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United States Government Accountability Office
Washington, DC 20548

February 14, 2013

The Honorable Jeff Sessions
Ranking Member
Committee on the Budget
United States Senate

Subject: *Warfighter Support: Army's and Defense Logistics Agency's Approach for Awarding Contracts for the Army Combat Shirt*

Dear Senator Sessions:

Flame-resistant clothing has been typically used by warfighters to protect them in situations where they face serious exposure to fire or incendiary devices. Prior to Operation Iraqi Freedom and Operation Enduring Freedom, Department of Defense (DOD) personnel wearing flame-resistant clothing were mainly aviators, fuel handlers, and combat-vehicle crewmembers. However, with the growing prevalence of improvised explosive devices in Iraq and Afghanistan, warfighters serving there have been exposed more frequently to the risk of fire-related injuries. To provide warfighters deploying into combat areas (including Iraq and Afghanistan) with a garment that can mitigate the risk of sustaining fire-related injuries, the Army procured the Army Combat Shirt, which is a flame-resistant, moisture-wicking shirt designed specifically to protect warfighters against burns and provide maximum comfort as well. Through the Army Program Executive Office Soldier—the program manager responsible for the initial procurement of the Army Combat Shirt—the Army began procuring this shirt in fiscal year 2007 and through fiscal year 2012 has awarded over \$310 million in contracts for the combat shirt. These contracts have been awarded to 8(a) firms¹ and to the National Industries for the Blind (NIB) and NISH² nonprofit agencies. Beginning in fiscal year 2011, the Defense Logistics Agency (DLA) assumed responsibility for sustainment contracting of the Army Combat Shirt and began the process of soliciting proposals and awarding contracts for the combat shirts.³ Transferring clothing and textile program functions from a military service to DLA is part of DOD's process for managing the life cycle of the procurement of supplies.⁴ This report addresses your request that we examine the approach that the Army used to award contracts for the Army Combat Shirt and that DLA is using to prepare to award future ones.

¹The 8(a) program is one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals.

²NISH was previously known as the National Industries for the Severely Handicapped, but is now only known as NISH. NISH is a nonprofit agency dedicated to creating employment opportunities for people with significant disabilities other than blindness.

³As described in Joint Publication 3-0 (Aug. 11, 2011), "sustainment" is the provision of logistics and personnel services, such as clothing items, necessary to maintain and prolong operations through mission accomplishment.

⁴A supply life cycle includes acquisition (design, development, testing, production and deployment), sustainment (operations and support), and disposal.

To examine the approach that the Army used to award contracts for the combat shirt during the fiscal year 2007-12 timeframe and that DLA is using to prepare to award future ones, we reviewed the statutory and regulatory requirements related to the procurement of supplies—i.e., the Federal Acquisition Regulation and Small Business Regulations implementing certain provisions of the Small Business Act. We also reviewed the Army's and DLA's documentation regarding the procurement of the Army Combat Shirts, including the Army's contracts, DLA's solicitation, and market research reports. To corroborate evidence in the documents we reviewed and to determine the factors considered during the award determination process, we interviewed program and contracting officials from Army Program Executive Office Soldier, DLA Troop Support, the Army Contracting Command, and the Office of Federal Procurement Policy. Finally, we interviewed officials from firms to which the Army awarded Army Combat Shirts between fiscal year 2007 and fiscal year 2012 to discuss the process for manufacturing the combat shirt. Specifically, these firms included an Alaska Native Corporation (ANC)⁵-owned, 8(a) firm; an Indian tribe-owned, 8(a) firm; NIB nonprofit agencies; and NISH nonprofit agencies.⁶ We conducted this performance audit from March 2012 to February 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See enclosure I for a detailed discussion of our scope and methodology and enclosure II for a glossary of statutory and regulatory requirements for awarding contracts for supplies.

Results in Brief

During the fiscal year 2007-12 timeframe, the Army applied statutory and regulatory requirements related to procurement for supplies to award contracts for the Army Combat Shirt. The Army applied these requirements, including those in the Federal Acquisition Regulation and Small Business Regulations, to award the following groups of contracts and to respond to demand for the combat shirt and the supply of manufacturers that could produce it:

- *contracts awarded on a sole-source basis to 8(a) firms owned by an ANC or an Indian tribe* in fiscal years 2007 and 2008 to respond to the urgent need for combat shirts because of an increase in warfighters being burned by improvised explosive devices in theater
- *contracts awarded to NIB and NISH nonprofit agencies representing industries for the blind and severely disabled, respectively, in fiscal years 2009 through 2012*

⁵ ANCs, created in 1971 through the Alaska Native Claims Settlement Act (ANCSA), were established to distribute land and monetary benefits to Alaska Native shareholders in lieu of a reservation system. The goal of the act was, in part, to resolve long-standing aboriginal land claims and to foster economic development for Alaska Natives. ANCs are eligible to participate in federal procurement programs, such as the 8(a) program, pursuant to ANCSA. See 43 U.S.C. §§ 1602, 1626(a) and (e).

