

**GAO**

Report to the Committee on Oversight  
and Government Reform, House of  
Representatives

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July 2010

# FEDERAL CONTRACTING

## Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received



# Report Documentation Page

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Highlights of [GAO-10-833](#), a report to the Committee on Oversight and Government Reform, House of Representatives

## Why GAO Did This Study

Competition is a critical tool for achieving the best return on the government's investment. While federal agencies are generally required to award contracts on the basis of full and open competition, they are permitted to award noncompetitive contracts in certain situations. Agencies are also required to establish competition advocates to promote competition. GAO assessed (1) trends in noncompetitive contracts and those receiving only one offer when competed; (2) exceptions to and factors affecting competition; (3) whether contracting approaches reflected sound procurement practices; and (4) how agencies are instituting the competition advocate role. GAO reviewed federal procurement data and 107 randomly selected contracts at the departments of Defense, Interior, and Homeland Security (which had among the highest noncompetitive obligations in fiscal year 2008) and interviewed contracting and program officials, competition advocates, and contractors.

## What GAO Recommends

GAO recommends that OFPP take actions regarding assessment of the reasons only one offer is received and issue guidance on competition advocate roles, including their direct involvement with program offices to seek opportunities for competition. OFPP agreed with the recommendations, and DOD generally agreed with our findings and recommendations. Other agencies provided technical comments.

View [GAO-10-833](#) or [key components](#). For more information, contact John P. Hutton at (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov).

## FEDERAL CONTRACTING

### Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received

#### What GAO Found

From fiscal years 2005 to 2009, reported obligations for noncompetitive contracts decreased from about 36 to 31 percent of total obligations, while obligations under contracts competed with only one offer received were steady, at about 13 percent of the total in each year. In comparing the data in the federal procurement data system to the information in contract files, we found that about 18 percent of the contracts sampled were coded incorrectly—as either not competed when they had been, or as competed with one offer received when they had not been competed at all.

Agencies used a variety of exceptions to competition for the contracts and orders in our sample, with the two most common being “only one responsible source” and sole-source awards under the Small Business Administration's 8(a) business development program. For services supporting DOD weapons programs, the government's lack of access to proprietary technical data and decades-long reliance on specific contractors for expertise limit—or even preclude the possibility of—competition. In other cases, program offices may press for contracts to be awarded to the incumbent contractor without competition, largely due to their relationship and the contractor's understanding of program requirements. For competitive procurements where only one offer is received, factors include a strong incumbent, sometimes coupled with overly restrictive government requirements, or vendors forming large teams to submit one offer for broader government requirements, whereas previously several vendors may have competed.

Contracting approaches for nine contracts reviewed did not reflect sound procurement practices and in some instances sound management practices, in some cases not leveraging the effectiveness of the market place. These approaches included ambiguously written justifications for noncompetitive contracts, very limited documentation of the reasonableness of contractors' proposed prices, instances where the contract's cost grew significantly or where labor categories were improperly authorized, and undefinitized contract actions that did not meet definitization requirements.

Agencies have much discretion regarding where in the organization the competition advocates should be placed, who should be appointed to this position, and how they should carry out their responsibilities. As a result, agencies have taken a range of approaches regarding the placement of the competition advocates, their skills and expertise, and the methods they use to carry out their responsibilities. Some advocates cited their experience in program offices as helping them to question requirements that may be overly restrictive, while others had been contracting officers or procurement policy officials before assuming the position. Some agency officials said that regulations are vague regarding the role of the competition advocate, and that given the Office of Federal Procurement Policy's (OFPP) recent emphasis on competition, they would like to see more guidance on competition advocate roles and methods of implementing their duties.

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# Contents

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<b>Letter</b>		<b>1</b>
	Background	4
	Percentage of Reported Noncompetitive Contract Obligations Has Decreased While Competed Contracts with One Offer Received Remained Steady	9
	Agencies Used a Variety of Exceptions to Competition and Processes to Award Noncompetitive Contracts	13
	Key Factors Affecting Competition Include Reliance on Contractor Expertise and Proprietary Data and Preference for Incumbent	18
	Some Contracting Approaches Did Not Reflect Sound Procurement or Management Practices	29
	Agencies Institute the Roles of Their Competition Advocates in a Variety of Ways, in Particular with Regard to Placement and Expertise	37
	Conclusions	43
	Recommendations for Executive Action	44
	Agency Comments and Our Evaluation	44
<b>Appendix I</b>	<b>Scope and Methodology</b>	<b>47</b>
<b>Appendix II</b>	<b>Comments from the Department of the Interior</b>	<b>52</b>
<b>Appendix III</b>	<b>GAO Contact and Staff Acknowledgments</b>	<b>55</b>
<b>Tables</b>		
	Table 1: Miscoded Contracts in our Sample	12
	Table 2: Agencies' Cited Exceptions to Competitive Awards for Contracts and Orders We Reviewed	14
	Table 3: Levels of Approval for Justifications for Other Than Full and Open Competition	38
	Table 4: Locations We Visited and the Number and Type of Contracts Reviewed	49

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## Figures

Figure 1: Percentage of Federal Obligations to Competitive, Noncompetitive, and Competed Contracts with One Offer Received for Fiscal Years 2005 through 2009 (Constant Dollars)	10
Figure 2: Percentage of Reported Obligations for Competitive and Noncompetitive Awards by Quarter, Fiscal Years 2005 to 2009 (Constant Dollars)	11

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### Abbreviations

ANC	Alaska Native Corporation
BPA	blanket purchase agreements
CICA	Competition in Contracting Act
COTR	contracting officer's technical representative
DFARS	Defense Federal Acquisition Regulation Supplement
DHS	Department of Homeland Security
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FFRDC	federally funded research and development center
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
ICE	Immigration and Customs Enforcement
IDIQ	indefinite delivery / indefinite quantity
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
SBA	Small Business Administration
TOW	Tube-launched, Optically-tracked, Wire-guided
UCA	undefinitized contract actions

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United States Government Accountability Office  
Washington, DC 20548

July 26, 2010

The Honorable Edolphus Towns  
Chairman  
The Honorable Darrell Issa  
Ranking Member  
Committee on Oversight and Government Reform  
House Of Representatives

Competition is a cornerstone of the acquisition system and a critical tool for achieving the best possible 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 the taxpayer money, improve contractor performance, curb fraud, and promote accountability for results. 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. The government obligates tens of billions of dollars every year under noncompetitive contracts. Further, the government obligates billions of dollars annually under contracts that are awarded competitively but for which the government receives only one offer—situations the Office of Management and Budget (OMB) has recently cited, along with noncompetitive contracts, as high risk.

Our prior work has shown that promoting competition in federal contracting presents the opportunity for significant cost savings, but that the government has not consistently taken advantage of such opportunities. For example, our recent review of federal agencies' use of blanket purchase agreements (BPA) awarded under General Services Administration (GSA) schedules program contracts showed that agencies rarely took advantage of additional opportunities for competition when placing orders under BPAs, reducing the potential to realize additional savings for taxpayers.<sup>1</sup> In other reviews, we found that the Army had

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<sup>1</sup>GAO, *Contract Management: Agencies Are Not Maximizing Opportunities for Competition or Savings under Blanket Purchase Agreements despite Significant Increase in Usage*, GAO-09-792 (Washington, D.C.: Sept. 9, 2009).

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issued contracts for security guards at U.S. military installations on a sole-source basis, and the Department of State had issued a sole-source contract for installation and maintenance of security equipment at U.S. embassies worldwide.<sup>2</sup> Based on GAO's recommendations, the requirements were subsequently competed, resulting in cost savings. Congress and the executive branch have recently highlighted as an area of concern the use of noncompetitive contracts and competed contracts where only one offer is received.

You asked us to review federal agencies' use of noncompetitive contracts and competitively awarded contracts in which only one offer was received. Accordingly, we determined (1) the extent to which agencies have awarded noncompetitive contracts and contracts awarded competitively with only one offer received; (2) the exceptions to competition that agencies used when awarding noncompetitive contracts; (3) some of the factors that affect competition in federal contracting; and (4) the extent to which the contracting approaches for the contracts in our sample reflect sound procurement or management practices. You also asked us to describe how agencies are instituting the roles of their competition advocates.

To identify the extent to which agencies have reported obligations under noncompetitive contracts and those receiving only one offer, we analyzed data from the government's procurement database—the Federal Procurement Data System-Next Generation (FPDS-NG)—for fiscal years 2005 through 2009.<sup>3</sup> To gain insight into the circumstances involving noncompetitive contracts, we randomly selected a sample of 79 contracts and orders coded as noncompetitive and reviewed the contract files. To identify the locations for our contract file reviews, we selected those agencies with the greatest reported use of noncompetitive contracts

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<sup>2</sup>GAO, *Department of State Contract for Security Installation at Embassies*, [GAO-07-34R](#) (Washington, D.C.; Nov. 8, 2006); GAO, *Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach*, [GAO-06-284](#) (Washington, D.C.; April 3, 2006).

<sup>3</sup>We identified obligations to noncompetitive contracts primarily through the "extent competed" field in FPDS-NG. This included contracts coded as not competed or not available for competition, and noncompetitive delivery orders. As a result, and for the purposes of this report, we are defining noncompetitive contracts to include contracts that were awarded using the exceptions to full and open competition in the Federal Acquisition Regulation, and orders issued under multiple award indefinite delivery / indefinite quantity contracts under the exception to fair opportunity process or under limited sources provisions for orders issued under GSA's schedules program.



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during fiscal year 2008 (the most recent available data at the time) and, within those agencies, the components that had the largest percentage of these contracts. Our selection criteria also included those components with large-dollar-value procurements. For the Department of Defense (DOD), in order to focus more on services, we narrowed our selection criteria to those contracts coded as professional, administrative, and management support services. Our random sample also included 28 contracts and orders that had been coded as competed but had only received one offer. In all, we reviewed 107 contracts or orders. The specific locations in our review were as follows.

- DOD:
  - Redstone Arsenal Army Base
  - Warner Robins Air Force Base
  - Los Angeles Air Force Base
  - China Lake Naval Air Warfare Center Weapons Division
  - Patuxent River Naval Air Station
  - Newport Naval Undersea Warfare Center
- Department of the Interior's Acquisition Services Directorate (formerly GovWorks): this fee-for-service contracting office awards and administers contracts on behalf of other federal agencies. Included in our sample from the Acquisition Services Directorate were contracts awarded on behalf of DOD agencies, the Federal Bureau of Investigation (FBI), and the National Institutes of Health.
- Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) and Secret Service.

To determine the exceptions to competition that were used, the factors affecting competition, and the extent to which the contracting approaches reflected sound procurement or management practices, we reviewed documentation in the contract files such as the justification for a noncompetitive award, acquisition plan, and other key documents, as well as relevant statutory provisions and the Federal Acquisition Regulation (FAR), agency guidance and supplements to the FAR, Small Business Administration (SBA) regulations, and OMB and Office of Federal Procurement Policy (OFPP) memorandums.<sup>4</sup> We interviewed relevant

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<sup>4</sup>The Administrator of OFPP serves as chair of the Federal Acquisition Regulatory Council. The council—whose members include the DOD Director of Defense Procurement and Acquisition Policy, the National Aeronautics and Space Administration's Associate Administrator for Procurement, and the GSA Chief Acquisition Officer—oversees development and maintenance of the FAR.

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contracting officers and contract specialists (when available) and, for many of the contracts, also interviewed the cognizant program officials to obtain their views. We also interviewed procurement policy officials at the department and local levels.

To determine how agencies are instituting the role of the competition advocate, we reviewed statutory and FAR provisions, a May 2007 OFPP memorandum pertaining to the role of the competition advocate, pertinent agency regulations and guidance, and the agencies' competition reports from fiscal years 2008 and 2009. We interviewed the competition advocates at DOD, the Army, Navy, and Air Force, the Department of the Interior, and DHS, as well as the advocates at the components included in our review.

A more detailed description of our scope and methodology is presented in appendix I. We conducted this performance audit from October 2009 to July 2010 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.

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## Background

Full and open competition is the preferred method for federal agencies to award contracts. This preference was established through the Competition in Contracting Act (CICA) of 1984,<sup>5</sup> which required agencies to obtain full and open competition through the use of competitive procedures in their procurement activities unless otherwise authorized by law. Contracts awarded using full and open competition means that all responsible sources—or prospective contractors that meet certain criteria—are permitted to submit proposals. Agencies are generally required to perform acquisition planning and conduct market research to promote and provide for, among other things, full and open competition. However, Congress, by enacting CICA, also recognized that there are situations that require or allow for contracts to be awarded noncompetitively—that is, contracts

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<sup>5</sup>Pub. L. No. 98-369, § 2701.

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awarded without full and open competition.<sup>6</sup> Some of the permitted exceptions to full and open competition follow.

- Supplies and services are only available from one responsible source, such as unique services from one supplier with unique capabilities, or limited rights to data that make certain services available from one source.
- The government is under unusual and compelling urgency to procure a good or service, and delaying the award of a contract would result in serious injury, financial or other, to the government.
- A statute expressly authorizes or requires that the acquisition be made from a specific source or through another agency, such as sole source awards under the SBA's 8(a) program—one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals.
- The terms of an international agreement between the United States and a foreign government, or written directions of a foreign government reimbursing a federal agency for the cost of an acquisition, preclude competition.
- The disclosure of the agency's needs would compromise national security. This exception, however, is not to be used merely because the acquisition is classified or because access to classified matter is necessary.

