



January 2015

DOD ACQUISITIONS

Opportunities May Exist to Increase Utility of Nondevelopmental Items Pilot Program

Report Documentation Page

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GAO Highlights

Highlights of [GAO-15-285](#), a report to congressional committees

Why GAO Did This Study

Section 866 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 established a pilot program authorizing DOD to award contracts for MPNDI to nontraditional defense contractors—companies that had not contracted with DOD for at least a year. The pilot program was designed to streamline acquisition procedures and to serve as an incentive for nontraditional defense contractors to innovate in areas useful to DOD.

Section 866 mandated that GAO assess DOD's use of the pilot program to acquire items that otherwise might not have been available to DOD, assisted in meeting urgent operational needs, and protected the interests of the U.S. in paying fair and reasonable prices. This report addresses the extent to which DOD awarded contracts that met these goals and issues potentially affecting use of the pilot program. To conduct this work, GAO reviewed applicable laws, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, DOD's annual reports to Congress on the pilot program from fiscal years 2011 to 2013, and DOD's implementing guidance. GAO collected information from DOD, the military departments, and selected defense organizations.

What GAO Recommends

GAO recommends that DOD identify how the pilot program can help DOD attract nontraditional contractors, to test flexibilities or streamlined procedures not otherwise available under existing authorities, and include issues hindering its use in its annual reports to Congress. DOD concurred with GAO's recommendations.

View [GAO-15-285](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov.

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DOD ACQUISITIONS

Opportunities May Exist to Increase Utility of Nondevelopmental Items Pilot Program

What GAO Found

Since the Department of Defense (DOD) implemented a pilot program in 2011 to award contracts for military purpose nondevelopmental items (MPNDI), it has not awarded any contracts using the authority. An MPNDI is generally an item that meets a validated military requirement and has been developed exclusively at private expense. GAO's analysis identified a number of issues that may be contributing to the lack of use of the pilot program, including the following:

- **Limited awareness of the pilot program:** In several instances, DOD officials from commands and contracting activities that GAO interviewed were unaware of the pilot program prior to GAO's review. Further, the Air Force noted that the program had not been well publicized within the department.
- **Challenges in meeting all the criteria required to use the pilot program:** DOD program and contracting officials that GAO contacted stated that it was difficult to identify proposed acquisitions that could meet all the criteria for using the pilot program, which include that the items must be developed at private expense, the initial lot of items be delivered within nine months after contract award, contractors be nontraditional defense contractors, competitive procedures be used, and contracts are \$50 million or less.
- **The ability to use other flexibilities to obtain needed items:** Contracting officials from the military departments with whom GAO spoke identified other existing authorities—such as commercial item acquisition procedures—that they would use to acquire items they identified as potentially covered by the pilot program.

DOD officials told GAO that they were aware of these issues but had no ongoing efforts to address them. GAO's prior work has identified several sound management practices to effectively implement or assess pilot programs, including developing objectives that link to the goals of the pilot and ensuring the results of the pilot are communicated to stakeholders. In the case of the MPNDI pilot program, DOD has not proactively identified opportunities to use the pilot program in areas useful to DOD—a goal of the pilot—such as by identifying specific industries, technologies or capability gaps where its use may provide an additional incentive for nontraditional defense contractors to do business with DOD. Additionally, DOD has not determined whether the pilot program provides new flexibilities or the opportunity to use streamlined acquisition procedures that are not already available under other authorities. Lastly, DOD's annual reports to Congress have not identified whether there are specific requirements under the pilot program, such as the need to award contracts competitively, that might hinder its use. Determining whether the pilot program provides meaningful value to the department requires that DOD do more than make the authority available for use by its personnel. Unless DOD takes action to identify opportunities to use the authority and report on issues hindering its use, DOD may miss an opportunity to make an informed decision as to whether the authority provided under the pilot program would provide value to the department.