⁶ The AbilityOne Commission represents nonprofit agencies serving people who are blind (NIB) and people with severe disabilities (NISH).

to respond to the increasing demand for the combat shirts and the limited capacity of the 8(a) firms that were manufacturing the combat shirts under the existing sole-source contracts

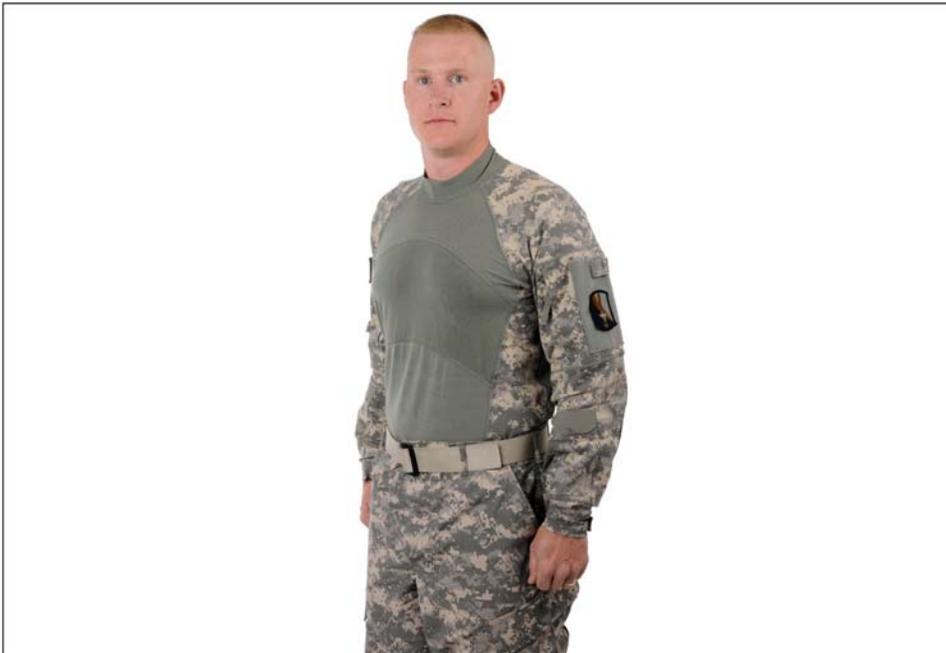
- *a contract awarded on a competitive basis to an 8(a), ANC-owned firm in fiscal year 2011 to respond to the need for an additional source of supply to manufacture the combat shirts and to introduce competition as a means of reducing cost of the combat shirt.*

Since fiscal year 2011, DLA has been responsible for sustainment contracts for the Army Combat Shirt. According to DLA contracting officials, DLA plans to award contracts by March 2013 by applying statutory and regulatory procurement requirements, including the Federal Acquisition Regulation and Small Business Regulations.

Background

The Army Combat Shirt is a flame-resistant, moisture-wicking shirt for deployed warfighters to wear to protect against burns and to maximize comfort in extremely hot environments like Iraq and Afghanistan. The combat shirt was designed to be a stand-alone garment that can be worn underneath body armor providing flame and thermal protection and moisture-wicking properties, while at the same time allowing for comfort and agility. The combat shirt comprises proprietary, flame-resistant fabric supplied and manufactured by Massif Mountain Gear Company, LLC (see fig. 1).

Figure 1: Photograph of Army Combat Shirt



Source: DOD.

In fiscal year 2007, the Army Program Executive Office Soldier—the program manager responsible for, among other things, developing, procuring, and fielding the Army Combat Shirt—began soliciting proposals and awarding contracts for the combat shirt. As part of the DOD life-cycle management of clothing and textile supplies like the Army Combat Shirt, the Army Program Executive Office Soldier conducts the testing, evaluation, and initial procurement of the items, and then DLA Troop Support is to take over the sustainment contracting, including the procurement and delivery of the items to the warfighter. Both the Army and DLA program managers oversee the procurement of the Army Combat Shirt with the assistance of contracting officers from their respective contracting offices. As part of this process, the contracting officer certified and documented in a memorandum that the price for the Army Combat Shirt is fair and reasonable.