Noncompetitive contracts are not permitted in situations in which the requiring agency has failed to adequately plan for the procurement or in which there are concerns related to availability of funding for the agency, such as funds expiring at the end of the year.

Generally, noncompetitive contracts must be supported by written justifications and approvals that contain sufficient facts and rationale to justify the use of the specific exception to full and open competition that is being applied to the procurement. These justifications must include, at a minimum, 12 elements specified by the FAR, for example,

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

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<sup>6</sup>See FAR Subpart 6.3, which contains the seven circumstances in which a contract is allowed to be awarded without providing for full and open competition.

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- 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.

The approval level for these types of noncompetitive contracts varies according to the dollar value of the procurement. Some contracts do not require written justifications, including those awarded on a sole source basis through the 8(a) program under the “authorized or required by statute” exception.

Although full and open competition is the preferred method to award a contract, agencies can competitively award contracts after limiting the pool of available contractors—a process called “full and open competition after exclusion of sources.” An example of this is when agencies set aside procurements for small businesses. In fact, agencies are required to set aside procurements for competition among qualified small businesses if there is a reasonable expectation that two or more responsible small businesses will compete for the work.<sup>7</sup>

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## Competitive Requirements for Indefinite Delivery / Indefinite Quantity Contracts

Federal agencies can establish indefinite delivery / indefinite quantity (IDIQ) contracts, or issue orders under them, using a number of different authorities. The following is a discussion of some of these authorities pertinent to the contracts included in our review and any provisions for exceptions to competition.

The Federal Acquisition Streamlining Act (FASA) of 1994 provided competition requirements for task order and delivery order contracts, referred to as IDIQ contracts.<sup>8</sup> IDIQ contracts can be single award or multiple award contracts, but FASA establishes a preference for multiple award contracts. Multiple award IDIQ contracts are awarded to multiple contractors through one solicitation. The number of contract holders depends on the number of contractors receiving the award, which could be from two contractors to thousands. Agencies are required to compete orders on multiple award contracts among all contract holders; however,

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<sup>7</sup> See FAR 19.502-2 (b), which also requires that the acquisitions are over the simplified acquisition threshold and there is a reasonable expectation that the award will be made at a fair market price.

<sup>8</sup> IDIQ contracts, known as task order (services) or delivery order (supply) contracts, do not procure or specify a firm quantity (other than a minimum or maximum) and provide for the issuance of orders during the contract period. FAR 16.501-1.

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agencies can award noncompetitive orders—through a process called an exception to a fair opportunity to compete—for reasons similar to those used for awarding contracts without full and open competition, such as only one contractor being capable of providing the supplies or services needed, or an urgent requirement.<sup>9</sup> The FAR requires contracting officers to document, in the contract file, the rationale for awarding the order noncompetitively, but does not specify what should be included in these justifications. In addition, approval of the justifications for noncompetitively awarded orders is not required.

One example of a large, multiple award IDIQ is the Navy’s Seaport Enhanced (Seaport-e) program with over 1,200 contract holders that can provide 22 different services, such as engineering, program, and logistics support. Orders may be issued under Seaport-e by Navy Systems Commands, and other Navy Commands and offices. Requirements must be competed among all contractors within a certain geographical area. Noncompetitive orders are only allowed if no alternative contract vehicle exists and written approval from the program manager of Seaport-e is obtained.

GSA, under its schedules program, awards IDIQ contracts to multiple vendors for commercially available goods and services, and federal agencies place orders under the contracts. To compete orders over \$3,000, agencies need only survey three schedule contractors that offer services that will meet their needs.<sup>10</sup> For orders issued noncompetitively under the schedules program, however, the ordering agency must justify in writing—with specific content required by the FAR—the need to restrict competition and also obtain approval at the same dollar values and by the same officials as for contracts awarded without full and open competition.<sup>11</sup> The Army has established BPAs under GSA schedule contracts with about 1,200 contractors—called the Express Program—to provide advisory and assistance services in four domains: business and

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<sup>9</sup>See FAR 16.505(b)(2). Other reasons for allowing a noncompetitive task order are that the requirement is a logical follow-on, or the order is needed to meet a minimum guarantee.

<sup>10</sup>FAR 8.405-1(c). DOD has more stringent competition requirements for use of the GSA Schedules Program. DFARS 208.405-70(c). Congress recently took action to enhance competition requirements pursuant to multiple award contracts for all executive agencies; however, the implementing regulations have not yet been promulgated. Pub. L. No. 110-417 § 863.

<sup>11</sup>FAR 8.405-6, limited sources justification and approval.

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analytical, programmatic, logistical, and technical. Requirements are generally competed within each domain, but orders can be placed noncompetitively.

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### Competitive Procurements Where Only One Offer Is Received

Contracts that are awarded using competitive procedures but where only one offer is received have recently gained attention as an area of concern. OFPP recently 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. The Office of Federal Procurement Policy Act, as amended by CICA, required that agencies begin separating data collected on contracts that were awarded using competitive procedures where only one offer was received. The act stipulated that these contracts be recorded as “noncompetitive procurements using competitive procedures.” Currently, FPDS-NG distinguishes these contracts by recording how many offers were received on any procurement.

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### Congressional and Executive Branch Actions

Congress and the executive branch have recently taken actions that require or encourage more competition in federal contracting and that bring more scrutiny to noncompetitive contracts. For example, since 2008 Congress has enacted legislation that:

- requires justifications for certain noncompetitive awards to be publicly posted;<sup>12</sup>
- enhances competition for task orders on multiple award contracts;<sup>13</sup>
- requires acquisition strategies for major defense acquisition programs to include measures to ensure competition throughout the life cycle of the program;<sup>14</sup> and

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<sup>12</sup>National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 844. CICA already required that the justification documents be made available for public inspection, subject to the exemptions from public disclosures provided in the Freedom of Information Act (5 U.S.C. 552).

<sup>13</sup>National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 843. (2008).

<sup>14</sup>Weapon Systems Acquisition Reform Act, Pub. L. No. 111-23, § 202(a) (1).

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- requires justifications, approvals, and notices for sole source contract awards over \$20 million awarded under the authority of SBA's 8(a) program.<sup>15</sup>

The executive branch also has brought attention to the importance of competition. In May 2007, OFPP called for agencies to reinvigorate the role of the competition advocate, a position required by law at each executive agency to promote competition. Each competition advocate must, among other things, submit an annual report on competition to the agency's senior procurement executive and chief acquisition officer and recommend goals and plans for increasing competition. In March 2009, the President called on federal agencies to examine their use of noncompetitive contracting as one of several important steps to improving the results achieved from government contractors. In July 2009, OMB instructed agencies to reduce dollars obligated to high-risk contracts—including noncompetitively awarded contracts and contracts competed with only one offer received—by 10 percent in fiscal year 2010. In October 2009, OFPP followed up with guidelines for agencies to evaluate, in part, the effectiveness of their agencies' competition practices.

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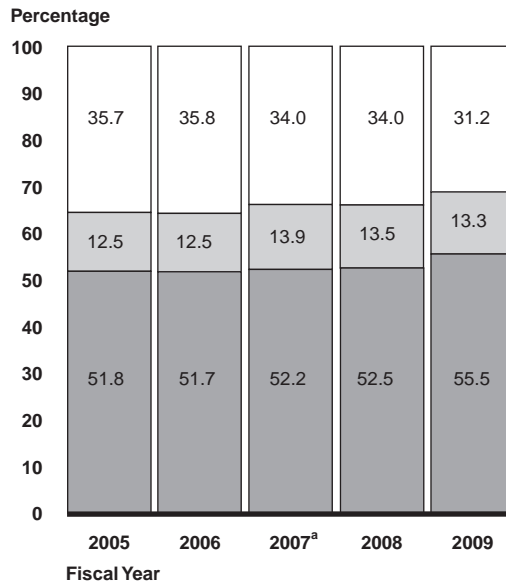
## Percentage of Reported Noncompetitive Contract Obligations Has Decreased While Competed Contracts with One Offer Received Remained Steady

Total obligations reported in FPDS-NG increased during fiscal years 2005 through 2009, from \$430.6 billion to \$543.6 billion. For the same 5-year period, the percentage of obligations reported for noncompetitive contracts decreased, from 35.6 percent to 31.2 percent of total obligations, while those reported under contracts that were competed with one offer received (noncompetitive procurements using competitive procedures) were steady, at about 13 percent of total obligations.

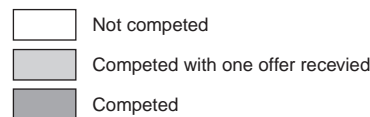
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<sup>15</sup>Pub. L. No. 111-84, § 811.

**Figure 1: Percentage of Federal Obligations to Competitive, Noncompetitive, and Competed Contracts with One Offer Received for Fiscal Years 2005 through 2009 (Constant Dollars)**



Total obligation (in billions)	2005	2006	2007 <sup>a</sup>	2008	2009
	\$430	456	477	514	543



Source: FPDS-NG.

<sup>a</sup>For fiscal year 2007, the percent is more than 100 percent due to rounding.

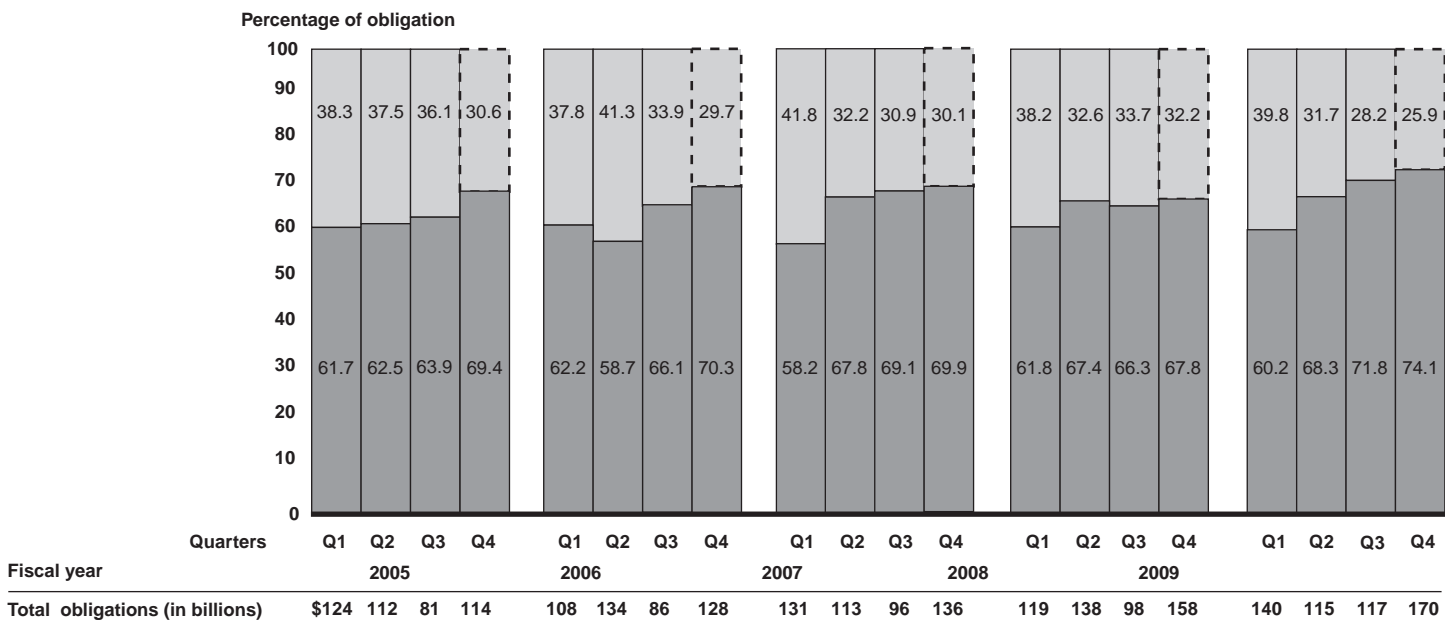
Note: We did not include obligations where data about the extent competed was missing, which represented less than or equal to 0.5 percent of the total obligations in each year. This accounts for a slight difference in the percent not competed in fiscal year 2005. Further, in FPDS-NG, DOD's total obligations in fiscal year 2009 reflect an approximately \$13.9 billion downward adjustment made by DOD to correct an administrative error made in fiscal year 2008. As this adjustment significantly affected DOD's reported obligations in fiscal years 2008 and 2009, the figures we report reflect what DOD's total obligations would have been had the error not occurred.

To determine whether there was any variation in dollars obligated to noncompetitive contracts during the four quarters of the fiscal year, we analyzed dollars obligated in each quarter for fiscal years 2005 through 2009. We found that the fourth quarter consistently had the lowest percentage of obligations to noncompetitive contracts in each fiscal year,



while the first quarter generally had the highest percentage of obligations to noncompetitive contracts, as shown in figure 2.<sup>16</sup>

**Figure 2: Percentage of Reported Obligations for Competitive and Noncompetitive Awards by Quarter, Fiscal Years 2005 to 2009 (Constant Dollars)**



Not competed  
 Competed

Source: FPDS-NG.

Note: We did not include obligations where data about the extent competed was missing, which represented less than or equal to 0.5 percent of the total obligations in each year.