Contents

Letter		1
	Background	3
	DOD Has Not Used the Pilot Program or Addressed Issues that Limit Its Use	6
	Conclusions	11
	Recommendations for Executive Action	12
	Agency Comments and Our Evaluation	13
Appendix I	Objectives, Scope, and Methodology	15
Appendix II	Comments from the Department of Defense	18
Appendix III	GAO Contact and Staff Acknowledgments	20
Tables		
	Table 1: Key Pilot Program Terms Defined in Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year 2011	4
	Table 2: Selected Contract Requirements Under the Pilot Program	4

Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
MPNDI	Military Purpose Nondevelopmental Item
NDAAs	National Defense Authorization Act

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January 29, 2015

Congressional Committees

In its 2010 Quadrennial Defense Review of strategies and priorities, the Department of Defense (DOD) found that it needed to better involve commercial and small business companies so that it could acquire innovative solutions to meet military requirements. As recognized by Congress, federal regulations included a preference for acquiring commercial items and other nondevelopmental items, but there were no procedures that incentivized private companies to develop items to exclusively meet a military purpose.¹ To address this gap, Section 866 of the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year 2011 established a pilot program that authorized DOD to award contracts for military purpose nondevelopmental items (MPNDI) to companies that had not contracted with DOD for at least a year.² The pilot program was designed to test whether streamlined acquisition procedures similar to those available for commercial items can serve as an incentive for these “nontraditional defense contractors” to innovate in areas useful to DOD.³

Section 866 of the NDAA for Fiscal Year 2011 mandated GAO to assess DOD’s use of the pilot program. Specifically, GAO was to assess the extent to which the pilot program (1) enabled DOD to acquire items that otherwise might not have been available to DOD; (2) assisted the department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired. This report addresses the extent to which DOD awarded contracts that met these goals and issues potentially affecting use of the pilot program.

¹S. Rpt. No. 111-201, at 163 (2010).

²Pub. L. No. 111-383 § 866 (2011).

³S. Rpt. No. 111-201, *supra*; House Armed Services Committee Print, Legislative Text and Joint Explanatory Statement, HASC Rpt. No. 5, accompanying Pub. L. No. 111-383, at 454 (2010).

To determine the extent to which DOD awarded contracts under the pilot program that met these goals, we reviewed Section 866 of the NDAA and other applicable laws, the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), DOD's annual reports to Congress on the pilot program from fiscal years 2011 to 2013 (the most recent year for which DOD submitted a report at the time of our review), DOD's preliminary data gathered in preparation for its fiscal year 2014 report, and DOD's implementing guidance. To test whether DOD's annual reports accurately reflected the use of the pilot program, we requested that the Office of the Assistant Secretary of the Air Force (Acquisition); Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology; and the Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) determine the extent to which their respective military departments had awarded any contracts under the pilot program. Based on the actions taken by the military departments in response to our request, we determined that the data, as originally provided to the congressional defense committees, of DOD's reported use of the authority from fiscal years 2011 to 2013 were sufficiently reliable for the purposes of this report. We interviewed DOD and military department officials to determine how they implemented the pilot program, including the extent to which the pilot program enabled DOD to acquire items that might otherwise not be available to DOD and assisted DOD in fielding capabilities to meet urgent operational needs.

To identify issues that potentially affected the use of the pilot program, we reviewed the input provided by the military departments and defense agencies to the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics-Defense Procurement and Acquisition Policy (DPAP) to help support the preparation of the fiscal year 2013 annual report to Congress, and reviewed the input to the fiscal year 2014 report that had been submitted to DPAP as of December 5, 2014. We also collected information and interviewed officials from DOD, the military departments, a command and contracting activity within each military department, and other defense organizations. Overall, we selected 11 components based on various factors, including their potential use or knowledge of the pilot program and their responsibilities for fulfilling urgent operational needs. We also met with representatives from an industry group to gather their views on the pilot program. Section 866 of the NDAA also required that we assess the extent to which DOD protected the interests of the U.S. in paying fair and reasonable prices for items acquired, but we determined that there was not sufficient information available to make such an assessment. To help determine whether DOD followed sound management practices when developing,

implementing, and evaluating the pilot program, we used GAO's prior work on pilot programs as criteria.⁴ Additional details on our scope and methodology are provided in appendix I.

We conducted this performance audit from September 2014 to January 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Congress authorized the five-year MPNDI pilot program in Section 866 of the NDAA for Fiscal Year 2011 with the intent to test whether streamlined acquisition procedures, similar to those available for commercial items, can serve as an effective incentive for "nontraditional defense contractors" to innovate in areas useful to DOD. Congress extended authority for the pilot program through December 31, 2019 in Section 814 of the National Defense Authorization Act for Fiscal Year 2014.⁵

Section 866 defined a number of terms for the purposes of the pilot program, such as MPNDI and nontraditional defense contractor, as shown in table 1.