The President is statutorily required to establish an annual government-wide goal of awarding not less than 23 percent of federal prime contracts to small businesses,⁷ including to small businesses owned by socially and economically disadvantaged individuals.⁸ To meet this government-wide goal, the Small Business Administration negotiates annual goals with each agency. In addition, in 2008, the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing and the U.S. Army Commanding General of the Army Materiel Command both issued correspondence encouraging contracting officials to look for more opportunities to contract with the nonprofit agencies representing industries for the blind or significantly disabled. Also, in 2009, following the President's Plan to Empower People with Disabilities, the Deputy Secretary of Defense issued a correspondence to encourage contracting officials to look for more opportunities to employ these nonprofit agencies.

Army Applied Relevant Provisions in Federal Regulations to Award Army Combat Shirt Contracts and DLA Is Applying Federal Regulations to Award Future Contracts

When awarding 18 Army Combat Shirt contracts between fiscal years 2007 and 2012,⁹ the Army applied federal regulatory provisions, including the Federal Acquisition Regulation and Small Business Regulations. A number of regulatory requirements apply to the procurement of the Army Combat Shirt, but Army and DLA officials stated that Federal Acquisition Regulation § 8.002, *Priorities for Use of Government Supply Sources*; Part 10, *Market Research*; and § 19.805, *8(a) Program*—were the key provisions used to award these contracts.¹⁰ The 18 awarded contracts fall into three groups—(1) sole-source, 8(a) contracts, which the Army awarded to ANC-owned and Indian tribe-owned firms in fiscal years 2007 and 2008; (2) NIB and NISH contracts, which the Army awarded

⁷ A prime contract is defined in FAR § 3.502-1 as a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

⁸ 15 U.S. Code § 644(g).

⁹ This excludes 1 contract the Army awarded in fiscal year 2007 for testing and evaluation purposes.

¹⁰ A description of these and other relevant procurement statutes and regulations are included in enclosure II.

in fiscal years 2009 through 2012; and (3) a competitive, ANC-owned 8(a) contract, which the Army awarded in fiscal year 2011. All contracts have expired, except for 2 NIB and NISH contracts awarded in fiscal year 2012 and the competitive, ANC-owned 8(a) contract awarded in fiscal year 2011. See figure 2 for a timeline by fiscal year of the 18 contracts the Army awarded.

Figure 2: Contracts the Army Awarded for the Army Combat Shirt by Date Awarded (Fiscal Years 2007-12)

Manufacturer	2007	2008	2009	2010	2011	2012
ANC-owned, 8(a) firm	✓	✓✓			✓	
Indian tribe-owned, 8(a) firm		✓				
National Industries for the Blind (NIB)			✓	✓	✓✓	✓
NISH				✓✓✓✓	✓✓✓	✓

✓ One contract awarded
 Source: GAO analysis of Army information.

Army Awarded Sole-Source Contracts to Respond to Urgent Need for Army Combat Shirt

Applying the provisions in the Federal Acquisition Regulation and Small Business Regulations, beginning in fiscal year 2007, the Army awarded 4 sole-source contracts for the Army Combat Shirt to 8(a) firms to respond to the urgent need for flame protection for warfighters. Specifically, the Army awarded these contracts from fiscal year 2007 through fiscal year 2008 to 8(a) firms owned by an ANC and an Indian tribe, which are both commercial/for-profit firms. The Army documented the urgent need for the Army Combat Shirt in Operational Needs Statements,¹¹ identifying the growing prevalence of improvised explosive devices coupled with the added fire threat of propane as a fire catalyst, which exposed warfighters serving in Iraq and Afghanistan to the risk of fire-related burns. Having no ready supply of shirts to meet the urgent need, Army officials stated that they needed an approach for awarding contracts quickly so that they could meet demanding delivery schedules.

Under the Federal Acquisition Regulation,¹² the contracting officer is generally provided wide latitude to exercise business judgment in making award decisions, including the determination of whether to award a contract on a competitive basis, or on a sole source basis if permitted by law. Army contracting officials stated that they pursued 8(a) sole-source awards to firms owned by an ANC and an Indian tribe, because they were an expeditious contracting option in meeting urgent warfighter needs. For example, according to Army officials, it took fewer than 4 weeks to award the first 8(a), sole-source contract in 2007, whereas it would have taken 6 months to have awarded contracts on a competitive basis. Some of the reasons it would have taken longer to award a competitive contract include the additional time needed to publicize the Army’s

¹¹ Operational commanders use an Operational Needs Statement to document the urgent need for equipment or resources required to protect life and enhance the success of the mission.

¹² FAR §§1.602-2, 6.101, 6.301.