In fiscal year 2009, among all federal agencies and DOD services that obligated over \$1 billion, the Navy and Air Force had some of the highest percentages of total contract obligations that were not competed, at about 45 percent. The agencies with some of the lowest percentages of total contract obligations to noncompetitive contracts were the Department of

<sup>16</sup>These data represent obligations under all contracts, both new and existing, for each quarter. We also analyzed obligations under newly awarded contracts for fiscal years 2007 and 2008 and found that the trend showed an increase in obligations overall in the fourth quarter of these years; however, the percentage of noncompetitive contracts in the fourth quarter was not significantly higher than in the beginning of the fiscal year.

Energy and the Office of Personnel and Management, with 7 percent and 5 percent respectively.

Although our sample is not representative of all federal contract obligations, we found coding errors in FPDS-NG. Specifically, 19 of the 107 contracts and orders we reviewed, or about 18 percent, were coded incorrectly. See table 1.

**Table 1: Miscoded Contracts in our Sample**

	Noncompetitive contracts and orders	Competed contracts and orders with one offer received	Total
How the contracts and orders were coded in FPDS-NG	79	28	<b>107</b>
Number of contracts that were miscoded	9	10	<b>19</b>

Source: GAO analysis of agency contract files and FPDS-NG.

The 9 contracts and orders miscoded as noncompetitive had actually been competed. For example, one ICE contract had been coded in FPDS-NG as not competed, but the agency had in fact competed it and received proposals from 5 vendors.<sup>17</sup> Another 5 of the 9 miscoded noncompeted contracts were actually orders under single-award IDIQ contracts that were competed, but the orders were coded as not competed.<sup>18</sup> For example, three orders at Interior coded as noncompeted in FPDS-NG turned out to have actually been competed, since their base contracts were competed. When a single-award IDIQ contract is competed, the orders under that contract are considered competed. This type of error appears to have stemmed from a lack of understanding on the part of the person entering the data, as some agency officials we spoke with admitted that there was confusion among contracting officials about how to code these orders. In April 2008, the Department of the Interior issued guidance clarifying that orders awarded under single-award indefinite delivery

<sup>17</sup>The agency corrected this error in FPDS-NG.

<sup>18</sup>A single-award IDIQ contract results from a solicitation where only one contractor is awarded the contract. The FAR provides for a preference for multiple-award IDIQ contracts; however, single-award contracts are allowed in certain circumstances, such as only one contractor being capable, or when the orders expected under the contract are so integrally related that only a single contractor can reasonably perform the work. FAR 16.504 (c).

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contracts that were awarded under full and open competition should be coded as competed. However, to address the issue more widely, on October 31, 2009, systemwide changes were made to FPDS-NG. Now, coding of the extent of competition under the base contract is automatically pulled forward to subsequent orders. This action should mitigate such errors in the data going forward.

Of the 10 contracts and orders that were incorrectly coded as competed with one offer received, 4 had not been competed at all. Two of the 4 were sole source contracts awarded on the basis of only one responsible contractor that could perform the work; one was a sole source contract award through the 8(a) program; and one was a sole source contract award on the basis of an international agreement with a foreign government. For the other 6 contracts and orders miscoded as competed with one offer received, documentation in the contract file indicated that they were actually competed with more than one offer received. For example, two Army contracts were labeled as competed with one offer received, but one had three offers and the other had four offers. It is not clear why these contracts and orders were miscoded.

Accounting for the miscoded contracts and orders, our analysis going forward focused on 74 noncompetitive contracts and 19 contracts that were competed with one offer received.<sup>19</sup>

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## Agencies Used a Variety of Exceptions to Competition and Processes to Award Noncompetitive Contracts

Agencies used a variety of exceptions to full and open competition, and ordering processes, to award the 74 noncompetitive contracts in our sample. Table 2 shows the spectrum of exceptions and processes that agencies used to award these contracts or orders.

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<sup>19</sup>One order that was coded as not competed was actually competed with one offer received.

**Table 2: Agencies' Cited Exceptions to Competitive Awards for Contracts and Orders We Reviewed**

	Only one responsible source	Industrial mobilization; engineering, developmental or research capability; or expert services	International agreements	Authorized by statute, specifically sole source authority through the 8(a) program	National Security	Limited sources justification and approval for orders under GSA schedules contracts	Exception to fair opportunity for orders under multiple award contracts	Total
FAR authority cited	6.302-1	6.302-3	6.302-4	6.302-5	6.302-6	8.405-6	16.505	
Number of noncompetitive contracts in our sample	42	1	2	20	3	4	2	<b>74</b>

Source: GAO analysis of agency contract files.

Note: We reviewed the justification or other contract documentation in the IDIQ contract files or the order files to determine the exceptions to competition that were used.

As indicated in the table, for 42 of 74 contracts—or 57 percent of the noncompetitive contracts in our sample—agencies determined, under FAR Part 6.3, that only one responsible contractor could meet the agency’s requirements. For example, the National Weather Service—through an interagency contract awarded by Interior—turned to the original provider of weather radios to obtain compatible spare parts. In another example at ICE, only one contractor could provide specified communications equipment, supplies and services being used in the field at the time. According to an ICE contracting official, this contractor essentially owns the market, and until other vendors or products are available, ICE is bound by the limited availability of items.

The second most frequently used exception to competition—for 20 of the 74 noncompetitive contracts in our sample, or 27 percent—was the authority to award sole source contracts to qualified firms in SBA’s 8(a) business development program.<sup>20</sup> Through the 8(a) program, agencies are encouraged to award sole source contracts under \$3.5 million when procuring services, or \$5.5 million for manufacturing, to participating 8(a) firms. In fact, the FAR encourages agencies not to compete under these thresholds, requiring agencies to obtain the approval from the SBA Associate Administrator for 8(a) Business Development for any competed

<sup>20</sup>15 U.S.C § 637; FAR 6.302-5(b)(4).

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procurements under the threshold, and this approval is to be given on a limited basis. One example was a sole source contract for \$1.7 million to an 8(a) firm for lead abatement services for one of the Secret Service's training facilities. Our sample also included large dollar value sole source contracts to 8(a) firms owned by Alaska Native Corporations (ANC) or tribal entities, such as American Indian tribes, which have special advantages over other 8(a) firms and can receive sole source contracts for any dollar amount.<sup>21</sup> Some examples of these 8(a) contracts in our sample follow.

- The Air Force awarded a \$75 million sole source award to an 8(a) firm owned by an American Indian tribe for analysis, integration and technical support services related to corrosion prevention and control.
- The Navy awarded a sole source contract to an 8(a) ANC firm for operation and management support and analysis and technical support for \$131 million.

In general, awarding noncompetitive contracts through the 8(a) program is an easy and quick way for agencies to award a contract, rather than using full and open competition. First, when awarding a sole source contract through the 8(a) program, a justification for awarding a sole source contract is generally not required.<sup>22</sup> Second, the agency need only identify a qualified 8(a) firm and obtain approval from SBA to award it a contract.<sup>23</sup> For example, a Secret Service contract estimated at \$3 million for information technology services included a description in the contract file of the market research that had been conducted, which simply stated that the program office provided the source. In another example from Interior, a program staff person at the National Institutes of Health suggested a contractor for building repair services to the Interior contracting officer.

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<sup>21</sup>GAO, *Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight*, [GAO-06-399](#) (Washington, D.C.: April 27, 2006).

<sup>22</sup>Congress enacted legislation in October 2009 that requires the FAR to be revised to require a written justification and approval and postings for sole source awards over \$20 million under Section 8(a) authority of the Small Business Act. National Defense Authorization Act for Fiscal Year 2010. Pub. L. No. 111-84, § 811. The FAR has not yet been revised, as OFPP recently requested that the rule be converted from an interim to a proposed rule.

<sup>23</sup>SBA is prohibited by regulation from accepting procurements for award under Section 8(a) under certain circumstances and if the price of the contract results in a cost to the contracting agency that exceeds a fair market price. Other than these prescriptions, SBA may accept a procurement for an 8(a) award whenever it determines such action is necessary or appropriate.

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The program staff informed us that although other contractors were available, he was most comfortable with the vendor he suggested, and therefore requested—and received—a noncompetitive award through the 8(a) program for approximately \$3.5 million.

SBA officials told us that agencies' procurement activities are encouraged to direct all work to small businesses as long as they do not run afoul of the Small Business Act or federal acquisition regulations. The SBA takes the general position that a procuring agency does not need to document in a contract file any other prospective sources if the agency selects an 8(a) participant to perform the requirement, offers it to SBA, and SBA accepts the requirement into the 8(a) program. SBA officials note that it is the procuring agency's responsibility to conduct market research to determine whether the requirements of the Small Business Act can be met, and then to determine the appropriate contracting vehicle to use. However, SBA considers market research requirements to be satisfied when a participant in the 8(a) program self-markets its abilities to a procuring agency and is subsequently offered a sole source 8(a) requirement. When we discussed this issue with procurement policy officials at DHS, they said that, while these activities may meet the regulatory requirements, in practice they like to see additional market research so that the offer to the 8(a) firm has a more solid basis.

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### Agencies Used a Number of Other Exceptions and Processes to Award Noncompetitive Contracts and Orders

Agencies in our review used a number of other exceptions under FAR Part 6.3 ("Other than Full and Open Competition") to award noncompetitive contracts, which includes orders issued under noncompetitively awarded IDIQ contracts.<sup>24</sup> For example,

- Three orders at the Air Force were issued under separate sole source contracts using the justification that disclosure of information on the program would compromise national security. One of these orders was to provide spare parts and resolve system failures to sustain the fielded equipment and software for remote airborne sensors. These orders were justified as a sole source procurement using a class justification—meaning one justification is used for consolidated requirements across DOD activities and multiple programs, such as the U-2 program.

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<sup>24</sup>When orders are issued under IDIQ contracts that used a FAR Part 6 exception to competition, the justification and approval at the contract level adequately covers the requirements contained in the order. FAR 6.001(e)(2).

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- Two contracts in our sample were awarded directly to one company on behalf of another country through an international agreement, referred to as foreign military sales. One example was an Army contract to install and configure software to modernize the logistics system for the Defense Forces of Saudi Arabia.
  - One noncompetitive order we reviewed was issued under a contract to a federally funded research and development center (FFRDC) to look at work processes and work flow requirements for clinical research and their interoperability with those of disease-specific research networks, hospitals, institutions, industry, and government.<sup>25</sup> The exception to competition that was used is that it was necessary to award the order to a particular source to establish or maintain an essential engineering, research, or development capability to be provided by an FFRDC. Although the contracting officer at Interior identified four FFRDCs that could do the work, the National Institutes of Health staff determined that this particular firm best met their needs because this work was a continuation of research that it was performing for them.

Agencies also used different procedures under the FAR to issue noncompetitive orders under competitively awarded IDIQ contracts. Four of the orders at two different agencies were issued under GSA schedule contracts, using procedures under FAR 8.405-6. Agencies justified not competing the orders because the work was a follow-on to another requirement that the company performed, or because there was only one source that could perform the specific work. In one case, a requiring office at the Department of the Interior that provides financial services to other federal agencies (or “federal customers”) needed a contractor to help with the integration and execution of the financial services provided. The Interior contracting officer suggested a minicompetition among GSA schedule contractors; however, the limited sources justification noted that this procurement was a logical follow-on because this particular company had partnered with the requiring office to perform these same integration services with six different federal customers and that, because this

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<sup>25</sup>FFRDCs are privately owned but government-funded entities that have long-term relationships with federal agencies to perform research and development or related tasks. They are still considered contractors and often have access beyond normal contractual access. See GAO, *Federal Research: Opportunities Exist to Improve the Management and Oversight of Federally Funded Research and Development Centers*, [GAO-09-15](#) (Washington D.C.; October 8, 2008).

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company was already familiar with the customer, it was in the best position to provide these services.<sup>26</sup>

In two other cases from our sample, orders were awarded through a process called “exceptions to the fair opportunity process” under FAR 16.505(b)(2). These exceptions allow noncompetitive orders exceeding \$3,000 issued under multiple award contracts using one of four reasons: (1) only one contractor is capable, (2) urgency, (3) the work is a logical follow-on to another task, or (4) there is a need to place an order with a particular contractor to satisfy a minimum guarantee. For example, an order was awarded for engineering support to redesign the B-1 aircraft main landing gear wheel and brake assembly because the contractor had previously worked on this airplane and had the expertise. The program official explained that when a new type of plane comes in for repair, requirements are typically competed between the two contractors on the multiple award contract, but once a contractor has built up expertise on that airplane’s system, it is logical to have the same contractor perform additional work on that system.

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## Key Factors Affecting Competition Include Reliance on Contractor Expertise and Proprietary Data and Preference for Incumbent

A variety of factors affect competition, including reliance on contractor expertise and decisions made by officials in program and contracting offices. For services supporting DOD weapons programs, the government’s lack of access to proprietary technical data and a heavy reliance on specific contractors for expertise limit, or even preclude the possibility of, competition.<sup>27</sup> Contracting officials pointed out that a program office may be comfortable with the incumbent contractor and presses the contracting office to remain with that contractor, thus inhibiting competition. Even for some procurements using competitive procedures, a strong incumbent coupled with overly restrictively written requirements can lead to only one offer—from the incumbent—being received. In other cases, groups of vendors have formed teams to compete for government requirements. Contracting officials and contractors told us that whereas previously several vendors might have submitted offers for more specific requirements, now only one offer—from the prime

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<sup>26</sup>Our recent report on BPAs established under GSA schedule contracts includes a recommendation to OFPP to clarify, in the FAR, when it is appropriate to establish a BPA using the limited source justifications. See [GAO-09-792](#).