⁴See, for example, GAO, *Catastrophic Planning: States Participating in FEMA's Pilot Program Made Progress, but Better Guidance Could Enhance Future Pilot Programs*, [GAO-11-383](#) (Washington, D.C.: Apr. 8, 2011).

⁵Pub. L. No. 113-66 § 814 (2013).

Table 1: Key Pilot Program Terms Defined in Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year 2011

Term	Definition
Military purpose nondevelopmental item	A military purpose nondevelopmental item is a nondevelopmental item that meets a validated military requirement as determined in writing by the program manager and has been developed exclusively at private expense. An item is not developed at private expense if the development of the item was paid for in whole or in part through (1) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a federal agency or have been submitted to a federal agency for reimbursement; or (2) foreign government funding. Section 866 further defined nondevelopmental items as commercial items, ^a and including previously developed items that require modifications other than those customarily available in the commercial marketplace if delivery of completed items is not later than nine months after the date of contract award.
Nontraditional defense contractor	A nontraditional defense contractor is an entity that is not currently performing and has not performed for at least one year prior to solicitation of sources by DOD for the procurement of any contract or subcontract subject to full coverage under federal cost accounting standards prescribed under 41 U.S.C. § 422 and any other contract in excess of \$500,000 for which the contractor was required to submit certified cost or pricing data under 10 U.S.C. § 2306a.

Source: GAO presentation of Section 866 of the NDAA for Fiscal Year 2011. | GAO-15-285

^aCommercial items are those generally available in the commercial marketplace, in contrast with items developed to meet specific federal government requirements. The Federal Acquisition Regulation (FAR) definition of commercial item includes a nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis to multiple state and local governments. FAR Part 12—Acquisition of Commercial Items—prescribes the policies unique to the acquisition of commercial items.

Section 866 also required that contracts awarded under the pilot program meet a number of contract requirements as outlined in table 2.

Table 2: Selected Contract Requirements Under the Pilot Program

Contracts must:
Be firm-fixed-price or fixed-price with economic price adjustment
Be awarded using competitive procedures
Not exceed \$50 million, including all options
Provide for initial lot delivered in nine months or less after contract award

Source: GAO presentation of Section 866 of the National Defense Authorization Act for Fiscal Year 2011. | GAO-15-285

To help encourage nontraditional defense contractors to offer items to DOD under streamlined procedures, Congress exempted contracts awarded under the pilot program from the requirement to submit certified cost or pricing data and from the federal Cost Accounting Standards, two requirements that have previously been identified as increasing contractor costs or discouraging such companies from competing for federal contracts. Certified cost or pricing data, by regulation, is to be provided to the government by contractors and subcontractors, at certain threshold contract levels unless an exception applies, to support their proposed

prices and to certify that the data are accurate, complete, and current. Certified cost or pricing data documentation requirements can be extensive. Cost Accounting Standards are mandatory for use by executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of, disputes generally concerning all negotiated prime contract and subcontract procurements with the government in excess of the thresholds for submission of certified cost or pricing data.⁶

Congress required that DOD provide information on contracts awarded under the pilot program not later than 60 days after the end of each fiscal year in which the pilot program is in effect. Each report is to include the contractor, the item or items to be acquired, the military purpose to be served by the item(s), the amount of the contract, and the actions taken to ensure that the price paid is fair and reasonable.

Attracting contractors that do not traditionally pursue government contracts due to the cost and impact of complying with government procurement requirements has been a longstanding concern within the government. Congress and others have taken various steps, including creation of the MPNDI pilot program, to address these concerns. For example, in 1996 Congress established a commercial item test program to provide contracting officers with additional procedural discretion and flexibility to acquire commercial items.⁷ Commercial items and services are those generally available in the commercial marketplace in contrast with items developed to meet specific federal government requirements. Commercial items are generally exempt from the requirement to provide certified cost or pricing data or comply with cost accounting standards. Similarly, Congress provided DOD the authority to enter into “other transactions” to take advantage of technological advances made by the private sector.⁸ Other transactions are generally not subject to federal laws and regulations governing standard procurement contracts. Further, in May 2013, the Deputy Secretary of Defense asked the Defense Business Board to begin studying ways to encourage broader

⁶41 U.S.C. § 1502(b).

