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May 1, 2015

The Honorable John McCain
Chairman
The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Mac Thornberry
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

Defense Contracting: DOD's Use of Competitive Procedures

Competition is the cornerstone of a sound acquisition process and a critical tool for achieving the best return on investment for taxpayers. Federal statutes and regulations generally require that contracts be awarded competitively, but permit agencies to award contracts noncompetitively in certain circumstances. The conference report for the National Defense Authorization Act for Fiscal Year 2012 directed us to report annually for 3 years on the Department of Defense's (DOD) noncompetitive awards and competitive awards based on receipt of one offer.¹ We have issued two prior reports on DOD competition, in which we made recommendations to help DOD enhance competition, learn from past procurements, collect reliable data on competitive procurements for which only one offer is received, and better understand why potential vendors did not submit offers.² For this report, we examined (1) the trends in DOD's use of competitive contracts for fiscal years 2010 through 2014; (2) the basis for exceptions to competitive procedures for fiscal years 2010 through 2014; and (3) the number and dollar amounts of awards for which DOD used competitive procedures but received only one offer during fiscal years 2013 and 2014. We are not making recommendations in this report.

In summary, we found that in fiscal year 2014, DOD obligated \$284.4 billion through contracts and task orders, of which 58.2 percent was competed. DOD competition rates ranged from 60.8 percent to 56.5 percent during the period from fiscal year 2010 through fiscal year 2014. Services were competed at a substantially higher rate than products during the 5-year period. In

¹ H.R. Rep. No. 112-329, at 676 (2011) (Conf. Rep.).

² In March 2013, we issued our first annual report, GAO, *Defense Contracting: Actions Needed to Increase Competition*, [GAO-13-325](#) (Washington, D.C.: Mar. 28, 2013). In May 2014, we issued the second annual report, GAO, *Defense Contracting: Early Attention in the Acquisition Process Needed to Enhance Competition*, [GAO-14-395](#) (Washington, D.C.: May 5, 2014).

Report Documentation Page

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fiscal year 2014, the competition rate for services was 71 percent compared to 43 percent for products. Throughout the 5-year period, the primary basis for exceptions to competition was “only one responsible source.” In fiscal year 2014, 69 percent of exceptions to competitive procedures were characterized this way. DOD’s competitive one-offer awards represented roughly 13 percent of all competed obligations for fiscal years 2013 and 2014. In fiscal year 2014, there were \$20.9 billion in obligations for these one-offer awards. The enclosure contains fact sheets that provide greater detail on trends in the use of competitive contracts, exceptions to competitive procedures, and the use of one-offer awards.

Background

While federal statutes 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 requirement or when a sole-source award is made under specified small business programs. Since 2009, the Office of Management and Budget and DOD have implemented initiatives to increase competition. Acknowledging the need to make more efficient use of resources and the benefits of competition in acquiring goods and services, DOD’s 2010 “Better Buying Power” initiative placed an emphasis on maximizing opportunities for competition in the acquisition of products and services.³ Generally, noncompetitive contracts must be supported by written justifications that address the specific exception to full and open competition that applies to the procurement. Also, the government obligates billions of dollars annually under contracts and task and delivery orders that are awarded using competitive procedures but for which the government receives only one offer—situations the Office of Management and Budget has cited as high risk. DOD has termed this “ineffective competition” and has implemented regulations requiring that additional steps be taken before a contract may be awarded when only one offer is received.⁴

Scope and Methodology

To address the review objectives, we used data in the Federal Procurement Data System-Next Generation (FPDS-NG), which is the government’s procurement database, as pulled on March 6, 2015. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, and (2) reviewing existing information about the FPDS-NG system and the data that it produces. We determined that the data were sufficiently reliable to examine the trends in DOD’s use of noncompetitive awards, the basis for exceptions to competitive procedures, and data on DOD’s use of competitive one-offer awards, including the number of awards, dollar amount obligated, and the percentage of contracts awarded competitively overall and by component. We also spoke with DOD officials and reviewed DOD policy documents and competition reports to better understand current efforts to improve competition in DOD

³ Better Buying Power is an initiative to strengthen DOD’s purchasing practices, improve industry productivity, and provide an affordable military capability to the warfighter. According to DOD, it encompasses a set of fundamental acquisition principles to achieve greater efficiencies through affordability, cost control, elimination of unproductive processes and bureaucracy, and promotion of competition.

⁴ Defense Federal Acquisition Regulation Supplement, § 215.371.

contracting, including the status of implementing GAO recommendations from prior mandated reviews.