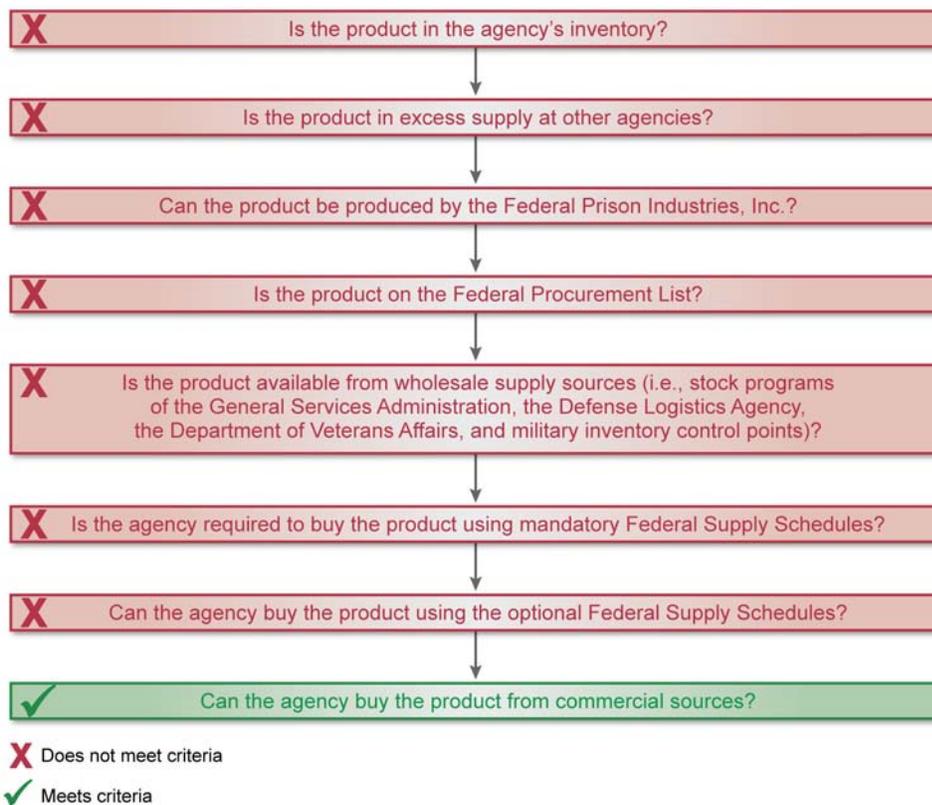
requirements, issue formal solicitations, and evaluate proposals in accordance with the criteria outlined in the solicitation.

Starting in fiscal year 2007, the Army conducted market research to identify potential vendors or manufacturers for the Army Combat Shirt by holding biannual advanced planning briefings to industry, participating in industry trade shows, conducting requests for information, and querying government-wide databases of contracts. The Federal Acquisition Regulation Part 10 states that agencies are to conduct market research to arrive at the most suitable approach for acquiring and distributing supplies and services, including for finding vendors capable of producing the required supplies.

After performing the market research, in fiscal years 2007 and 2008, the Army applied the *Priorities for Use of Government Supply Sources*—Federal Acquisition Regulation § 8.002—which sets forth the priority order government agencies must follow to acquire required supplies and services from government supply sources. Specifically, to choose a source for the combat shirt, the Army considered, in descending order of priority, whether Army Combat Shirts existed in its own inventory, other agencies had excess supplies of the combat shirt, the Federal Prison Industries had the production capability to manufacture the combat shirt, the combat shirt was on the Federal Procurement List,¹³ the combat shirt was available on the General Service Administration’s mandatory or optional Federal Supply Schedules, and commercial sources could manufacture the combat shirt. In figure 3, we show the questions that contracting officials answered when applying the *Priorities for Use of Government Supply Sources*—Federal Acquisition Regulation § 8.002—and before ultimately awarding the 4 sole-source contracts to the 8(a) firms.

¹³The Federal Procurement List is a list of products and services that the Committee for Purchase for the Blind or Severely Disabled (which operates as the AbilityOne Commission) has determined suitable for purchase by the government under the Javits-Wagner-O’Day Act. For purposes of this report, we use the term “AbilityOne Commission” to refer to the Committee. The AbilityOne Commission represents nonprofit agencies serving people who are blind and people with severe disabilities.

Figure 3: Army’s Application of *Priorities for Use of Government Supply Sources* (Federal Acquisition Regulation § 8.002) for Fiscal Years 2007 and 2008 Army Combat Shirt Contracts



Source: GAO analysis based on Federal Acquisition Regulation § 8.002.