⁷GAO, *Federal Contracting: Commercial Item Test Program Beneficial, but Actions Needed to Mitigate Potential Risks*, [GAO-14-178](#) (Washington, D.C.: Feb. 4, 2014).

⁸10 U.S.C. § 2371.

participation in DOD acquisitions from the private sector for the purpose of encouraging innovation.

DOD Has Not Used the Pilot Program or Addressed Issues that Limit Its Use

DOD reported that it has not awarded any contracts using the authority provided by the pilot program since it was initiated in 2011. As a result, the pilot program has not resulted in DOD obtaining items that otherwise might not have been available to it nor assisted DOD in the rapid acquisition and fielding of capabilities to meet urgent operational needs. Our review of input provided by the military departments and defense agencies to DPAP and our interviews with DOD program and contracting officials identified a number of factors that may be contributing to the lack of use of the pilot program, including limited awareness of the program, challenges in meeting all the criteria needed to use the program, and the ability to use other flexibilities to obtain needed items. DOD has not taken steps to address these concerns, however, which may continue to limit the future use of the pilot program.

DOD Has Not Awarded Any Contracts Under the Pilot Program

DOD initiated the pilot program in June 2011 through an interim rule to the DFARS.⁹ Under this interim rule, DOD created DFARS subpart 212.71, which generally reiterated the pilot program requirements as prescribed by Section 866. The subpart provided that a new clause, DFARS 252.212-7002, be used in all solicitations that would meet the criteria of the pilot program. The subpart also required that departments and agencies prepare a consolidated annual report to provide information about contracts awarded under the pilot program authority and submit it by October 31 of each year. The interim rule was finalized without change in January 2012.¹⁰

The military departments also provided varying levels of guidance that generally reiterated the pilot program rules as stated in DFARS. For example, the Navy Marine Corps Acquisition Regulation Supplement requires that contracts awarded under the pilot program during the preceding fiscal year be reported annually to the Deputy Assistant Secretary of the Navy for Acquisition and Procurement. Air Force Materiel Command restated the requirements of the pilot program in their

⁹76 Fed. Reg. 38,048 (June 29, 2011).

¹⁰77 Fed. Reg. 2,653 (Jan. 19, 2012).

February 2012 and April 2014 Contracting Bulletins, which are distributed to contracting personnel across the command, and also issued corresponding training slides that restated the requirements of the pilot program. In addition, during the course of our audit, the Army distributed a policy alert on the proper use of the pilot program by restating the requirements.

Over the past three years, the Under Secretary of Defense for Acquisition, Technology and Logistics has reported to Congress that DOD has not awarded contracts under the authority provided by the pilot program during each of the prior fiscal years. To prepare its annual reports, DPAP requests data from each of the military departments, defense agencies, and other defense offices on all instances of use of the pilot program during the relevant fiscal year. Each DOD component is required to provide information for each contract awarded under the pilot program, including the contractor, item(s) acquired, price, military purpose served by the item(s) acquired, and steps taken to ensure fair and reasonable pricing. DPAP also requires the components to report if they have not used the pilot program during the course of the prior fiscal year. DOD's annual reports found, and our discussions with military department and defense agency officials confirmed, that DOD has not used the authority from fiscal years 2011 to 2013. As a result, the pilot program has not resulted in DOD obtaining items that otherwise might not have been available to it nor assisted in the rapid acquisition and fielding of capabilities to meet urgent operational needs. The absence of contracts awarded under the pilot program precludes us from determining how DOD protected the government's interests in paying fair and reasonable prices for the item(s) acquired.

DOD Has Not Addressed Issues Potentially Limiting the Use of the Pilot Program

Our review of the input provided by the defense components, as well as our information from interviews with policy, program, and contracting officials at the 11 components we contacted, identified a number of issues that may be contributing to the lack of use of the pilot program, including limited awareness of the pilot program, challenges in meeting all the criteria required to use the pilot program, and the ability to use other flexibilities to obtain needed items. DOD is aware of a number of issues but has no ongoing efforts to address them. The following examples illustrate these issues.