To identify trends in DOD's use of competitive awards, we used FPDS-NG to identify DOD obligations under competitive and noncompetitive contracts in fiscal years 2010 through 2014, the five most recent years for which complete data were available. 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. We also included noncompetitive orders issued under multiple award indefinite delivery/indefinite quantity (IDIQ) contracts or under the General Service Administration's schedules program.⁵ 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 focused on the Air Force, Army, Navy, and the defense agencies.

To identify the basis for exceptions to competitive procedures, we used FPDS-NG to identify DOD's reported exceptions to competitive procedures in fiscal years 2010 through 2014, the five most recent years for which complete data were available, and grouped them into four categories:

- "Only one responsible source" includes contracts and orders placed on IDIQ 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,
- "Authorized or required by statute" is used when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or there is a need for a brand name commercial item for authorized resale. FAR § 6.302-5,
- "International agreement" is used when competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or on the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services. FAR § 6.302-4, and
- "Other" includes contracts and orders placed on IDIQ 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 Part 13.

⁵ IDIQ 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 (supplies) during the contract period. FAR §§ 16.501-1;16.504. Multiple award IDIQ contracts are awarded to multiple contractors through one solicitation. When using multiple award IDIQ contracts, generally the contracting officer must provide each contractor a fair opportunity to be considered for each order, 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.

To assess DOD's use of competitive one-offer awards, we used FPDS-NG to identify DOD obligations under one-offer awards in fiscal years 2013 and 2014. We previously had found that the data for prior years were unreliable.

We conducted this performance audit from March 2015 to May 2015 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.

Agency Comments

We are not making recommendations in this report. We requested comments from DOD on a draft of this report and department officials informed us that they had no comments.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

Should you or your staff have any questions on the matters covered in this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Penny Berrier, Assistant Director; Victoria Klepacz; Scott Purdy; Julia Kennon; Roxanna Sun; Danielle Greene; John Krump; and Kenneth Patton.



William T. Woods, Director
Acquisition and Sourcing Management

Enclosure



Analysis of DOD's Use of Competitive Procedures, Exceptions to Competitive Procedures, and One-Offer Awards

DOD's Use of Competitive Contracts

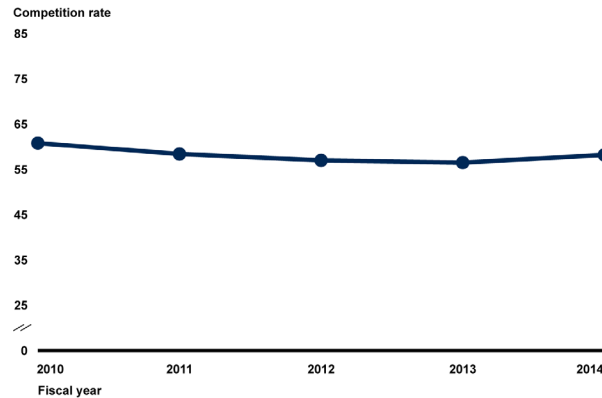
Trends in Competitive Contracts

Between fiscal years (FY) 2010 and 2014, DOD's competition rate—based on all contract obligations—ranged from 60.8 percent to 56.5 percent. In FY 2014, DOD's competition rate was 58 percent.

The competition rate for all contract obligations varied by DOD component. For the data we reviewed—covering Air Force, Army, Navy, and the defense agencies—in FY 2014, the Air Force continued to have the lowest competition rate, at 43.6 percent. The Air Force FY 2014 Competition Report notes that it had a number of mature and aging systems, which rely on noncompetitive follow-on buys from the original manufacturer, and had a reduced number of new programs. Both of these factors limited competition. In 2013 and 2014 we reported that DOD's long-term contractual relationships with weapon system contractors limit opportunities for competition. Also, another factor affecting competition rates was noncompetitive purchases that DOD made on behalf of foreign governments, with the Air Force being affected the most.

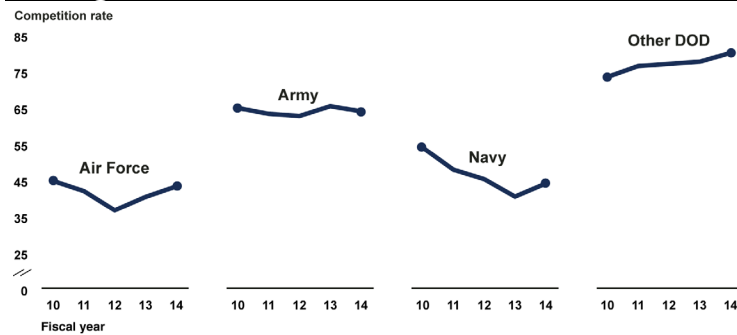
Slightly more than half of all DOD's obligations in FY 2014 were to purchase services, (\$156.0 billion, or 54.8 percent), which were competed at a substantially higher rate than products. Specifically, the competition rate for services was 71 percent compared to 43 percent for products. We previously reported that one reason products are competed less frequently than services is the large obligations for follow-on procurements of major weapons systems.