<sup>27</sup>Technical data is recorded information used to define a design and to produce, support, maintain, or operate the item.



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contractor on the team—is being received. However, we did find cases in which contracting and program officials were actively seeking opportunities to compete requirements.

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### A Lack of Access to Proprietary Technical Data and Reliance on Specific Contractors for Expertise Inhibit Competition

For 27 of the 47 noncompetitive DOD contracts we reviewed, the government was unable to compete requirements due to a lack of access to proprietary technical data. This situation, combined with a heavy reliance on certain contractors' expertise built over years of experience, inhibits competition. Most of the contracting and program officials at DOD that we spoke with pointed to the lack of access to technical data as one of the main barriers to competition. Some contracting officers described this condition as essentially being “stuck” with a certain contractor. For example, a \$46 million contract at the Navy for engineering services in the DOD's Prowler/Growler aircraft programs could not be competitively awarded because the government had not procured the technical data package and only the original contractor, who was one of the developers of the system, has over 20 years experience and expertise to perform the work. Several officials pointed out that the situation the government is currently experiencing is a result of decisions made years ago, when first acquiring a weapon system, to not purchase critical technical data packages for reasons that include budgetary constraints or a push toward streamlined contracting processes by purchasing commercial items. For a couple of the contracts in our sample, the government had purchased some of the technical data, but, for budgetary reasons, has not kept those data packages current over time. Hence, only the original equipment manufacturer has the technical data needed for follow-on maintenance and engineering support contracts.

Some contracting and program officials have inquired about the cost of obtaining the technical data, only to discover that the package is not for sale or purchase of it would be cost-prohibitive, especially the systems and equipment that have been contracted out for decades. In one instance, the Air Force requested an estimate of the cost to the government to purchase the technical data package for an aircraft program, and the contractor—the original equipment manufacturer that had been working on the system for over 30 years—replied that while it was not for sale, if they were to sell it, the estimated cost was \$1 billion. On a \$4.8 billion contract for sustainment and support for another Air Force program, the contractor estimated the cost to purchase the data rights to be more than \$1.3 billion. However, the market research report noted that the contractor refused to sell the data, and because commercial contracting procedures under FAR Part 12 were used in this procurement, the contractor was able to retain

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strict control over data rights and the government did not have insight into the work performed by the major subcontractors. In yet another case, a contractor for an Army missile program informed the program office that they would charge approximately \$30,000 just to put together a cost estimate for the technical data package, which the contractor later stated would be \$31 million for selected technical data elements of the missile program, but excluding rights to critical contractor-specific software. The contractor was the original equipment manufacturer and sole producer of the missiles since the early 1960s. DOD procurement policy officials told us they view this issue as a long-standing problem and that any significant turnaround will need to occur with new programs. They also said they see refusal to share or sell technical data as a larger problem under commercial acquisitions, where the government lacks leverage.

Recently, Congress has taken steps to address the lack of access to technical data. For example, the John Warner National Defense Authorization Act of Fiscal Year 2007 required DOD program managers for major weapons systems to assess the long-term technical data needs and establish corresponding acquisition strategies that provide for the technical data rights needed to sustain such systems over their life cycle.<sup>28</sup> Further, Congress enacted legislation in May of 2009 that requires DOD to include in the acquisition strategy for each major defense acquisition program measures to ensure competition—or the option of competition—at both the prime contract level and subcontract level throughout the life-cycle of the program. This includes considering the acquisition of complete technical data packages, among other things.<sup>29</sup> For almost a decade, we have reported on the limitations to competition when DOD does not purchase technical data rights for sustainment of weapon systems and the increased costs as a result.<sup>30</sup> In 2001 and 2002, we

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<sup>28</sup>DFARS 207.106. Additional requirements for major systems.

<sup>29</sup>Weapon Systems Acquisition Reform Act of 2009, Pub. L. No. 111-23 § 202. The act also requires the Secretary of DOD to take actions to ensure that, to the maximum extent practicable, contracts for maintenance and sustainment are awarded on a competitive basis.

<sup>30</sup>GAO, *Defense Logistics: Air Force Lacks Data to Assess Contractor Logistics Support Approaches*, [GAO-01-618](#) (Washington, D.C.: Sept. 7, 2001); *Defense Logistics: Opportunities to Improve the Army's and Navy's Decision-making Process for Weapons Systems Support*, [GAO-02-306](#) (Washington, D.C.: Feb. 28, 2002); *Defense Management: Opportunities to Enhance the Implementation of Performance-Based Logistics*, [GAO-04-715](#) (Washington, D.C.: Aug. 16, 2004); and *Weapons Acquisition: DOD Should Strengthen Policies for Assessing Technical Data Needs to Support Weapons Systems*, [GAO-06-839](#) (Washington, D.C.: July 14, 2006).

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reported that DOD had often failed to put adequate emphasis on obtaining needed technical data during the acquisition process, and noted officials' concerns on the potential negative impact on competition and potential increase in costs. In 2004, we found that not obtaining technical data limited DOD's flexibility to perform work in house or support alternate source development if necessary. In another report, in 2006, we noted that as a result of the limitations of not having technical data rights, the military services had to alter their plans for developing new sources of supply to increase production or to obtain competitive offers for the acquisition of spare parts and components to reduce sustainment costs. In that report, we also found that DOD's acquisition policies did not specifically address long term needs for technical data rights and recommended that DOD require program managers to assess long-term technical data needs and establish corresponding acquisition strategies that provide for technical data rights needed to sustain weapons systems over their life cycles.

Even when technical data are not an issue, the government may have little choice other than to rely on the contractors that were the original equipment manufacturers, and who, in some cases, designed and developed the weapon system. A few contracting and program officials we spoke with noted that for some DOD programs, the government is so reliant on the contractor that it is difficult for the government to even make decisions or set requirements anymore. Our prior work has noted the government's increasing reliance on contractors and pointed to the challenges of this increasing reliance, such as identifying and distinguishing roles and responsibilities and ensuring appropriate oversight.<sup>31</sup> Most noncompetitive DOD contracts in our sample indicated

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<sup>31</sup>GAO, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, [GAO-08-572T](#) (Washington D.C.: March 11, 2008). Additionally, our prior work has found that when federal agencies, including DOD, believe they do not have the in-house capability to design, develop, and manage complex acquisitions, they sometimes turn to a systems integrator to carry out these functions, creating an inherent risk of relying too much on contractors to make program decisions. For example, the Army's Future Combat System program is managed by a lead systems integrator that assumes the responsibilities of developing requirements; selecting major system and subsystem contractors; and making trade-off decisions among costs, schedules, and capabilities. While this management approach has some advantages for DOD, we found that the extent of contractor responsibility makes DOD vulnerable to decisions being made by the contractor that are not in the government's best interests. See GAO, *Defense Acquisitions: Role of Lead Systems Integrator on Future Combat Systems Program Poses Oversight Challenges*, [GAO-07-380](#) (Washington, D.C.: June 6, 2007).

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that the contractor was the only source of the expertise for the system, having developed that expertise and the infrastructure over time. For example:

- An engineering contract for the Army's Hellfire missile program has current obligations at almost \$72 million. According to the justification in the contract file, the technical data package has been developed, but since 1994, the contractor has been acquiring unique expertise that is not contained in any documentation.
- The contractor for the Army's Patriot Missile program has been designing the missile since 1972. The contract for engineering and other support of the program was worth an estimated \$122 million. The contractor that designed the program was the only contractor capable of performing the support work because the contractor also developed and manufactured the system. Over time, the contractor developed the technical expertise, experience, and the facilities needed for the contract.
- The Army awarded a \$1.7 billion contract for engineering support and maintenance for the Chinook and Apache Helicopter Programs. The contractor for these two helicopters—since 1961 and 1984 respectively—is the only contractor with the needed skills, technical and engineering expertise, and the technical data to provide the full range of services needed. This contract was one of several billion-dollar sole-source Army contracts we reviewed that had been awarded to large prime contractors for depot maintenance requirements that had been previously performed by many small businesses. A business case analysis was performed, showing that these contracts were burdensome to manage and left the government without one entity to hold accountable. The contracts were bundled into one requirement (with the appropriate justifications and approvals) and the prime contractors' subcontracting plans emphasized the need to compete among small businesses at that level.
- The Air Force awarded a contract for engineering support and software maintenance for satellite communication systems with an estimated value of \$404.7 million. The contractor, in place since 1982, has 20 years of knowledge and experience with extensive hardware, software, and test facilities needed to support the system.

Further, the cost, including time and money, of changing contractors can be relatively high. For instance, the sole-source justification for an almost \$1 billion contract awarded in June 2008 for the overhaul and recapitalization of the Army's Blackhawk helicopter included a \$50 million estimate as the minimum investment needed to bring on another contractor and a lead time of 24 to 36 months. The justification further stated that the current contractor's knowledge could not be easily duplicated, even with significant investment and that it was unlikely that

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the government would be able to recover the investment cost through competition. In another example, the sole source justification of an Air Force contract, estimated at \$50 million, for general engineering support for Military Satellite Communication programs, included an estimate of \$5 million for developing another contractor's knowledge and skill, including the time to gain familiarity with the software tools and technical requirements. However, the justification also described that any delays would result in a cost increase of hundreds of millions of dollars for the program and any unplanned schedule delays would adversely affect the warfighter.

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### Program Officials' Preference for Incumbents and Inadequate Acquisition Planning Can Influence Extent of Competition

Program officials play a significant role in the contracting process—developing requirements, performing market research, and interfacing with contractors. In their 2009 competition reports to OMB, several agencies in our review recognized the pressure that program offices place on the contracting process to award new contracts to a specific vendor without competition. Many contracting officials we spoke with recognized that program staff sometimes prefer a specific vendor, in some cases because a relationship had developed between the program office and the contractor, who understands the program requirements. We also heard this echoed in discussions with program staff. Program officials from two program offices at the National Institutes of Health, for example, described their comfort with certain contractors because of their level of understanding of requirements and because they could be relied on to complete the work. A Navy program official stated that, when one contractor has been performing a requirement for many years, it is easier to go back to the contractor personnel who understand the requirement rather than taking the time to find a new vendor. One contracting official described how, in his former role as a program manager, he did not want to change contractors for products and services once he found ones he liked.

Program offices can also influence levels of competition through their roles in the acquisition planning process, in particular by having sufficient knowledge of the contract award process and providing contracting officials with enough time to compete requirements. However in their competition reports, some agencies in our review pointed to a lack of acquisition planning, and the role that the program office plays in it, as a

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barrier to competition.<sup>32</sup> Further, several contracting officials from different agencies expressed concern about the fact that they receive short notices from program offices for acquisitions. Others noted that program offices sometimes do not allow them enough time to execute a sufficiently robust acquisition planning process that could increase opportunities for competition. They told us that program offices are insufficiently aware of the amount of time needed to properly define requirements or conduct adequate market research. According to an official at ICE, in one instance, he only had a couple of days to complete certain procurements, which he managed to do, but he believed that the customer would have received a better product if he had had enough time to obtain more high-quality proposals from the marketplace. Several contracting officials also pointed to the experience levels and staffing shortfalls of both the contracting staff and program staff as affecting the quality of the procurement processes, and, in turn, the extent of competition. For example, DHS contracting officials stated that high workloads for limited numbers of staff and inexperienced staff can hinder the acquisition planning, timing of the procurements, and market research.

Some agency officials recognize that training on the acquisition process for program staff may help address some of these issues, but we found that training on competition issues is often directed to contracting officers and not necessarily the program staff. For example, DOD has developed formal training on enhancing competition awareness, but it is required only for contracting staff and just recommended for others in the acquisition community. The Navy, however, has made this training mandatory for Navy personnel engaged in the acquisition process, including program managers, program executive officers and logistics personnel. ICE contracting officials said that they regularly reach out to the program offices—through meetings and supervisor trainings and by making guidance available—to provide information on the acquisition process with the goal of increasing competition. They noted, however, that ICE program offices still struggle to understand the acquisition process. Other contracting officials, for instance at the location we visited at the Department of the Interior, stated that they train program staff about the benefits of competition during regular, informal interactions or do so only on issues pertaining to a specific procurement.

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<sup>32</sup> We also have sustained numerous bid protests that show that agencies improperly awarded sole source contracts because of lack of advanced acquisition planning.

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## Overly-Restrictive Government Requirements Can Limit The Number of Offers Received

From a practical standpoint, for contracts awarded using competitive solicitation procedures where only one offer is received, the government does not have the benefit of evaluating more than one competing proposal. As noted earlier, OMB's July 2009 instruction to agencies to reduce dollars obligated to high risk contracts included contracts that had been competed but where only one offer was received.

The government's requirements can influence the number of offers received under competitive solicitations if requirements are written too restrictively.<sup>33</sup> Some contracting officials noted the challenge of questioning program office requirements that are written so restrictively that they are geared towards the incumbent. These contracting officials informed us that their technical backgrounds and having the assistance of technical staff in evaluating the requirements can help them determine whether the requirements can be broadened. They noted that if they lack technical expertise in the specific area of requirements, it is more difficult to question whether a statement of work is too restrictive.