- **Limited awareness of the pilot program:** In several instances, DOD officials from commands and contracting activities that we interviewed were generally unaware of the pilot program prior to our review, noting

that the program had not been well publicized or could only cite its inclusion into DFARS. For example, the program officials from the Army's Rapid Equipping Force told us that they were notified of the pilot program on October 1, 2014 as a result of our review. Similarly, program officials from the Joint Improvised Explosive Device Defeat Organization were unaware of the pilot program until we had contacted them for information. Further, the Air Force noted in its response to the fiscal year 2014 DPAP data call on the pilot program that the program had not been well publicized within the department and identified this issue as one of several reasons why the program had not been used.

- **Challenges in meeting all the criteria required to use the pilot program:** Program and contracting officials from commands and contracting activities we interviewed stated that it was difficult to identify proposed acquisitions that met all the requirements for using the pilot program. Officials from 5 of the 11 offices that we spoke with provided examples or told us that in their experience the items they acquire generally need to be modified for government use and therefore may not meet the requirement that the item was developed exclusively at private expense. For example, officials from the Army Rapid Equipping Force told us about a 2011 need to identify and field a sensor package that could measure, collect, and store data on improvised explosive device blast pressure experienced by soldiers inside and outside of vehicles. These officials noted that doing so would enable the Army to advance research and treatment on mild traumatic brain injuries. The Army determined that no existing nondevelopmental items suitably measured such forces, so they modified an existing commercial item to meet the need, which in turn was deployed to Afghanistan in June 2012. In another example, a contracting official from the Air Force Materiel Command identified a commercially-available airplane landing system that was modified by the government for military-use. In its response to the fiscal year 2014 DPAP data call, the Air Force noted that the many requirements of the pilot program that must be met, such as delivery within nine months, use of nontraditional contractors, the required use of competitive procedures, and the restriction not to exceed \$50 million, limited the applicability of the program.

Additionally, several DOD officials cited the requirement to use competitive procedures as a limiting factor. DPAP officials noted that Section 866 requires the use of "competitive procedures" without further definition. These officials noted that 10 U.S.C. 2302 defines competitive procedures as acquisitions conducted under full and open

competition—that is, under which all responsible bidders or offerors are eligible to compete. As such, DPAP officials did not believe that the use of Section 866 allowed acquisitions to be conducted using one of the exceptions to competitive procedures, such as awarding a contract on a sole-source basis.¹¹ However, some DOD officials stated that they thought the program may be more useful if exceptions to competition could be used. They noted that the ability to use exceptions to competition would make one of the key features of the pilot program—the exemption from the need to provide certified cost and pricing data—more applicable because certified cost and pricing data would generally apply to contracts that are awarded non-competitively.

- **The ability to use other flexibilities to obtain needed items:** Contracting officials from the military departments with whom we spoke identified other existing authorities—such as commercial item acquisition procedures—that they would use to acquire items that they identified as potentially covered by the pilot program. In several cases, officials provided examples of nondevelopmental items developed at private expense that they acquired through competitive commercial item acquisition procedures. As such, DOD would generally be precluded from obtaining certified cost or pricing data or from requiring the contractor to adhere to federal cost accounting standards, two benefits that the pilot program was to provide to attract commercial firms. For example, during our interview with the Naval Surface Warfare Center, contracting officials initially identified data recorders as potentially meeting the requirements of the pilot program but ultimately concluded that acquisition of these recorders would most likely be acquired as a commercial item. Further, in another example, DPAP officials told us that military purpose aviation fuel tanks were acquired as a commercial item rather than under the pilot program, because DOD determined the fuel tanks met the definition of a commercial item. As we found in our February 2014 report on DOD’s commercial item test program, DOD contracting officers have many tools in their toolkit and the decision regarding the appropriate contracting method for a commercial item is left to the contracting officers’ discretion. We found that several factors influence the contracting officer’s decision, such as the estimated value of the contract at award, the urgency of the requirement, the availability of

¹¹FAR Subpart 6.3.

existing contracts or contracting vehicles, as well as the nature of the item or service being acquired.¹²