DOD Competition Rates for Fiscal Years 2010 through 2014



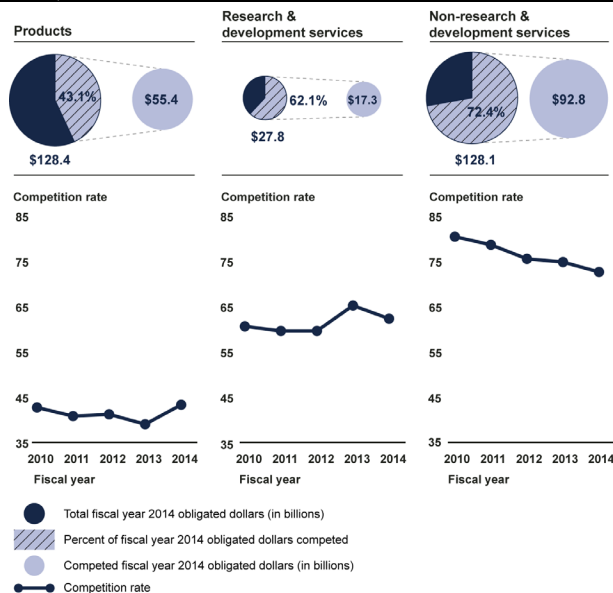
Source: GAO analysis of Federal Procurement Data System – Next Generation data. | GAO-15-484R

DOD Component Competition Rates for Fiscal Years 2010 through 2014



Source: GAO analysis of Federal Procurement Data System – Next Generation data. | GAO-15-484R

DOD Fiscal Year 2014 Competitive Obligation Dollars and Competition Rates for Fiscal Years 2010 through 2014 for Products, R&D, and Non-R&D Services



Source: GAO analysis of Federal Procurement Data System – Next Generation data. | GAO-15-484R



Exceptions to Competitive Procedures

Exceptions to Competitive Procedures

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

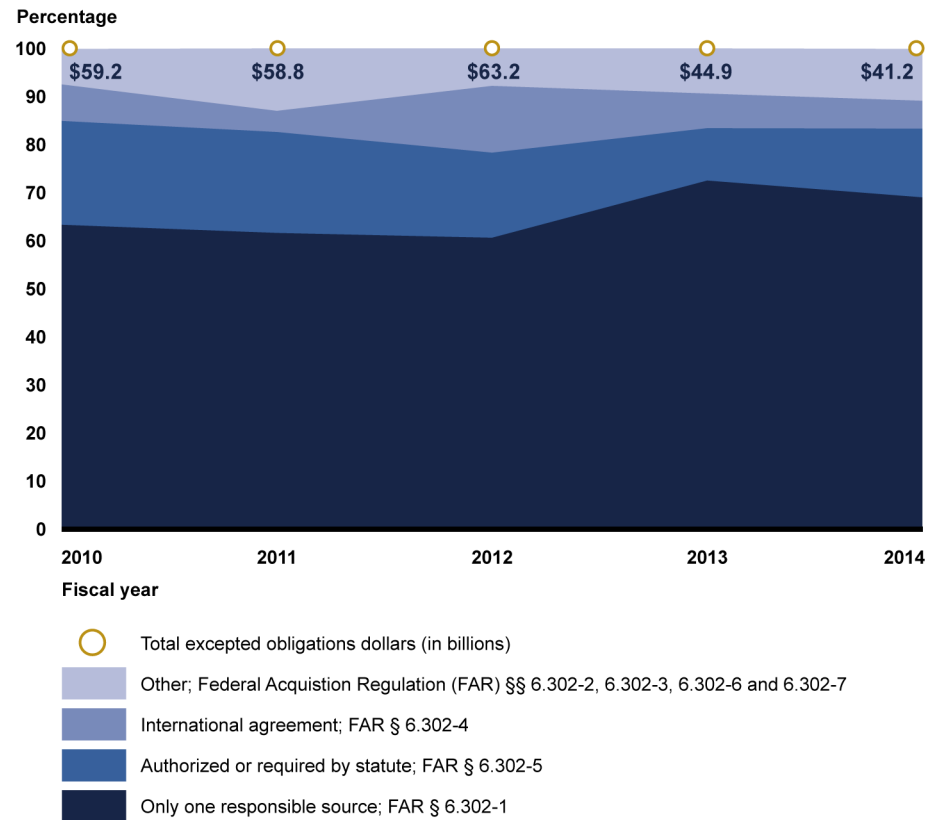
Generally, noncompetitive contracts must be supported by a written justification and approval document that addresses the specific exception to full and open competition that applies to the procurement. Each such document must contain sufficient facts and rationale to justify the use of the specific exception to competition.