The FAR does not require actions to be taken in circumstances where only one offer is received in response to a competitive solicitation, such as performing additional market research or determining if the requirements were overly restrictive. However, contracting officials at two of the locations we visited noted that they have a local requirement to document in the contract file the circumstances that may have led to only one offer being received and actions that will be taken to obtain more competition if there is a follow-on procurement. None of the contract files we reviewed where one offer was received included this information.

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## Factors Contractors Consider Regarding When to Submit an Offer

Although the government is generally required to make every effort to obtain as much competition as possible, the contractors themselves make a business decision about when to submit an offer in response to a solicitation. The contractors we spoke with told us that they consider a

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<sup>33</sup>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 certain exceptions apply. One of these exceptions is if a "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."

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wide variety of factors before submitting a proposal in response to a solicitation, such as

- the cost of developing proposals;
- their ability to provide the services, including key personnel;
- their knowledge and history of the requirement;
- rapport with the government personnel;
- ability to partner with small businesses to meet small business subcontracting requirements; and
- the potential financial gain from the procurement.

There are also certain strategies that companies take when deciding whether to submit a proposal. For example, companies may submit a proposal to test the water or get their name recognized as a potential contractor for a particular requirement, then bid more aggressively for the follow-on procurement. Contractors may also intentionally not submit an offer on a certain procurement to retain their status as a small business—and thus remain eligible for procurements designated for small businesses.

A predominant factor that contractors consider when deciding whether to compete for a contract is the performance of the incumbents. Contracting officers and contractor representatives explained that when an incumbent is known, contractors may not compete if the incumbent has historically provided the requirement and is identified as well-performing. The solicitations for all of the 11 orders we reviewed under the Navy's Seaport-e Multiple Award Schedule and the Army's Express Multiple Award Schedule listed previous contractors' names and contract numbers, and only one offer was received for 9 out of the 11 solicitations. In talking to us about another contract in our sample, an Army program official said she believed that vendors other than the incumbent could have competed for a certain contract, but that a short time frame combined with the incumbent's history on the contract caused many vendors to be disinclined to compete. Ultimately, the Army received only one offer in response to its solicitation. An Army contracting official also noted that when evaluation factors in the solicitations are based mostly on experience with the system and technical skills, other competitors may not submit offers because the cost of developing a proposal is too high to outweigh the risk of not winning the award.

Furthermore, several contracting officials and contractors told us that some contractors find it necessary to team up with other contractors in order to fulfill certain government needs, which can also contribute to



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only one offer being received. For example, a Navy requirement for submarine engineering services was being performed by a large business. The Navy decided to set aside the follow-on contract, estimated at \$34 million, for small businesses. Only one small business submitted a proposal, which included 10 subcontractors—1 of which was the large-business incumbent, and another of which was a small business that was originally identified as a possible competitor for the procurement. In another example, one order under the Army's Express program, estimated at \$122 million, was awarded to a small business after one offer was received, helping the Army meet its small business goals. Under a teaming arrangement involving a number of subcontractors, the small business prime contractor was going to perform only 7 percent of the work while one subcontractor was going to perform 87 percent of the work. Under another Express order, a small business was the prime contractor and a large business, which had been the prime contractor under a predecessor contract for the same requirement, was a subcontractor performing the bulk of the work. Under the Express program, the Army claims full small business credit for all obligations under these types of arrangements. In one contractor proposal we reviewed, submitted in response to an Express program solicitation, the small business prime contractor pointed out this benefit. According to SBA officials, as long as the procurement was awarded using full and open competition, the percentage of the work performed by the small business prime contractor is not relevant.

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### Some Agencies Are Seeking Opportunities to Enhance Competition

Some agencies actively seek out opportunities to compete requirements and contracts that were originally awarded noncompetitively, such as by breaking out components of the requirement that can be awarded competitively. We encountered several contracting and program officials who told us that they broke out pieces of requirements from past sole-source procurements in order to compete them. For example, Coast Guard contracting officials informed us that they broke one requirement for aircraft maintenance and repair into one contract and three separate orders, which they believe will save the government approximately \$13 million. In another case, a Navy contracting official informed us that certain requirements for submarine components had been separated from a sole-source procurement and are currently in second or third cycles of competition. We also found one noncompetitive contract at the Navy where the follow-on requirement was competed. The contract, for operations and maintenance support and engineering services, was a sole-source award to an ANC 8(a) firm, but the contracting officer who inherited the contract decided to compete the follow-on contract in the 8(a) program.

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In some cases, the government actively sought additional vendors for certain requirements. For instance, Air Force officials informed us that they encouraged a second vendor to compete against the incumbent contractor for production of aluminum pallets. These officials noted that at the threat of competition, the incumbent—who ultimately won the contract—“sharpened his pencil,” resulting in savings for the government through a lower price and improved delivery schedules. In another example, the Army’s Tube-launched, Optically-tracked, Wire-guided (TOW) missile has been with one contractor since its inception in the early 1960s. The Army recently made a business case for breaking out a portion of the requirement and competing it as a separate procurement because it had identified another capable contractor: one of the subcontractors with a long history with the program. But other officials noted that it is not always the best business decision to invest time and money into finding other vendors; each situation has to be evaluated on its own merits and future procurements or production lines must be sufficient to warrant the government’s investment in a second source. The C-130J engine has also been broken out of the overall Lockheed Martin contract, with a separate sole source contract to Rolls Royce. According to program and contracting officials, this decision was made to save money.

Some contracting officials we spoke with recognized the importance of thorough market research for identifying possible vendors even when it appears that only one contractor is capable of doing the work. For example, during the market research phase for the awarding of two contracts for engineering services for military satellite communications at the Los Angeles Air Force base, the contracting officers requested that potential contractors provide information on their abilities to meet the government’s requirements in an attempt to identify other qualified contractors. Ultimately, however, the two contracts were awarded using a sole source justification that only one responsible contractor was capable of doing the work. The director of contracting at this location informed us that they typically reach out to the open market when they are not familiar with a requirement or when a requirement has been procured on a sole source basis for many years and they wish to test the marketplace to determine if it has changed over time. He also noted that there have been instances in which new contractors have expressed interest, but usually no new contractors come forward. In another case, ICE contracting officials informed us that the program office wanted a specific vendor for a requirement for rifle cases. The contracting officer pushed back against the program’s specific request, competed the requirement, and received numerous offers. The contract was awarded to a vendor that the program

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office was not aware of, and the contracting officer reported that they were very pleased with the results of the competition.

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## Some Contracting Approaches Did Not Reflect Sound Procurement or Management Practices

In reviewing the contracts in our sample, we identified contracting approaches for nine contracts or orders that did not reflect sound procurement or management practices, in some cases not leveraging the effectiveness of the market place. These approaches included ambiguously written justifications for noncompetitive contracts, very limited documentation of the reasonableness of contractors' proposed prices, instances where the contract's cost grew significantly, and labor categories that were improperly authorized because they were not included in the contract. In addition, our sample contained undefinitized contract actions (UCA) that did not clearly follow UCA policies or did not meet the definitization requirements, which puts the government at risk because contractors lack incentives to control costs during this period. Finally, during our file review, we found an example of a noncompetitive contract awarded in an urgent situation that failed to follow sound procurement practices in several ways, such as drastic increases in ceiling prices, improper modifications to the contract, inappropriate communications between the program staff and the contractor, and a program official serving as the contracting officer's technical representative (COTR) without the required training. We also found that sound management practices were not followed in the administration of this contract.

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## Ambiguous Justifications for Noncompetitive Contracts

For two contracts in our sample, the justifications for not competing cited exceptions to competition that were not supported by the circumstances of the procurement or that were the wrong section of the FAR and thus created ambiguity about whether circumstances warranted a noncompetitive award. In the first situation, at ICE, the justification to use a particular company's online language learning services cited the wrong section of the FAR in two different ways. First, the order was placed under the firm's GSA schedule contract (pursuant to FAR 8.4) and thus should have been justified under one of the exceptions in FAR 8.405-6, yet the FAR citation was to one of the exceptions to full and open competition under FAR 6.302. Orders placed under GSA schedule contracts are exempt from the requirements in FAR Part 6. Second, the justification itself was not even clear as to the circumstances warranting a noncompetitive order. Specifically, the justification incorrectly cited FAR 6.302-2 as "only one responsible source." FAR 6.302-2 is used to justify sole source procurements that are urgent and compelling; FAR 6.302-1 is for

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procurements that have only one responsible source. Further, the justification should have been reviewed by the competition advocate and attorney based on the total estimated value of the procurement—the base year and 2 option years—but it was not.<sup>34</sup> The justification described the features of the services provided, claiming that it was the best product available and that a pilot program testing this product had elicited a positive response. While planning the procurement, the contract specialist pointed out to the program staff that there were 31 GSA vendors that could offer these services and recommended that they try to obtain proposals from at least two other vendors. The contracting officers we spoke with explained that the program office was insistent on the use of this contractor for these services. The program office stated that the order was placed solely with this contractor primarily because DHS had undertaken a successful pilot program for these services with this contractor, and they were under time pressure to award the contract quickly.

In the second example, at the Department of the Interior, the justification for a noncompetitive order on a GSA schedule contract to lease information technology licenses was similarly ambiguous because the citation used was FAR 8.405-6(b)(3), for urgent and compelling requirements, but the supporting narrative stated that this vendor was the only distributor that could offer all of the required products and services, i.e., a certain brand name of licenses.<sup>35</sup> The justification also stated that this system was one of three that the government could use to meet its needs. In addition, the program office was pushing for this contractor because it was offering significant discounts if the award was made in a certain time frame.

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<sup>34</sup>For a proposed order exceeding \$550,000, but not exceeding \$11.5 million, the justification must be approved by the competition advocate of the activity placing the order or by another official specified in the FAR. FAR 8.405-6(h)(2). The DHS Acquisition Manual requires legal review of contract actions, with supporting documentation, that are expected to exceed \$500,000.

<sup>35</sup>FAR 8.405-6(b)(3) is used for restricting consideration to only one source on an urgent and compelling basis through a GSA schedule contract. FAR 8.405-6(a)(2) is used when ordering an item peculiar to one manufacturer, or a brand name item. There is another justification that contracting officers can use to place a noncompetitive order on the GSA schedule, which was not cited in this instance, that allows for situations where only one source is capable of responding due to the unique or specialized nature of the work. See FAR 8.405-6(b)(1).

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## Other Contracts Had Limited Documentation of Price Analysis, Lack of Reviews, and Growth in Contract Price

The Department of the Interior issued an order under an IDIQ contract for the Office of Historical Trust Accounting to provide assistance with historical accounting of trust funds for Indian Tribes. The order was placed for over \$2.2 million noncompetitively through the 8(a) program to a tribally owned 8(a) firm. The contract specialist sent the firm's proposal to the program official for price and technical review, and the program official responded in less than an hour that the contractor's proposal "looked good," with no documentation or description of what he had reviewed. The contracting officer at the time put a memo in the file stating that pricing for the labor categories was found to be in line with another order on the same contract and the base contract.<sup>36</sup> We discussed this finding with agency officials, and a policy official at Interior's Acquisition Services Directorate told us that she and other managers in her office have put a renewed emphasis on more detailed price analysis for orders under IDIQ contracts in their reviews of contract actions. Further, during the period of performance, the same program official from the Office of Historical Trust Accounting worked directly with the contractor—significantly overstepping his authority and circumventing the Interior contracting officer—to obtain services that were not included in an order by adding labor categories to the scope of work.<sup>37</sup> The IDIQ contract under which this order had been issued was subsequently transferred to a new contracting officer, who noticed the unauthorized labor categories in the contractor's invoices. This contracting officer modified the order to incorporate a new statement of work with the additional labor categories and a corresponding price increase of about \$500,000. A more detailed price analysis was conducted, including development of an independent government cost estimate for these labor categories which was compared

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<sup>36</sup>The FAR provides discretion for the contracting officer to determine how much price analysis is necessary based on the complexity and circumstances of the procurement. See FAR 15.404-1(a)(1). The purpose of the price analysis is to develop a negotiation position to reach a fair and reasonable price; the source and type of data used to support the price analysis conducted is addressed in the price negotiation memorandum. FAR 15.405 and 15.406-3.

<sup>37</sup>There is no documentation in the contract file that these unauthorized commitments were not ratified, as authorized by FAR 1.602-3. An unauthorized commitment is an agreement that is not binding because the government representative who made the agreement lacked the authority to enter into the agreement on behalf of the government. We have previously reported on situations where program officials overstepped their bounds and where contractors played a role in the procurement process normally performed by government personnel. See GAO, *U.S. Office of Special Counsel: Selected Contracting and Human Capital Issues*, [GAO-06-16](#) (Washington, D.C.: Nov. 17, 2005) and GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, [GAO-05-201](#) (Washington, D.C.: April 29, 2005).

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to the contractor's proposed prices as a basis for the determination that the price was fair and reasonable.

In another contract file at the Air Force, no price analysis had been documented for an order for integrated logistics support and engineering services in support of the Air Force's Distributed Common Ground System. The pricing memorandum in the file for the order contained a brief note that the information was in the base contract file; however, when we looked in the base file the information was not there. After we raised this situation, the former contracting officer prepared a price negotiation memorandum after-the-fact explaining how the government arrived at a fair and reasonable price. To do so, however, the contracting officer had to rely on old e-mails as well as information supplied by the contractor. According to the current contracting officer, the value of this order grew from the initial \$9.1 million to \$18.8 million at the time of our audit.