Further, several DOD officials noted that DOD has codified in policy the processes for the fulfillment of urgent operational needs to provide warfighters involved in conflict or preparing for imminent contingency operations with the capabilities urgently needed to overcome unforeseen threats, achieve mission success, and reduce the risk of casualties. DOD established the urgent operational needs processes to rapidly develop, modify, and field new capabilities, such as counter-improvised explosive device systems, in response to findings that U.S. military personnel in Iraq and Afghanistan had faced significant risks of mission failure and loss of life due to rapidly changing enemy threats. DOD Instruction 5000.02 states that the objective for the rapid acquisition of urgent needs is to deliver capability quickly, within days or months. DOD components are instructed to use all available authorities to expeditiously fund, develop, assess, produce, deploy, and sustain urgent need capabilities for the duration of the urgent need. Specifically, at an initial milestone, DOD is to assess, among other things, if the solution does not require substantial development effort, is based on technologies that are proven and available, and can be acquired under a fixed-price contract—not unlike the requirements of the pilot program.¹³ For example, to meet an urgent operational need related to a gap in pelvic protection, in July 2011, the Joint Improvised Explosive Device Defeat Organization used the urgent needs process to start delivery to Afghanistan within eight weeks of about 200,000 Protective Undergarments, a pelvic protection system, from a supplier in the United Kingdom. The items were acquired using noncompetitive procedures, and the British government, which had acquired the items for its military personnel, had helped to fund the development of the undergarments. Further, these officials noted that future orders, which the government was able to acquire from U.S. companies, required

¹²[GAO-14-178](#).

¹³GAO has issued several reports on DOD's urgent needs processes. See, for example, GAO, *Warfighter Support: DOD's Urgent Needs Processes Need a More Comprehensive Approach and Evaluation for Potential Consolidation*, [GAO-11-273](#) (Washington, D.C.: Mar. 1, 2011); and GAO, *Warfighter Support: Improvements to DOD's Urgent Needs Processes Would Enhance Oversight and Expedite Efforts to Meet Critical Warfighter Needs*, [GAO-10-460](#) (Washington, D.C.: Apr. 30, 2010).

some modifications to the design. As a result, these officials were not certain whether the items could have been acquired using the pilot program.

DPAP officials noted that they are aware of many of these issues, but have no ongoing efforts to specifically address them. GAO's prior work has identified several sound management practices when developing, implementing, and assessing pilot programs, including developing objectives that link to the goals of the pilot and ensuring the results of the pilot are communicated to stakeholders.¹⁴ In the case of the MPNDI pilot program, DOD has not proactively identified opportunities to use the pilot program in areas useful to DOD—a goal of the pilot—such as by identifying how the authority might help DOD attract nontraditional contractors to fill needs in specific industries, technologies, or for certain capabilities that are not met by existing authorities. The pilot program was also intended to test whether streamlined acquisition procedures, similar to those available for commercial items, can serve as an incentive for “nontraditional defense contractors” to innovate in areas useful to DOD. DOD has not determined whether the pilot program provides new flexibilities or the opportunity to use streamlined acquisition procedures that are not already available under other authorities. Lastly, DOD's prior annual reports to Congress have not identified whether there are specific requirements under the pilot program, such as the need to award contracts competitively, that might hinder its use. Taking action to identify how the pilot program authority may assist in (1) attracting nontraditional contractors, (2) testing the use of new flexibilities or streamlined procedures, and (3) identifying and reporting to Congress on specific requirements of the pilot program that may hinder its use, could better position DOD to determine whether the pilot program provides meaningful value to the department.

Conclusions

DOD has had a longstanding concern to better involve commercial and small business companies so that it can acquire innovative solutions to meet military requirements. Congress created and later extended the MPNDI pilot program as a way of providing additional flexibilities to assist DOD in acquiring needed items, to spur innovation and participation from nontraditional defense contractors, such as by using streamlined

¹⁴[GAO-11-383](#).

acquisition procedures or eliminating certain requirements that had been identified as barriers to attracting firms that traditionally did not do business with DOD. However, DOD has not yet used the program in the 3 years since it was initiated. Determining whether the pilot program provides meaningful value to the department requires that DOD do more than make the authority available for use by its personnel. In that regard, DOD has not provided assistance to its program and contracting officials to help identify opportunities to use the pilot program as currently structured, nor has it reported to Congress on issues that hinder its use, such as the requirement to use competitive procedures. Further, DOD identified a number of existing authorities that enabled them to acquire needed goods and services quickly from the private sector. Identifying whether there are targets of opportunities in terms of industries, technologies or capabilities that remain untapped, or gaps in existing authorities or procedures that could be met, or limitations in the pilot program's current structure that hinder its use can help shape the future of the pilot program. Unless DOD takes such action, the remaining 5 years of the authority may not produce results that differ from those reported over the past 3 years. If so, DOD will have missed an opportunity to make an informed decision as to whether authority provided under the pilot program would provide value to the department. On the other hand, if DOD concludes, on the basis of a robust pilot program, that the authority does not add value, then that conclusion should stand.