The allowable exceptions to full and open competition are identified in the Federal Acquisition Regulation (FAR). Exceptions include circumstances when only one source is 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.

"Only One Responsible Source" is the Most Cited Reason for Exception to Competitive Procedures

The most frequently cited exception to competitive procedures reported from fiscal years 2010 through 2014 was "only one responsible source." In fiscal year 2014, 69 percent of noncompetitive contracts and task orders were coded under this category.

Reasons Cited for Use of Noncompetitive Contracts for Fiscal Years 2010 through 2014



Source: GAO analysis of Federal Procurement Data System – Next Generation data | GAO-15-484R

The individual components used the "only one responsible source" exception to varying degrees in fiscal year 2014—58 percent for Air Force, 58 percent for Army, 83 percent for Navy, and 71 percent for the defense agencies. These levels represent a slight increase in use of this exception by Navy and a decrease in use of it by Air Force and Army, relative to fiscal year 2013.



DOD's Use of Competitive One-Offer Awards

Use of One-Offer Awards

The government obligates billions of dollars annually under contracts and task and delivery orders that are awarded using competitive procedures but for which the government receives only one offer—situations the Office of Management and Budget has cited as high risk. In DOD's September 2010 Better Buying Power initiative memorandum, competitive procurements for which only one offer to a solicitation was received are termed "ineffective competition."

In November 2010, DOD introduced a policy containing new requirements concerning one-offer awards, and codified it with changes in the Defense Federal Acquisition Regulation Supplement in June 2012. To address the risk associated with one-offer awards, the DOD requirement established rules that were intended to help ensure adequate solicitation time, that contract requirements are not unnecessarily restrictive, and that offers received are fair and reasonable. In 2013 we reported that the one-offer policy will likely have a limited impact because some awards are not subject to all of the rules established by the policy. Also we have previously reported that actions can be taken much earlier in the acquisition planning process to encourage multiple offers and ensure vendors have adequate time to review the solicitation and prepare a bid. DOD officials have had limited insight into the reasons only one offer was received.

One-Offer Awards Account for a Varying Percentage of Awards

In fiscal year 2014, DOD obligated \$20.9 billion on contracts and task and delivery orders awarded using competitive procedures but for which one offer was received, or 13 percent of all competed fiscal year 2014 obligations. This was the same percentage as in fiscal year 2013. We cannot compare these data to prior years to determine trends in competitive one-offer awards because we found earlier data to be too unreliable.

In fiscal year 2014, the DOD military services used competitive one-offer awards to varying, but limited, degrees. The Navy contracts and task and delivery awards resulted in one-offer awards for the largest percent of its competed awards, for \$6.6 billion in obligations, or 18 percent of its total competed obligations. In fiscal year 2014, the Army obligated \$6.4 billion to contracts and task and delivery awards that resulted in one-offer awards, or 13 percent of its total competed obligations. The Air Force obligated \$3.3 billion that resulted in one-offer awards, or 13 percent of its total competed obligations. The defense agencies had the smallest percent of their competed awards resulting in one-offer awards, \$4.6 billion in obligations, or 8 percent of their total competed obligations.

In the past, we have made multiple recommendations to inform DOD efforts on competitive one-offer awards. In March 2013, we reported that many awards were not subject to the policy's requirement to review whether the contract requirements were unnecessarily restrictive by simply allowing 30 or more days for a response to a solicitation. As a result, we recommended that DOD develop an action plan for the components to collect reliable data on competitive one-offer awards, in order to better understand the effect of recent policy requirements. In May 2014, we reported that the one-offer policy requirements occur too late in the acquisition process to impact competition and we recommended that DOD establish guidance for when contracting officers should assess and document the reasons only one offer was received on competitive awards. In August 2014, DOD issued a memorandum titled *Actions to Improve Department of Defense Competition* directing contracting officers to seek feedback from companies to understand why they did not submit an offer when they originally expressed interest during the market research phase.¹ DOD plans to use this feedback to consider how it might overcome barriers to competition for future requirements.

¹DOD, Office of the Under Secretary for Acquisition, Technology, and Logistics, *Actions to Improve Department of Defense Competition* (Washington, D.C.: Aug. 21, 2014).

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