On the basis of its analysis, the Army determined that the combat shirt was a new requirement and did not exist in any of the DOD inventories or supplies, the Federal Prison Industries could not produce the combat shirt, it did not yet exist on the Federal Procurement List, and the combat shirt was not listed on the General Service Administration’s mandatory or optional Federal Supply Schedules. Because the Army could not obtain the combat shirt from these sources, the Army decided to award the combat shirt to commercial/for-profit, 8(a), ANC-owned and Indian tribe-owned firms.

Following the *Priorities for Use of Government Supply Sources* and the results of market research, the Army made sole-source awards to ANC-owned and Indian tribe-owned, 8(a) firms, which are commercial/for-profit firms. In making these awards, the Army applied the Federal Acquisition Regulation and the Small Business Regulations following the acceptance of the requirement by the Small Business Administration,¹⁴ which oversees the 8(a) program.¹⁵

¹⁴The Small Business Administration oversees the 8(a) program. The Small Business Administration admits firms to participate in the 8(a) program based on specified eligibility criteria. Agencies, such as the Army, can independently, or through the self-marketing efforts of an 8(a) firm (e.g., ANC-owned firm), identify an agency requirement (e.g., the Army’s requirement) for the 8(a) program.

The Army determined that the prices for the Army Combat Shirt under the 8(a) contracts were fair and reasonable by completing both a cost and price analysis.¹⁶ The Army contracting officers made this determination by performing a cost analysis, in which they reviewed the separate cost elements making up the total price— including materials (fabric), labor, shipping/freight, and profit and the 8(a) firms’ certified cost or pricing data for the Army Combat Shirt. The contracting officers determined that the cost or pricing data were accurate, complete, current, and acceptable based on industry standards. We found that the proprietary fabric required by the Army to be used in the shirts is the highest priced component, accounting for about 70 percent of the average total contract price for the shirt from all sources. The Army also conducted a price analysis of the firms’ proposals by comparing the firms’ proposed prices with

- prices under previously awarded contracts for a prior version of the Army Combat Shirt that did not meet current requirements and
- commercial market prices for similar combat shirts from several commercial sources that, while lower in price, the contracting officer determined did not meet the Army’s requirements and specifications for flame resistance.

Army Awarded Contracts to NIB and NISH Agencies to Respond to Increasing Demand for Army Combat Shirts and the Limited Capacity of Firms Awarded Sole-Source Contracts

In fiscal year 2009 through fiscal year 2012, the Army awarded 13 contracts to NIB and NISH nonprofit agencies, representing industries for the blind and severely disabled, to respond to an increasing demand for the combat shirt and the limited capacity of the firms under the previously awarded sole-source contracts. By fiscal year 2009, according to Army officials, the ANC-owned and Indian tribe-owned 8(a) firms were reaching maximum production capacity because of an increase in the Army’s demand for the combat shirts. This increase was driven in part by the June 2008 change in the combat shirt fielding requirement for warfighters deploying to a combat theater—i.e., from two to four shirts per warfighter.

Army officials told us that in late 2008 and early 2009, applying Federal Acquisition Regulation § 8.002 (*Priorities for Use of Government Supply Sources*), they began coordinating with NIB and NISH to have the Army Combat Shirt added to the Federal Procurement List. Army officials told us that these agencies had expertise in manufacturing textiles but that in fiscal years 2007 and 2008, during the initial procurement of the combat shirt, Army officials did not have time to coordinate with NIB and NISH to have the shirt added to the Federal Procurement List, which is a list of products and services that the AbilityOne Commission has determined suitable for

The agency can then offer the requirement on behalf of a specific firm, for the 8(a) program in general, or for 8(a) competition per Federal Acquisition Regulation § 19.803(c).

¹⁵ 13 C.F.R. Part 124 – 8(a) Business Development/Small Disadvantaged Business Status Determinations sets forth requirements, including the purpose, definitions, and basic requirements a concern must meet to participate in the 8(a) program.

¹⁶ FAR § 19.806.