Recommendations for Executive Action

To maximize the potential value of the MPNDI pilot program, we recommend that the Under Secretary of Defense for Acquisition, Technology and Logistics take the following three actions:

- identify how this authority, as currently structured, may assist DOD in attracting nontraditional contractors in specific industries, technologies, or capabilities;
- identify whether there are opportunities to test flexibilities or streamlined procedures that are not otherwise available under existing authorities; and
- if DOD believes changes are needed to the current structure of the pilot program to increase its utility, to identify such issues in its subsequent annual reports to Congress.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD for comment. In its written comments, which are reprinted in appendix II, DOD concurred with each of our recommendations. DOD stated that it found meeting all the criteria needed to use the authority, and in particular, the need to use “competitive procedures,” as limiting the department’s ability to effectively use the pilot program authority and its ability to test flexibilities or streamlined procedures not otherwise available to the department. DOD stated it would identify such issues in future reports to Congress. DOD also stated it would continue to examine how the pilot program may assist in attracting nontraditional contractors, but did not specify how it would do so. As we indicated in the report, identifying potential targets of opportunity, such as specific industries, technologies, or capabilities gaps where the program’s use may provide an additional incentive for nontraditional contractors to do business with DOD, can help shape the future of the pilot program. DOD also provided technical comments, which we incorporated in the report as appropriate.

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

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or dinapolit@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 key contributions to this report are listed in appendix III.



Timothy J. DiNapoli
Director
Acquisition and Sourcing Management

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Appendix I: Objectives, Scope, and Methodology

Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year 2011 mandated that GAO assess DOD's use of the pilot program. Specifically, Section 866 mandated that GAO assess whether the pilot program (1) enabled DOD to acquire items that otherwise might not have been available to DOD; (2) assisted the department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired. This report addresses the extent to which DOD awarded contracts that met these goals and issues potentially affecting use of the pilot program.

To determine the extent to which DOD awarded contracts under the pilot program that met these goals, we reviewed Section 866 of the NDAA and other applicable laws, the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), DOD's annual reports to Congress on the pilot program from fiscal years 2011 to 2013 (the most recent fiscal year for which DOD submitted a report at the time of our review), DOD's preliminary data gathered in preparation for its fiscal year 2014 report, and DOD's implementing guidance. To test whether DOD's annual reports accurately reflected the use of the pilot program, we requested data from the military departments (Office of the Assistant Secretary of the Air Force (Acquisition); Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology; and the Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement)) on contracts that included the DFARS clause 252.212-7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, which is to be included on contracts awarded under the pilot program. This effort identified 105 contracts awarded from fiscal years 2011 to 2013 that included the clause. The military departments, however, subsequently determined that none of the contracts identified had used the pilot program authority, and provided us information on how they identified the contracts that included the clause, the steps they took to verify the information in their contracting systems with cognizant contracting officials, and the steps they were taking to correct these errors, including modifying the contracts to delete the clause and issuing additional guidance. Based on the actions taken by the military departments in response to our request for data, we determined that the data, as originally provided to the defense committees, of DOD's reported use of the authority from fiscal years 2011 to 2013 were sufficiently reliable for the purposes of this report. We interviewed DOD and military department officials to determine how they implemented the pilot program, including the extent to which the pilot program enabled DOD to acquire items that otherwise might not have been available to DOD and

assisted DOD in the rapid acquisition and fielding of capabilities to meet urgent operational needs.