In another example, ICE contracting officers purchased communication equipment through an order under a Secret Service contract. ICE issued the order noncompetitively, using the justification that only one source was available. The justification stated that only the contractor could provide the equipment as the original manufacturer of a system in which the government had already invested significant resources in training and software. In the order file, the contracting officer noted that price analysis and legal review were not performed because the base contract at Secret Service was competed and prices were determined to be reasonable in part through competition. The base contract, however, was not competed. When we brought this to their attention, ICE contracting officials told us that they had misinterpreted the information in their internal acquisition planning database and from ICE program and senior management officials. Only after the order had been issued did they learn that the underlying contract had not been competed. They recognized that they should not have pointed to competition as a basis for the fair and reasonable pricing in the documentation for this order, but noted that they had compared the prices for this equipment to prices on the open market and GSA schedules contracts—which was noted in the contract file—and that this analysis, along with Secret Service's determination of a fair price at the time of award of the base contract, would suffice as a determination that the price was fair and reasonable.

Finally, a sole source contract at the Army for engineering and maintenance support for the Chinook helicopter program grew over a number of years from \$34.7 million to about \$477 million, but the

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acquisition plan was not revised in spite of this significant price increase. The FAR requires that whenever significant changes occur, and no less often than annually, the planner must review the acquisition plan and, if appropriate, revise it. The sole source justification prior to award of the contract, at \$34.7 million, was correctly approved by the head of the contracting activity, which is all that is required for that dollar value. Although not reflected in the acquisition plan, a second phase of the requirement was identified and a second justification for this additional work, citing an estimated value of \$134.6 million, was reviewed and approved by the Army's senior procurement executive. When the contract was subsequently modified, however, the value was increased to \$477 million with no further notification to the senior procurement executive about the significant price increase. The attorney reviewing the contract modification expressed serious concerns, including that the senior procurement executive was not being notified of the drastic increase in price. A senior DOD acquisition policy official told us that, given the significant increase in the contract's value, additional notification should have occurred, such as in the form of an amended justification and approval or acquisition plan.

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## Undefinitized Contract Actions

Our sample also contained UCAs. In one case, it was unclear from the documentation to what extent the agency followed UCA policies; in another, the agency did not meet the DOD definitization requirements and key documentation was missing from the contract file.<sup>38</sup> UCAs are binding commitments that can be entered into using different contract vehicles (i.e., letter contracts, orders under IDIQ contracts, or modifications to an existing contract). They are intended to be used only when the government needs the contractor to start work quickly and there is not enough time to negotiate all the terms and conditions for a contract. UCAs are required to be definitized within 180 days, or when the amount of the funds obligated under the contract action are 50 percent or more of the not-to-exceed price, to limit the risk to the government.

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<sup>38</sup>Undefinitized contract actions, or UCAs, are contract actions for which the contract terms, specifications, or price are not agreed upon before performance is begun. DFARS 217.7401(d). We have previously reported on UCAs. GAO, *Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met*, GAO-07-559 (Washington, D.C.: June 19, 2007); and *Defense Contracting: DOD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvement*, GAO-10-299 (Washington, D.C.: Jan. 28, 2010).

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- In one case at the Air Force, an order was undefinitized for 17 months. This order, to provide F-15 engines to the Royal Saudi Air Force, was issued under a sole source IDIQ contract for development, production and other support of the F-15 weapon program. In addition to this lengthy undefinitized period, the contractor had begun work 7 months before the UCA was even issued, but neither the contracting officer nor program office official could locate any documentation showing that the government had authorized this work to begin. The Defense Federal Acquisition Regulation Supplement (DFARS) states that, while foreign military sales are not subject to the DFARS policy for UCAs, including the definitization requirements, contracting officers should apply the definitization requirements to the maximum extent practicable.<sup>39</sup> The original contracting officer was no longer available, but we discussed this matter with the current contracting officer and an official from the program office, who were unable to explain the circumstances surrounding the initial authorization to start work or the lengthy undefinitized time frame.
  - In another example, a UCA at the Navy remained undefinitized for 7 months, thereby not meeting DOD definitization requirements. This IDIQ contract was awarded noncompetitively to an ANC 8(a) firm after the previous contractor, another 8(a) firm, failed to meet certain contractual requirements and the government needed to quickly put another contract in place to avoid a break in service. Further, when the contract was definitized at an agreed to price of about \$131 million, the only documentation included in the modification definitizing the contract was the award term plan and some contract line items, but no description of the scope of work required.<sup>40</sup> The contracting officer explained that after a reorganization at the Navy, the contract file had been transferred to her from another contracting office with missing documentation and she could only make notes where documentation was missing. She said she would have expected more information to be included in the modification that definitized the contract.

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<sup>39</sup>DFARS 217.7402.

<sup>40</sup>Award-term incentives are similar to award-fee incentives, but the contractor is to be rewarded for excellent performance with an extension of the contract period instead of additional fee.



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## One Noncompetitive Contract in an Urgent Situation Highlights Numerous Problems That Can Occur

In one example, the government failed to follow sound procurement practices in several ways and did not adhere to certain sound management principles, or internal controls, in others. In the period following the terrorist attacks of September 11, 2001, Interior initially issued an order in our sample, on behalf of the Federal Bureau of Investigation (FBI), under a \$50 million contract to an 8(a) ANC firm; the contract value subsequently grew to \$100 million. This order was improperly transferred by the Interior contracting officer to a second contract—the ceiling price of which tripled, from \$100 million to \$300 million—with the same vendor. A modification in the file stated that “this task order is hereby transferred” from the first contract to the second contract after the ceiling on the first contract was reached. The contracting officer subsequently noted that some requirements under the order were not incorporated into the second contract, and took steps to modify the second contract. In addition, the work under the first contract included commercial-off-the-shelf information technology and telecommunication hardware and software and support services for civilian and DOD agencies; modifications to the contract added commercial and institutional building construction. The work under the second contract included information analysis and technical assistance support to provide a turnkey solution for operational support for services to the Foreign Terrorist Tracking Task Force,<sup>41</sup> including quick reaction support for assessment planning and analysis and “other special requirements.” Additional labor categories—such as counter terrorism operations specialists—were later added. Interior contracting officials and FBI program officials acknowledged that the FBI’s requirements had changed significantly from a basic information technology support project to running a 24-hour program to track terrorist activities.<sup>42</sup> The FBI officials noted that they were responding to a presidential directive to establish a terrorist watch list within a matter of months and that there was intense pressure to have this call center up and running quickly. Also, according to contract file documentation, the government accepted and paid for an invoice submitted by the contractor for a service—security guards—that was not within the scope of the first contract. The Interior contracting officer, in later scrutinizing the contractor’s invoices, noticed this out-of-scope issue and obtained

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<sup>41</sup>The Foreign Terrorist Tracking Task Force was established in response to the September 11, 2001, terrorist attacks and was comprised of a number of government entities with the goal of keeping foreign terrorists and their supporters out of the United States.

<sup>42</sup>The task order requirement also shifted from support for the Foreign Terrorist Tracking Task Force to the FBI’s Terrorist Screening Center.

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reimbursement from the contractor. In another instance, the contracting officer noticed more improper billing, including an unauthorized expense for a hotel bar tab, and deducted the costs from the invoices. When the second contract was about to reach its ceiling price, Interior put in place a third contract with the same 8(a) ANC firm with an estimated ceiling price of \$1 billion, with the contracting officer noting that after that award they would no “longer have to worry about contract ceilings” with this vendor. Finally, the FBI program official designated as the COTR did not have the necessary training to fulfill this position; the Interior contracting officer subsequently removed the official from the position.

Apart from the issues with procurement practices discussed above, the administration of this contract lacked appropriate management controls—also referred to as internal controls. Examples follow.

- We found little evidence in the contract file that the contractor’s proposed prices had been analyzed for price reasonableness at various points during the life of the order. For example, the FBI program official’s analysis of the contractor’s proposed price for the order under the initial contract was a statement in an email that she had reviewed the price and found it reasonable, with no further documentation supporting the statement. Further, during preparations to award an option year on this order, an FBI program official again approved the contractor’s revised price proposal with a simple “yes” response when asked by the Interior contracting officer, and also explained to the contracting officer that the independent estimate—presumably for this option year—was different from the contractor’s proposed prices in part because the contractor included additional labor categories that the FBI did not require, but that they “agreed with.”
- Communications between the FBI and Interior were problematic. Specifically, the program office was communicating directly with the contractor about the growth in the requirements but not involving the contracting officers. For example, the contractor informed the Interior contracting officer that it had been directed by the program office, due to a change in requirements, to establish an increased level of continuity and retention within the terrorist screening center— particularly for the second and third shifts. The contractor proposed additional compensation for these shifts and told the contracting officer that approval to apply these shift differentials would be approved by the program office . The contracting officer told us the program office should have informed her first of the need for shift differential compensation and that the direction to the contractor should have come from her rather than from the program office. Interior contracting officials expressed dismay at the program office’s lack of communication with them and told us that sometimes they

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did not know what was going on with their own contract. Further, when Interior was preparing to award the second contract to the ANC firm, an FBI program official told the contracting officer that she understood delays in the award may be due to Interior's legal review process; the FBI official, in an effort to expedite the process, then asked for the legal representative's contact information to "move this along smoothly."

Interior officials told us that after several years of dealing with this contract, their office had undergone a culture change whereby they were starting to push back on customer demands instead of simply doing what the program offices wanted. Eventually, after a dispute about the interagency contracting fees the FBI was paying to Interior and Interior's desire to not award another sole-source contract to the same vendor, the FBI officials told us that they pulled the requirement in-house and, under their own contract, awarded the requirement noncompetitively to another ANC 8(a) firm. FBI officials added that by this time, they had increased their own contracting staff so were able to handle this requirement themselves.

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## Agencies Institute the Roles of Their Competition Advocates in a Variety of Ways, in Particular with Regard to Placement and Expertise

Statute and regulation require that each executive agency establish an "advocate for competition," commonly known as a competition advocate, at the agency level as well as at each procuring activity.<sup>43</sup> In general, the agencies in our review have organized their competition advocates into the required department- and procuring activity levels. For example, the Department of the Interior has a department-level competition advocate and competition advocates at the bureaus, including the National Business Center, which houses the Acquisition Services Directorate. DOD has a competition advocate at the department level, and additional competition advocates are in place at the Army, Air Force, and Navy and local contracting activities. The advocates are to carry out a number of broad responsibilities, including

- promoting full and open competition and challenging barriers to competition,
- reporting to the agency's senior procurement executive and chief acquisition officer on opportunities and actions taken to achieve competition, as well as conditions or actions that unnecessarily restrict it, such as unnecessarily detailed specifications or restrictive statements of work, and

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<sup>43</sup> 41 U.S.C. § 418 and FAR Subpart 6.5.

- recommending to the senior procurement executive and chief acquisition officer a “system of personal and organizational accountability” for competition, which may include recognition and awards to program managers, contracting officers, or others.

Competition advocates are also responsible for approving justifications for other than full and open competition within certain dollar limits, as depicted in table 3.

**Table 3: Levels of Approval for Justifications for Other Than Full and Open Competition**

Estimated value of proposed contract action	Approval by
\$550,000 or less	Contracting officer
Over \$550,000 but not exceeding \$11.5 million	Competition advocate for the procuring activity
Over \$11.5 million but not exceeding \$57 million (\$78.5 million for DOD, NASA, and Coast Guard)	Head of the procuring activity, or designee
More than \$57 million (or \$78.5 million for DOD, NASA, and Coast Guard)	Agency senior procurement executive

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

Note: Agency procedures may include higher approval levels.

Apart from these duties, agencies are left with much discretion regarding where in the organization the competition advocates should be placed, who should be appointed to this position, and how they should carry out their responsibilities. Some agency officials we spoke with said that, because the FAR is vague in this regard, and especially given the current emphasis on competition, more guidance related to this position could be helpful. For the agencies in our review, we found a range of approaches to the competition advocate position and placement, skills and expertise, and methods of implementing their responsibilities.

## Competition Advocate Placement in the Organization

Officials at the agencies we reviewed generally agreed that placement of the competition advocate at a high level within agencies is important, as the person in this role should have the clout to make difficult decisions regarding proposed sole-source awards and support procuring activity contracting officers who attempt to do so. A competition advocate who can exercise this level of leadership at a senior level can be more effective in the role and, by emphasizing the importance of competition to program office staff as well as contracting officers, has the potential to affect competition results. The Air Force competition advocate told us, for example, that he sees value in being highly placed within the organization;

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if people must come to him to explain why a particular procurement needs to be sole source, they are more likely to do things the right way and less likely to take short cuts.

