as "subject to fair opportunity" and as "fair opportunity given." For noncompetitive contract actions, we included contracts and orders coded as "not competed," "not available for competition," "not competed under simplified acquisition procedures," and "follow-on to competed action" as well as orders coded as "subject to fair opportunity" and under an exception to fair opportunity, including "urgency," "only one source," "minimum guarantee," "follow-on action following competitive initial action," and "other statutory authority." We calculated competition rates as the percentage of obligations on competitive contracts and orders over all obligations on contracts and orders annually. We examined the competition rate at the DOD level and at each component from fiscal year 2008 through 2012. For fiscal year 2012, we analyzed the competition rate for products, non-research and development (R&D) services, and R&D services. For new noncompetitive awards in fiscal

year 2012, we determined the dollars obligated by award type. We also assessed the exceptions cited in FPDS-NG for new noncompetitive DOD contracts and task orders in fiscal year 2012.

To examine the factors influencing DOD's competition rate, we analyzed FPDS-NG data to determine the impact of foreign military sale awards on DOD's competition rate. For foreign military sale (FMS) awards, we included contracts and orders coded as "foreign funds FMS" in FPDS-NG. We defined the competition rate as the ratio of new obligations at the time of award on competitive contracts and task orders over all new obligations at the time of award on all new contracts and task orders in a fiscal year. We also examined DOD's Better Buying Power initiative, DOD's fiscal year 2011 competition report, which was the most recent report available at the time of our review, and prior GAO reports. To gain insight into how DOD sets competition goals, we reviewed DOD policy and spoke with DOD officials.

To examine the extent to which justifications for exceptions to competitive procedures provided insight into the reason for noncompetitive awards, we reviewed a nongeneralizable sample of 56 contracts and orders awarded noncompetitively by DOD from April 1, 2011, to March 31, 2012, as coded in FPDS-NG. At the time our review began, data was not available for the last two quarters of fiscal year 2012. In order to review justifications for contracts and task orders awarded in all four fiscal year quarters, our sample included awards from fiscal years 2011 and 2012. We excluded from our sample:

- contracts and orders under the simplified acquisition threshold of \$150,000;
- noncompetitive orders that were not submitted under multiple award indefinite-delivery/indefinite-quantity (IDIQ) contracts, because these orders would not require a justification since the decision not to compete was made and presumably justified when the base IDIQ contract was awarded to one contractor;

- noncompetitive contracts and orders justified under the 8(a) program because we recently reported on challenges implementing new requirements for these types of justifications¹;
- noncompetitive contracts that do not require a justification, including awards not competed under simplified acquisition procedures, justified under the “international agreement” exception or certain contracts awarded under the “authorized or required by statute” exception.

We initially selected 75 contracts and orders, including: the five largest contracts from the Air Force, Army, Defense Logistics Agency (DLA), Navy, and other defense agencies; the two largest orders from each of these components; and eight randomly selected contracts and orders from each component. In addition, we added five contracts to our sample which we had initially selected as part of our review of competitive one-offer awards, but were miscoded in FPDS-NG and actually awarded noncompetitively. Of these 80 awards, we removed 24 from our review because either they were miscoded and awarded competitively, a justification was not required, or the justification was classified for national security reasons. For the 56 remaining awards, we reviewed 59 justifications—in one case a justification was required but not prepared; and in two cases awards had multiple justifications.

We reviewed these 59 justifications to determine whether they met criteria in the FAR for content, timing, approval, and public availability. In particular, we assessed whether the justifications contained sufficient information to justify the use of the specific authority cited as required by the FAR. To gain additional insight into the rationale for noncompetitive awards, we also reviewed other contract file documentation such as the acquisition plan, statement of work, price negotiation memorandums, records of market research, and other key documents. We conducted e-mail and telephone follow-up with contracting and program officials involved in these awards to obtain additional information as needed.

To examine the impact of DOD’s new requirement on competitive procurements that received one offer, we examined DOD policies, regulations, and other related documents. To determine whether recent awards complied with the requirement, we selected a nongeneralizable

¹GAO, *Federal Contracting: Slow Start to Implementation of Justification for 8(a) Sole-Source Contracts*, [GAO-13-118](#) (Washington, D.C.: Dec 12, 2012).

sample of 25 contracts and task orders that received one offer in response to a solicitation issued using competitive procedures, as coded in FPDS-NG. In order to review awards from each fiscal quarter, we selected awards issued between April 1, 2011, and March 31, 2012. We planned to review a sample of the 25 awards with the highest obligations, across DOD—5 each from the Army, Navy, Air Force, DLA, and other defense agencies. However, as we selected awards, we identified 10 that were out of scope due to coding errors in FPDS-NG. Using the original selection criteria, we continued to select awards until we reached a sample size of 25 awards. As previously noted, we found the data on one-offer awards not reliable for certain analyses.

For the awards in our sample, we obtained and reviewed award documentation, including the solicitation and evidence of a cost/price analysis to determine whether the awards complied with DOD's new requirement. Our analysis did not consider whether the awards complied with the new rule to consult about whether requirements may be unnecessarily restrictive because the rule was not in effect at the time of our review and therefore did not apply to the awards in our sample. In addition, we spoke with officials at the Army, Air Force, Navy, and DLA about the implementation and impact of the new requirement.

We conducted this performance audit from May 2012 to March 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAR 22 2013

Mr. Michael J. Courts
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548.

Dear Mr. Courts:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-13-325, "DEFENSE CONTRACTING: Actions Needed to Increase Competition," dated March 5, 2013 (GAO Code 121071). Detailed comments on the report recommendations are enclosed.

Sincerely,

A handwritten signature in blue ink, which appears to read "Richard Gimman", is positioned above the printed name and title.

Richard Gimman
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated

**GAO Draft Report Dated MARCH 5, 2013
GAO-13-325 (GAO CODE 121071)**

“Defense Contracting: Actions Needed to Increase Competition,”

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

To better inform DOD’s efforts to enhance competition, we recommend that the Secretary of Defense take the following three actions:

RECOMMENDATION 1: Identify and track the specific factors that affect the competition rate, such as foreign military sales, and consider this information when setting annual competition goals for each DOD component.

DoD RESPONSE: Concur. The Department will consider specific factors affecting competition in setting annual component competition goals.

RECOMMENDATION 2: Develop guidance that could enable DOD components to apply lessons learned from past procurements to increase competition for the same good and services in the future.

DoD RESPONSE: Concur. The Department will work with components to develop guidance and tools that analyze past procurements and Federal Procurement Data System (FPDS), Product Service Code data to help identify opportunities to increase competition for goods and services. This information will also be discussed at future Competition Advocates meetings.

RECOMMENDATION 3: Develop an action plan for DOD components to collect reliable data on competitive procurements for which only one offer is received, so that the department can determine the effect of its new requirements on one-offer contracts.

DoD RESPONSE: Concur. The Department will review existing training and procedures for reporting of contract actions in FPDS, and update the guidance to incorporate instructions on reporting competitive procurements in which only one-offer is received to increase the reliability of the data and better understand the impact of the new only one-offer requirements. This information will also be discussed at future Competition Advocates meetings.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Michael J. Courts, (202) 512-4841 or courtsm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Penny Berrier, Assistant Director; Richard Burkard; Alissa Czyz; Alexandra Dew Silva; Jeffrey Fiore; Danielle Greene; Julia Kennon; Jean McSween; Kenneth Patton; Roxanna Sun; Kristin Van Wychen; and Andrea Yohe also made key contributions to this report.

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