To identify issues that potentially affected the use of the pilot program, we reviewed the input provided by the military departments and defense agencies to the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics-Defense Procurement and Acquisition Policy (DPAP) to help support the preparation of the fiscal year 2013 annual report to Congress and reviewed the input to the fiscal year 2014 report that had been submitted to DPAP as of December 5, 2014. We also collected information and interviewed officials from DOD, the military departments, a command and contracting activity within each military department, and other defense organizations. Selected commands, activities, and defense organizations included the Air Force Materiel Command; Air Force Life Cycle Management Center; Army Program Executive Office for Command, Control and Communications-Tactical; Army Program Manager Tactical Radios; Naval Sea Systems Command; Naval Surface Warfare Center-Port Hueneme Division; Army Rapid Equipping Force; the Joint Improvised Explosive Device Defeat Organization; the Joint Rapid Acquisition Cell; Special Operations Command-Special Operations Research, Development, and Acquisition Center; and Central Command-Joint Theatre Support Contracting Command. These 11 components were selected based on various factors, including potential use of the pilot program, knowledge of the pilot program, and fulfillment of urgent operational needs. Further, we collected information and met with officials from Department of the Navy-Office of Small Business Programs and the Program Executive Office for Simulation, Training and Instrumentation. We also met with representatives from an industry group to gather their views on the pilot program. Section 866 of the NDAA also required that we assess the extent to which the pilot program protected the interests of the U.S. in paying fair and reasonable prices for the item(s) acquired, but we determined that there was not sufficient information available to make such an assessment. To help determine whether DOD followed sound management practices when developing, implementing and evaluating the pilot program, we used GAO's prior work on pilot programs as criteria.¹ These practices include developing objectives that link to the

¹See, for example, GAO, *Catastrophic Planning: States Participating in FEMA's Pilot Program Made Progress, but Better Guidance Could Enhance Future Pilot Programs*, [GAO-11-383](#) (Washington, D.C.: Apr. 8, 2011).

goals of the pilot and ensuring the results of the pilot are communicated to stakeholders.

We conducted this performance audit from September 2014 to January 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000


JAN 22 2015

Mr. Timothy J. DiNapoli
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Mr. DiNapoli:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report, GAO-15-285, "DOD ACQUISITIONS: Opportunities May Exist to Increase Utility of Nondevelopmental Items Pilot Program," dated December 29, 2014 (GAO Code 121248). Detailed comments on the report recommendations are enclosed.

Sincerely,


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated

GAO Draft Report Dated December 29, 2014
GAO-15-285 (GAO CODE 121248)

**"DOD ACQUISITIONS: OPPORTUNITIES MAY EXIST TO INCREASE UTILITY OF
NONDEVELOPMENTAL ITEMS PILOT PROGRAM"**

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

RECOMMENDATION 1: To maximize the potential value of the MPNDI pilot program, the GAO recommends that the Under Secretary of Defense for Acquisition, Technology and Logistics identify how this authority, as currently structured, may assist DOD in attracting nontraditional contractors in specific industries, technologies or capabilities.

DoD RESPONSE: Concur. Defense Procurement and Acquisition Policy (DPAP) will continue to examine how this authority might enable the Department to attract nontraditional contractors. However, as currently structured, DPAP finds meeting all of the criteria challenging and ultimately limits the Department's ability to utilize this pilot program authority.

RECOMMENDATION 2: To maximize the potential value of the MPNDI pilot program, the GAO recommends that the Under Secretary of Defense for Acquisition, Technology and Logistics identify whether there are opportunities to test flexibilities or streamlined procedures that are not otherwise available under existing authorities.

DoD RESPONSE: Concur. While Defense Procurement and Acquisition Policy (DPAP) would like to test the section 866 flexibilities and/or streamlined procedures, the limitations of the authority as currently structured have precluded the Department from doing so. However, the Department leverages other existing authorities, such as FAR Part 12 Commercial Acquisition and Other Transaction Authorities to fulfill needs and satisfy similar objectives as the MPNDI pilot authority.

RECOMMENDATION 3: To maximize the potential value of the MPNDI pilot program, the GAO recommends that the Under Secretary of Defense for Acquisition, Technology and Logistics identify such issues in its subsequent annual reports to Congress, if DOD believes changes are needed to the current structure of the pilot program to increase its utility.

DoD RESPONSE: Concur. Defense Procurement and Acquisition Policy (DPAP) finds meeting all of the section 866 criteria, and specifically the requirement to use "competitive procedures," as defined in section 2302 of title 10, U.S.C. limits the Department's ability to effectively utilize the pilot program authority. DPAP will identify such issues in future annual reports to Congress.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Timothy J. DiNapoli, (202) 512-4841 or dinapolit@gao.gov

Staff Acknowledgments

In addition to the contact named above, Janet McKelvey (Assistant Director), James Kim, Dina Shorafa, Marie Ahearn, Virginia Chanley, Julia Kennon, Pete Anderson, and Cary Russell made key contributions to this report.

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