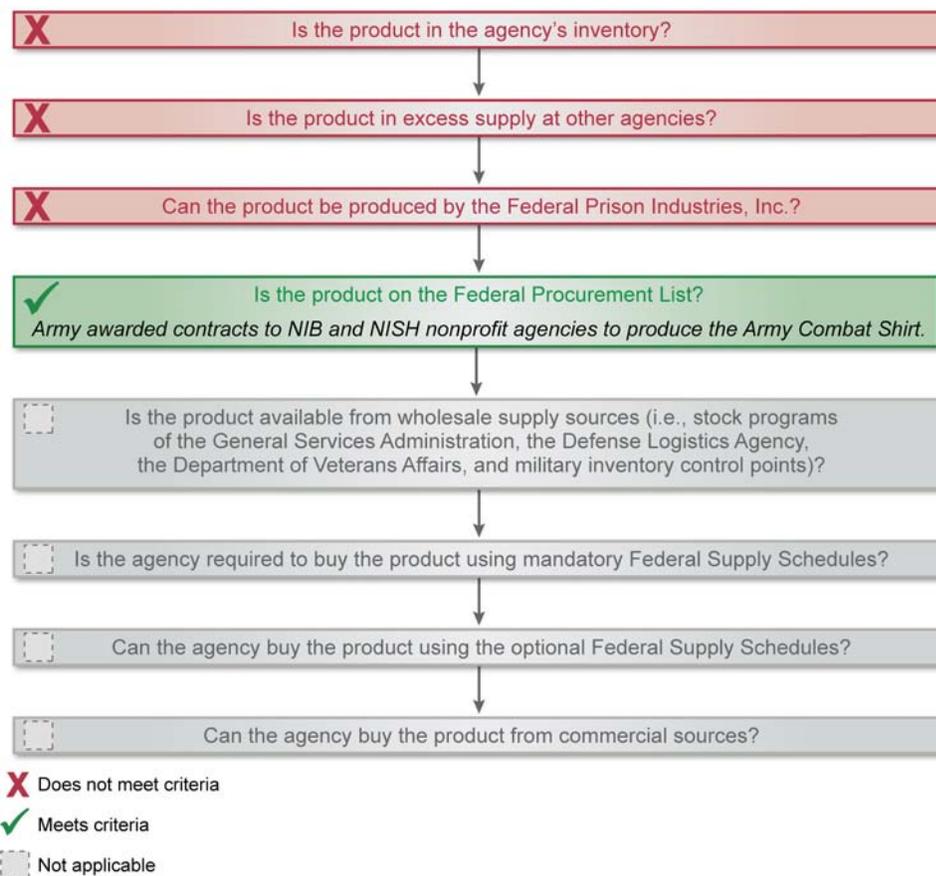
purchase by the government, and still meet the warfighters' urgent needs as quickly as possible. In addressing the increase in demand as fiscal year 2009 approached, however, Army officials said that they had time to consider this option. In making their decision to award Army Combat Shirt contracts, Army officials stated that they also considered memorandums from the Office of Secretary of Defense and the Army encouraging the use of the NIB and NISH agencies.

According to Army contracting officials, the process for adding the Army Combat Shirt to the Federal Procurement List and ultimately awarding contracts to NIB and NISH agencies and delivering the product took over 6 months. The process for adding the combat shirt to the list included the following: (1) NIB and NISH submitted price proposals to the AbilityOne Commission, the organization that carries out the function of providing employment opportunities to employees of NIB and NISH nonprofit agencies; (2) the AbilityOne Commission conducted a "severe adverse impact" analysis to determine what percentage of the Army's total demand for the combat shirt might be produced by the industries for the blind and severely disabled without any severe adverse impact on the business base of the current contractors of the combat shirt;¹⁷ (3) the AbilityOne Commission published the proposed addition of the item on the Federal Register for a 30-day comment period; (4) the Army approved the price proposals; and (5) the AbilityOne Commission made the final decision to add a portion of the Army's requirement, ranging from 25 percent to 63 percent between fiscal year 2009 and fiscal year 2010, for the Army Combat Shirt to the Federal Procurement List.

Once the process for adding a portion of its requirement for the Army Combat Shirt to the Federal Procurement List was completed, the Army applied the *Priorities for Use of Government Supply Sources*—Federal Acquisition Regulation § 8.002—and awarded contracts to NIB and NISH agencies to manufacture the combat shirts. In figure 4, we show the questions that contracting officials answered in descending order of priority when applying *Priorities for Use of Government Supply Sources*—Federal Acquisition Regulation § 8.002—and before awarding the 13 contracts to the NIB and NISH agencies.

¹⁷In considering whether to add the Army Combat Shirt to the AbilityOne Program, the AbilityOne Commission conducted a "severe adverse impact" analysis per 41 C.F.R. § 51-2.4(a)(4) and (5) to determine whether to add all or a portion of the Army's requirement for the Army Combat Shirt to the Federal Procurement List for NIB and NISH agencies. On the basis of this analysis, the Commission added only a portion of the Army's requirement for NIB and NISH agencies to produce to mitigate a severe adverse impact on the business base of the current contractors of the combat shirt; the remaining percentage was later awarded to an 8(a), ANC-owned firm on a competitive basis in fiscal year 2011.