At the agencies in our review, competition advocates are in various positions and placements within the organization. Some are senior leaders in the acquisition arena. For example, the DOD competition advocate is the Director of Defense Procurement, Acquisition Policy, and Strategic Sourcing, and the DHS competition advocate is the Director of Oversight and Strategic Support within the Office of the Chief Procurement Officer. We found that the duties of competition advocate can be automatically tied to the person's position within the agency. For example, Air Force, Navy, and Army acquisition regulations designate a specific deputy assistant secretary position to be the advocate. Agency officials told us that the ICE Deputy Assistant Secretary for Management is automatically designated as the competition advocate, and within the Secret Service, it is the Deputy Assistant Director. Also within DHS, the head of contracting activity was the competition advocate for the Coast Guard, but because this person was uncomfortable signing sole source justifications in two different capacities, she told us that she delegated her role as competition advocate to another senior official—the Deputy Assistant Commandant for Acquisition—within the acquisition directorate. Within Interior, the department competition advocate is a senior procurement analyst who reports to the senior procurement executive. The competition advocates at the bureaus, components, or procuring activities included in our review were, for example, acquisition policy chiefs or senior contracting officers.

We found one situation, at ICE, where the competition advocate is higher in the organization than the head of contracting activity. Given the approval thresholds stipulated in the FAR, this means that the head of contracting approves justifications at a higher dollar threshold than the competition advocate, but in practice reports to the competition advocate. The competition advocate explained that ICE does not administer many high-dollar acquisitions, and therefore, having the competition advocate in a management position above the head of contracting brings greater visibility to noncompetitive requirements at lower-dollar thresholds.

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## Expertise and Background

Agencies can appoint any individual, other than the senior procurement executive, as a competition advocate as long as the individual's broader

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functions and duties do not conflict with the responsibilities of a competition advocate as outlined in statute.<sup>44</sup> Agency officials told us that a competition advocate should have the right skill set, which may include a background that enables them to recognize and question overly restrictive requirements which could lead to an unnecessary sole-source outcome, and the personality to ask tough questions. In general, we found that no specific qualifications were required for this role, but the Air Force's Competition and Commercial Advocacy Program does call for its competition advocates to have "extensive qualifications and knowledge of the types of acquisitions" the procuring activity engages in.

The department- and component-level competition advocates we spoke with had a variety of backgrounds. Several of them had been contracting officers and program managers, while one was involved in the operations side of the agency, and another served as an attorney to the agency. Some competition advocates offered examples of how their background and expertise influence how they approach their job of promoting competition.

- Interior's competition advocate informed us that her experience as a contracting officer and bureau competition advocate influences how she reviews urgent and compelling requirements. During the Army's deployment in Bosnia, she was a contingency contracting officer and processed wartime requirements. She said that because she worked with urgent and compelling requirements during the deployment, she is more likely to challenge sole source emergency requirements in her capacity as the competition advocate. In addition to her experience as a contingency contracting officer, she also served as the competition advocate for the U.S. Fish and Wildlife Service during Hurricane Katrina, service that required her to balance the needs of emergency response with her responsibility as a competition advocate to promote competition. She believes that her past experience leads her to have a different attitude toward her role as a competition advocate in comparison to other advocates who may be less likely to challenge emergency requirements.
- The Coast Guard's competition advocate explained that his experience as a program manager allows him to ask questions that a contracting officer may not think to ask about a requirement. Over 25 years ago, he began working in structural design and subsequently served in several supervisory and program manager capacities in the Navy. His experience in program, fiscal, and technical management influences how he approaches his role as competition advocate. He reviews contract

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<sup>44</sup> 41 U.S.C. § 418.

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documentation strictly from the perspective of promoting competition. He stated that when a program office tries to solicit a requirement in a way that precludes certain vendors, his technical background of working with various platforms leads him to question these restrictive requirements.

- The competition advocate at one of the Air Force contracting activities we visited pointed to her experience as a program manager and her contracting background as an asset to her current position as competition advocate. She also noted that the support that she receives and relationships she has with the command-level and Air Force competition advocate has helped her challenge sole source requirements when program managers are pushing for a certain vendor.
- At one Navy location, the advocate pointed to her experience and familiarity with the program offices' requirements as a plus in enabling her to question planned sole-source procurements.
- The Secret Service's competition advocate has years of experience in operations but no experience as a contracting officer or a program manager. He told us he began working as a criminal investigator and worked in other positions, such as on the president's protection detail and in congressional affairs. After over 20 years of working in operations for the agency, he told us he is learning about contracting operations and that he believes more agents who work in operations should hold the position of competition advocate. He works closely with the head of contracting activity, relying on her expertise and supporting her efforts to increase competition within the agency.

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### Competition Advocates Use Various Methods for Carrying Out Their Duties

The competition advocates at the agencies in our review are tackling their jobs in a variety of ways. Most department-level advocates told us that they review, and in some cases sign, justifications for sole source procurements that must also be approved by the senior procurement executive, that is, justifications for the highest dollar amounts, as another check point in the process to question planned sole-source procurements. The Army's competition advocate said that one trigger for potentially rejecting a justification for a sole-source procurement is when the evaluation of the market is cursory. For example, a justification for a sole-source award to an 8(a) ANC firm was turned back for additional detail on market research and further review of the feedback from other potential offerors, although the same firm ended up with the follow-on contract.

As noted above, competition advocates are required to recommend to the senior procurement executive and the chief acquisition officer a "system of personal and organizational accountability" for competition. The Navy competition advocate and his staff told us that, as part of their review of high dollar value justifications prior to the senior procurement executive's

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review, they look to see whether program offices have made strides in improving competition in their programs if a prior justification had made this claim. Holding the program offices accountable is part of their overall plan for improving competition, an attitude that is also strongly held by the Navy's senior procurement executive. Other competition advocates also pointed out that strong leadership, from the senior procurement executive and the competition advocate, can engender results. The DHS competition advocate, for example, noted that without this level of continued leadership and the will to enforce accountability, there could be a slip back to less competition.

Other methods we found that competition advocates are using include:

- DOD officials told us that the DOD competition advocate holds quarterly meetings with competition advocates from the military services and other DOD agencies to review the progress toward meeting competition procurement goals and to challenge the barriers they identify as inhibiting competition.
- The Navy competition advocate told us that he holds quarterly contracting council meetings with senior contracting staff for each of the systems commands (some of whom are also competition advocates), discussing various topics including competition.
- Interior and DHS do not hold regular meetings with the competition advocates of bureaus or components, but, according to agency officials, they have other meetings with procurement staff where competition goals are discussed.
- The DHS competition advocate recently completed an investigation of noncompetitive contract awards at DHS and found that some contract files lacked required justifications for sole source procurements. Other contract files included justifications that did not adequately describe why only one source could perform the work. The competition advocate subsequently approved a memorandum signed by the Chief Procurement Officer that emphasized the need to include the justification in the contract file and provided examples of inadequate rationale for use of a noncompetitive contract.

Competition advocates can also offer recognition and awards—including to program managers—for efforts to increase competition. Some advocates indicated that their agencies or procuring activities have competition awards programs that recognize the work of individuals or teams who increase competition. For example, since July 2007, DHS has instituted the DHS Competition and Acquisition Excellence Awards Program “as a means of renewing and increasing acquisition workforce interest in competition and related innovative procurement practices.” The



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Army competition advocate also said the Army was going to add competition as a metric to the Secretary of the Army's award program, awarding contracting activities that raised and exceeded their competition goals.

For their part, local competition advocates told us that they try to get involved in acquisitions as early as possible to have a greater impact on decisions related to competition. For example, the advocate at the Naval Air Warfare Center Weapons Division said that, for service contracts, she reviews acquisition strategies before she reviews justifications. If she identifies a potential issue related to competition in the acquisition strategy stage, she can have the program make appropriate changes before the justification is ever developed. The Warner Robins Air Logistics Center competition advocate and her staff also try to engage program offices early in the process and, if the procurement must be noncompetitive, the approval process is faster because they are already familiar with the support for the justification. The Air Force competition advocate noted that it is his responsibility to ensure that competition advocates in the field have a certain level of independence to allow them to push back, especially with regards to the requirements side, and to make sure there is a process that allows them to raise issues up the chain when warranted.

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## Conclusions

Some degree of noncompetitive contracting is unavoidable, such as when only one responsible source can perform the work; and in some cases competition is impractical due to the government's reliance on contractors stemming from decisions that were made long ago. Recent congressional actions to strengthen competition opportunities in major defense programs may take some time to demonstrate results. Further, OMB's efforts to reduce agencies' use of high risk contract types may help agencies refocus and reenergize efforts to improve competition. Despite these actions, other targets of opportunity still exist, but to take full advantage of them, it will be necessary to challenge conventional thinking to some extent. Key among these are establishing an effective, adequately trained team of contracting and program staff working together, starting early in the acquisition process. Competition opportunities should be considered when requirements are initially developed, and as complex programs mature and the government gains more knowledge about what it needs. Because program officials have an essential role in the acquisition process, as do contracting officers, it is just as important for them to advance competition whenever possible. Given the nation's fiscal constraints, it is not acceptable to keep an incumbent contractor in place without competition simply because the contractor is doing a good job, or

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to resist legitimate suggestions that competition be imposed even though it may take longer. As discussed in this report, some agencies have implemented the leadership and accountability to make progress in this area, such as breaking out requirements to facilitate competition. However, there is no requirement to assess the circumstances under which competitive solicitations receive only one offer to potentially bring about a greater response from the market place. The competition advocates, in their unique role and in the context of OFPP's call to reinvigorate their role, have the potential to implement changes to practice and to culture. However, to do so they need to be situated in the right organizational position and able to bring to bear the acquisition knowledge and leadership to engender change.

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## Recommendations for Executive Action

We recommend that the Administrator of the Office of Federal Procurement Policy take the following three actions:

- Determine whether the FAR should be amended to require agencies to regularly review and critically evaluate the circumstances leading to only one offer being received for recurring or other requirements and to identify additional steps that can be taken to increase the likelihood that multiple offers will be submitted, with the results of the evaluation documented in the contract file.
- As part of efforts to reinvigorate the role of the competition advocate, issue guidance to federal agencies regarding appropriate considerations when appointing competition advocates, such as placement within the organization, skill set, and potential methods to effectively carry out their duties.
- Direct agencies to require their competition advocates to actively involve program offices in highlighting opportunities to increase competition.

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## Agency Comments and Our Evaluation

We requested comments on a draft of this report from OFPP, the departments of Defense, Homeland Security, and the Interior, and the SBA.

In oral comments provided via email, the OFPP Administrator concurred with our recommendations, noting that they are consistent with the types of steps agencies have begun to take in response to the President's direction to be more fiscally responsible in their contracting practices and to reduce use of high-risk contracting practices that can lead to taxpayers paying more than they should. The Administrator noted that there is still much work ahead and that OMB will periodically meet with agencies to review progress against their risk reduction goals. He stated that these

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efforts will include a push to achieve greater collaboration between contracting, program, finance, and other key stakeholder offices in the acquisition process. The Administrator also said that his office would continue in its efforts to build the capacity and capability of the acquisition workforce—including program and project managers and COTRs—to ensure that agencies are well-equipped to take the actions necessary to maximize the benefits of competition. The Administrator also stated that executive branch actions to draw agency attention to high risk contracting and establish goals for risk reduction provide a catalyst for change and that key among these are establishing an effective, adequately trained team of contracting and program staff working together, starting early in the acquisition process. Finally, the Administrator highlighted OFPP's October 2009 memorandum, which stated that a spend analysis might be useful for identifying and analyzing competitions where only one offer is received, by comparing levels of competition achieved by different organizations within the agency or those similarly situated in other agencies to determine if more successful practices may exist for more competition for a given spending category.

DOD also provided oral comments via email. The Director, Defense Procurement and Acquisition Policy, stated that, in general, he agrees with our findings and recommendations concerning opportunities to increase competition in cases where only one offer is received (a situation DOD terms “ineffective competition”). He stated that the department is taking a number of actions to increase the quality of competition in this regard. For example, the competition advocates will be required to measure and report on “ineffective competition,” contracting officers will be directed to perform cost analysis in all situations where only one offer is received, and the intent is to form a Contracting Integrity Panel subcommittee to specifically look at creating opportunities for more effective competition.

In its written comments, Interior pointed out that its September 2008 internal policy, “Enhancing Competition,” is one step the department has taken to enhance competition. Interior also commented that we should clarify that noncompetitive orders justified as logical follow-ons are permitted. We believe our report makes this clear. In addition, Interior commented that one of the limited sources justifications discussed in our report, where the wrong FAR citation had been used, was a “minor typographical error.” We disagree. Because of this error, it is not clear what exception was being used and, therefore, the rationale is ambiguous, as we state in the report. Interior provided additional technical comments, which we incorporated as appropriate. Interior's comments are included as appendix II.

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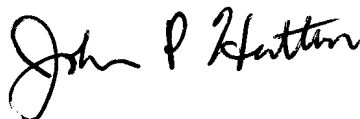
DHS had no comment on the draft report.

We received technical comments from the SBA, which we incorporated where appropriate.

The FBI requested a copy of the draft report and provided technical comments pertaining to one contract in our sample, which we also incorporated where appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of the report. We will then send copies of this report to interested congressional committees and the Secretaries of Defense, Homeland Security, and the Interior; and to the Administrators of SBA and OFPP. This report is also available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov). Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to the report are listed in appendix III.



John P. Hutton  
Director  
Acquisition and Sourcing Management

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# Appendix I: Scope and Methodology

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The objectives of this review were to assess (1) the extent to which agencies are awarding noncompetitive contracts and contracts awarded competitively with only one offer received; (2) the exceptions to competition that agencies used when awarding noncompetitive contracts; (3) factors that affect competition in federal contracting; and (4) the extent to which the contracting approaches for the contracts in our sample reflected sound procurement or management practices. We also identified how agencies are instituting the roles of their competition advocates.