Figure 4: Army’s Application of *Priorities for Use of Government Supply Sources* (Federal Acquisition Regulation § 8.002) for Fiscal Years 2009–12 Army Combat Shirt Contracts



Source: GAO analysis based on Federal Acquisition Regulation § 8.002.

Using the standards set forth in the federal regulation,¹⁸ the AbilityOne Commission proposed a price for the combat shirts. The Army determined that the price, submitted by the AbilityOne Commission for the Army Combat Shirt under the NIB and NISH nonprofit agency contracts, was fair and reasonable. Specifically, before awarding the contracts to these agencies, the Army contracting officer concurred that the price was fair and reasonable in accordance with the AbilityOne Commission’s pricing memorandum¹⁹ and using the standards set forth in the Federal Acquisition Regulation.²⁰ As with the previous contracts awarded to 8(a) firms in fiscal years 2007 and 2008, we found that the proprietary fabric is the highest priced component of the Army Combat Shirt, accounting for about 70 percent of the average total contract price for the combat shirt from all sources.

¹⁸ 41 C.F.R. § 51-2.7.

¹⁹ The AbilityOne Commission pricing memorandum is a consolidated pricing agreement from NIB and NISH nonprofit agencies for the Army Combat Shirt.

²⁰ FAR § 15.404-1, *Proposal Analysis Techniques*.

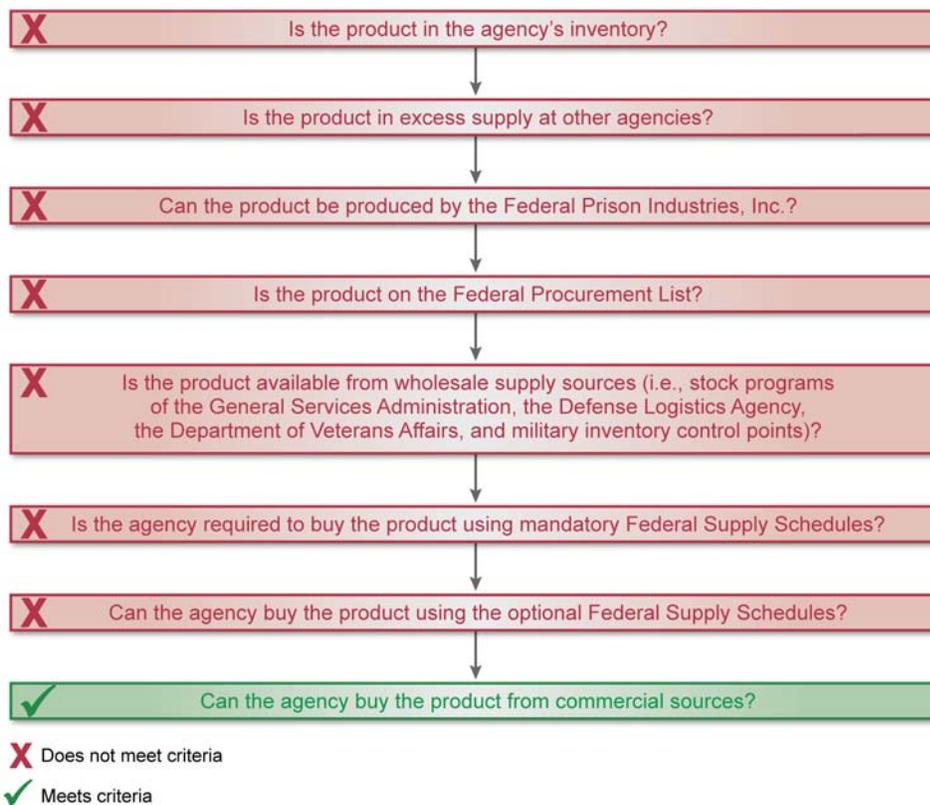
Army Awarded a Competitive Contract to an 8(a) Firm to Respond to the Need for an Additional Source of Supply and to Introduce Competition

In fiscal year 2011, the Army awarded 1 contract on a competitive basis to an 8(a) firm to respond to the need for an additional source of supply to manufacture the combat shirts and to introduce competition as a means of reducing cost of the combat shirt. The 8(a), sole-source contracts had expired by fiscal year 2010, and the Army required additional quantities beyond those available through the Federal Procurement List to meet fielding requirements. Under the Federal Acquisition Regulation,²¹ the contracting officer is generally provided wide latitude to exercise business judgment in making award decisions, including the determination of whether to award a contract on a competitive basis, or on a sole source basis if permitted by law. In contrast with the earlier 8(a), sole-source contracts awarded to meet urgent warfighter needs, Army officials stated that with an existing inventory of shirts and current source of supply they had adequate time to award the contract competitively and still meet the demanding delivery schedules. According to contracting officials, the Army wanted to develop a competitive mix of 8(a) firms and NIB and NISH nonprofit agencies—commercial and non-commercial sources—to lower the cost and improve the schedule of the delivery of the combat shirt.