To address these objectives, we identified through the Federal Procurement Data System-Next Generation (FPDS-NG) government-wide obligations to noncompetitive contracts in fiscal year 2008, the most recent available when we began our review. We included contracts and orders coded as “not competed,” “not available for competition,” “follow on to competed action” and “noncompetitive delivery order.” We found that a small percentage of obligations for orders under indefinite delivery / indefinite quantity (IDIQ) contracts were unlabeled in FPDS-NG as to extent of competition. We were able to match many of these unlabeled orders to their base contracts to obtain more complete information. In addition, we identified the fiscal year 2008 obligations under contracts where only one offer had been received.

To select the agencies to include in our review, we identified the five agencies with the highest reported percentage of obligations under noncompetitive contracts in fiscal year 2008. These included the Air Force, Army, Navy, the National Aeronautics and Space Administration (NASA), and the Department of Homeland Security (DHS). For these agencies, the percentage of noncompetitive obligations ranged from 45.2 percent (Navy) to 25.2 percent (DHS). We performed additional analysis of NASA and DOD obligations, focusing on the types of services and products represented by the noncompetitive obligations, and found that the products were largely what is generally considered to be specialized equipment. To focus our review on services, for DOD and NASA we limited our analysis to the “R” codes in FPDS-NG, which reflect professional, administrative, and management support services. Each of the DOD agencies and NASA had a significant percentage of noncompetitive contracts for these services. After discussion with our congressional requesters, we eliminated NASA from our scope of work and focused on the DOD agencies, DHS, and the Department of the Interior.

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To identify the components, or specific procuring activities, within each of these agencies for our contract file reviews, we focused on those whose percentage of fiscal year 2008 obligations under noncompetitive contracts exceeded that of the agency (Army, Navy, Air Force, DHS, and Interior) as a whole. We also focused on those components with \$100 million or more in contract obligations in 2008 and those with higher-dollar procurements, in order to avoid selecting low-dollar procurements. We then considered other factors, such as travel expenses, the locations' percentage of obligations under noncompetitive contracts, and the locations' percentage of obligations under contracts with only one offer received, into account in making our final selection. Following is more specific criteria applicable to the agencies in our review.

- For the Army, Air Force, and Navy, our analysis of fiscal year 2008 noncompetitive obligations was limited to obligations for professional, administrative, and management support services.
- For DHS: the Coast Guard, the Secret Service, Immigration and Customs Enforcement (ICE), Customs and Border Protection, the Federal Emergency Management Agency (FEMA), and the Transportation and Security Administration met our initial selection criteria. We removed the Coast Guard and FEMA from the scope of our review due to our continued audits of the Coast Guard's Deepwater program, and FEMA because it had also been the subject of many recent audits. (However, we did speak with the Coast Guard's competition advocate and head of contracting activity as part of our fifth objective, as discussed below.) Further, after discussion with the DHS Inspector General, we also removed the Customs and Border Protection and Transportation and Security Administration from our scope to avoid duplication of effort, as the Inspector General had completed or had current work underway on noncompetitive contracts at those locations. Therefore, we focused on the Secret Service and ICE.
- At Interior, two components—the Acquisition Services Directorate and Bureau of Indian Affairs—met our initial selection criteria. We included the Acquisition Services Directorate in our review due to its proximity to Washington, D.C. This fee-for-service contracting office (formerly GovWorks) awards and administers contracts on behalf of other federal agencies. Included in our contract sample from the Acquisition Services Directorate were contracts awarded on behalf of DOD agencies, the Federal Bureau of Investigation, and the National Institutes of Health.

We then randomly selected a sample of 107 contracts and orders to review in depth. While our focus was on noncompetitive contracts, we also selected a small sample of competed contracts where only one offer had been received in order to gain an understanding of the circumstances

leading to that situation. Table 4 shows the specific locations we visited, along with the number and type of contracts reviewed.

**Table 4: Locations We Visited and the Number and Type of Contracts Reviewed**

<b>Agency</b>	<b>Location, number, and type of contracts</b>
Air Force	Los Angeles Air Force Base, El Segundo, California Reviewed 4 contracts: 2 noncompetitive and 2 competed with one offer received Robins Air Force Base, Warner Robins, Georgia Reviewed 16 contracts: 14 noncompetitive and 2 competed with one offer received
Army	Redstone Arsenal Army Base, Huntsville, Alabama Reviewed 21 contracts: 16 noncompetitive and 5 competed with one offer received
Navy	Naval Air Warfare Center Weapons Division, China Lake, California Reviewed 11 contracts: 8 noncompetitive and 3 competed with one offer received Naval Air Station, Patuxent River, Maryland Reviewed 7 contracts: all were noncompetitive Naval Undersea Warfare Center in Newport, Rhode Island Reviewed 5 contracts: all were competed with one offer received
DHS	Secret Service Procurement Division, Washington, D.C. Reviewed 11 contracts: 8 noncompetitive and 3 competed with one offer received Immigration and Customs Enforcement Office of Acquisition Management, Dallas, Texas Reviewed 11 contracts: 8 noncompetitive and 3 competed with one offer received
DOI	Acquisition Services Directorate, Herndon, Virginia Reviewed 21 contracts: 16 noncompetitive and 5 competed with one offer received

Source: GAO analysis of FPDS-NG

Note: The “noncompetitive” and “competed with one offer received” in this table refers to how the agency had coded the obligations in FPDS-NG.

To identify the extent to which agencies have reported obligations under noncompetitive contracts, we analyzed FPDS-NG data from fiscal years 2005 through 2009 using the fields “not competed,” “not available for competition,” and “follow on to competed action.” We determined that a contract or order was miscoded in FPDS-NG if it was coded as not competed, but our analysis of the contract file documentation showed that the contract or order was competed. Similarly, if a contract or order was coded as competed with one offer received, we determined that it was

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miscoded if the contract documentation showed that the requirement was not competed, or that it was competed and received more than one offer. We did not make a determination whether the “reason not competed” field in FPDS-NG was coded correctly. We also analyzed reported obligations under competed contracts where only one offer had been reported for the same time period. DOD’s total obligations in fiscal year 2009 reflect an approximately \$13.9 billion downward adjustment made by DOD to correct an administrative error made in fiscal year 2008. As this adjustment significantly affected DOD’s reported obligations in fiscal years 2008 and 2009, the figures we report reflects what DOD’s total obligations would have been had the error not occurred. We also analyzed FPDS-NG data by quarter for fiscal years 2007 and 2008 to identify trends in obligations under existing and newly awarded noncompetitive contracts. In reviewing the contract files in our sample, we compared the reported competition data in FPDS-NG to the actual data in the contract file to determine if discrepancies existed in the way competition had been coded. As discussed in the first objective in this report, we found that about 18 percent of the contracts or orders had been miscoded as either competed or not competed. We found the FPDS-NG data to be adequately reliable for overall trend analysis on extent of competition and for selection of locations for our file reviews.

To determine the exceptions to competition that were used, the factors affecting competition, and the extent to which certain contracting approaches reflected sound procurement or management practices, we reviewed documentation in the contract files such as the written justification, acquisition plan, statement of work, price negotiation memorandums, records of market research, and other key documents. Where our sample involved orders under IDIQ contracts, we reviewed the base contract file as well. We reviewed pertinent legislation, such as the Competition in Contracting Act, the Federal Acquisition Streamlining Act, National Defense Authorization Acts, and the Weapon Systems Acquisition Reform Act. We also reviewed relevant provisions in the Federal Acquisition Regulation (FAR), specifically Parts 6, 8, 16, and 19, Small Business Administration regulations, and pertinent agency guidance and supplements to the FAR. We also reviewed GAO and Inspector General audit reports dealing with competition. At the locations we visited, we interviewed the contracting officer and contract specialist responsible for the files we reviewed (when available) and, for many of the contracts, also interviewed cognizant program officials to obtain their views. In addition to discussing the specific issues related to the contracts in our sample, we also discussed general topics with these officials, such as their views on barriers to competition and how, if at all, they interact with the agency or



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local-level competition advocate. We also interviewed procurement policy officials at the department and local levels and a limited number of contractor representatives.

To determine how agencies are instituting the role of the competition advocate, we reviewed statutory and FAR provisions, Office of Management and Budget and Office of Federal Procurement Policy memorandums (such as the May 2007 memorandum on reinvigorating the role of the competition advocate), pertinent agency regulations and guidance, and the annual competition reports for fiscal years 2008 and 2009 for the agencies in our review. We interviewed the competition advocates at DOD, the Army, Navy, and Air Force, the Department of the Interior, and DHS, as well as the advocates at the components included in our review. We discussed the competition advocates' placement within their organizations, their backgrounds and areas of expertise, their strategies for promoting competition, and factors they identified as barriers to competition.

We conducted this performance audit from October 2009 to July 2010, 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 the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



JUL 20 2010

Mr. John P. Hutton  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Hutton:

Thank you for providing the Department of the Interior the opportunity to review and comment on the draft Government Accountability Office Report entitled, *FEDERAL CONTRACTING: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer is Received* (GAO-10-833).

The Department has some general and technical comments for your consideration.

We hope the technical comments and the additional information provided will assist you in preparing the final report. If you have any questions or need additional information, please contact Megan Olsen, Policy Division Chief, Acquisition Services Directorate, at (703) 964-8461.

Sincerely,

Rhea Suh  
Assistant Secretary  
Policy, Management and Budget

Enclosures

Enclosure

**Government Accountability Office Draft Report**  
***FEDERAL CONTRACTING: Opportunities Exist to Increase Competition and Assess***  
***Reasons When Only One Offer is Received***  
**(GAO-10-833)**

**General and Technical Comments**

- Please include the date on which each contract was awarded with the comments related to that contract. It would be beneficial to provide context for the comments and for trends in non-competitive acquisitions generally. See table below listing the award dates for all DOI contracts referenced in the draft.
- Throughout the draft, there are references to steps that agencies have taken to enhance competition. However, there is no mention of DIAPR 2008-10 titled *Enhancing Competition*, which was released on September 12, 2008. This policy is a strong step taken by DOI to enhance competition and merits inclusion in the document. Attached are copies of both the initial policy and its amendment.
- Last paragraph on page 15 (which continues on page 16): As a point of clarification, it might be beneficial to discuss the logical follow-on exception here. The text as written implies that it is not proper to award a contract on a sole-source basis merely because it is a logical follow-on. However, FAR 8.405-6(b)(2) and FAR 16.505(b)(2)(iii) clearly indicate that a task order may be awarded on a sole-source basis if it is a logical follow-on to a previously competed order. There is no requirement that one of the other exceptions in FAR Part 6 also apply. A brief description of this exception at this point in the document would be beneficial.
- Page 27, first full paragraph: This paragraph seems to overstate an issue that is essentially a minor typographical error. GAO has stated that the Limited Sources Justification is ambiguous, because “the citation used was FAR 8.405-6(b)(3), for urgent and compelling requirements, but the supporting narrative stated that this vendor was the only distributor that could offer all of the required products and services, i.e., a certain brand name of licenses.”

The words “urgent and compelling” do not appear in the limited sources justification at issue. The FAR section that was referenced was FAR 8.405-6(b)(3), but the entire narrative supports the position that only one source could supply the product and services. It is clear from the plain language of the document that urgent and compelling was not intended to be the justification for limiting competition; rather, an incorrect FAR citation was used in error. Any reasonable person reading this document would understand the rationale for limiting competition. Further, the document contains the required information and was approved at the appropriate level. Therefore, please consider rewording the comments on this acquisition.

document would understand the rationale for limiting competition. Further, the document contains the required information and was approved at the appropriate level. Therefore, please consider rewording the comments on this acquisition.

**Dates of Department of Interior Contracts**

Contract Number	Contractor	Date Awarded
INM0404DO32099	TKC	November 2003
INM0405DO40856	Booz Allen Hamilton	November 2004
INM0405TO44315	G & B Solutions	August 2005
IND0406TO39517	Phoenix Systems	November 2005
IND0406DO61483	Resource Consultants, Inc.	March 2006
IND0406DO62181	SAIC	June 2006
IND0406DO63204	Mythics	August 2006
IND0407TO66427	IAE	November 2006
IND0408TO20637	MHN Government Services	February 2007
IND0407PO67012	Upper Mohawk	February 2007
IND0407TO68650	IBM	August 2007
IND0407CT68513	Brooks & Brooks	August 2007
IND0408DO20029	Oaktree Systems	October 2007
IND14060408TO20188	MITRE Corp	December 2007
IND0408TO20290	Z-Tech Corp	January 2008
IND0408DO20222	FEMCO, Inc.	February 2008
IND0408DO20756	SEK Solutions	June 2008
IND0408DO20823	Integrated Systems Analyst	July 2008
IND0408TO20817	APG	July 2008
IND0408TO20796	Engineering & Software System	August 2008
IND0408CT21027	Armstrong Transmitter	September 2008

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

John P. Hutton, (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Michele Mackin, Assistant Director; Tatiana Winger; Julia Kennon; Anh Nguyen; Kenneth Patton; Jared Sippel; Sylvia Schatz; Kristin VanWychen; and Keo Vongvanith made key contributions to this report.

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