By applying requirements in federal regulations, the Army awarded a competitive contract to an 8(a), ANC-owned firm, which is a commercial/for-profit firm. Specifically, the Army applied the provisions in (1) Federal Acquisition Regulation § 8.002, *Priorities for Use of Government Supply Sources*, to determine that the source of supply was a commercial/for-profit firm; (2) Federal Acquisition Regulation Part 10, *Market Research*, to determine that there was more than one 8(a) firm eligible and responsible to manufacture the combat shirt; and (3) Federal Acquisition Regulation §19.805-1(a), *Competitive 8(a)*, and Small Business Regulations in 13 Code of Federal Regulations (C.F.R.) § 124.506(a). In figure 5, we show the questions that contracting officials answered in descending order of priority when applying the *Priorities for Use of Government Supply Sources*—Federal Acquisition Regulation § 8.002—and before awarding the competitive contract to the ANC-owned, 8(a) firm.

²¹ FAR §§1.602-2, 6.101, 6.301.

Figure 5: Army's Application of *Priorities for Use of Government Supply Sources* (Federal Acquisition Regulation § 8.002) for Fiscal Year 2011 Army Combat Shirt Contract



Source: GAO analysis based on Federal Acquisition Regulation § 8.002.

Following the same process as with the prior 8(a) contracts, the Army determined that the price for the Army Combat Shirt under the 8(a) contract was fair and reasonable by completing both a cost and price analysis.²²

DLA Plans to Award Future Contracts for the Army Combat Shirt under Federal Regulations

In fiscal year 2011, as part of the life-cycle management process for textiles and clothing, DLA began assuming responsibility for sustainment contracts of the Army Combat Shirt. DLA contracting officials stated that they expect to make future contract awards by March 2013. Contracting officials stated that to begin the process of soliciting proposals and awarding contracts for the combat shirt, DLA is applying statutory and regulatory procurement requirements, including the Federal Acquisition Regulation and Small Business Regulations. In July 2012, DLA issued a Request for Proposals (solicitation) to award future contracts for the Army Combat Shirt.

²² FAR §§ 19.806 and 15.404-1 (b)(2)(i) and (ii).

Agency Comments

We provided a draft of this report to DOD, and DOD responded that it would not be providing comments.

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

If you or your staff have any questions concerning this report, please contact me at (202) 512-5431 or on russellc@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 this report are listed in enclosure III.

Sincerely yours,

A handwritten signature in black ink that reads "Cary Russell". The signature is written in a cursive style with a large initial "C" and a long, sweeping tail.

Cary B. Russell
Director
Defense Capabilities and Management

Enclosures

Enclosure I: Scope and Methodology

To examine the approach that the Army used to award contracts for the Army Combat Shirt during the fiscal year 2007-12 timeframe and that the Defense Logistics Agency (DLA) is using to prepare to award future ones, we reviewed the relevant provisions of statutes and regulations related to the procurement of supplies—i.e., the U.S. Code; the Code of Federal Regulations, including the Federal Acquisition Regulation; and Small Business Regulations. We examined the Army's and DLA's documentation regarding the procurement of the Army Combat Shirt—e.g., contracts, acquisition plans, solicitations, Small Business Administration acceptance letters, award determination memorandums, market research reports, award and price analyses memorandums, the Army's purchase description for the combat shirt, and memorandums from the Office of the Secretary of Defense and the Army regarding the use of the National Industries for the Blind (NIB) nonprofit agencies and the NISH nonprofit agencies.

We interviewed program and contracting officials from Army Program Executive Office Soldier, DLA Troop Support, the Army Contracting Command, and the Office of Federal Procurement Policy to corroborate evidence from the documents reviewed on the Army's and DLA's approach and to determine the factors considered during the award determination process.

We interviewed the following firms that the Army awarded Army Combat Shirt contracts to between fiscal years 2007 and 2012 to discuss the process for manufacturing the Army Combat Shirts:

- Two Small Business Administration, 8 (a) firms —API, LLC, and Source for Native American Products, LLC, firms owned by an Alaska Native Corporation and an Indian tribe, respectively, were afforded special advantages for certain contract awards;²³
- A NIB nonprofit agency—i.e., San Antonio Lighthouse for the Blind; and
- Two NISH nonprofit agencies—Mount Rogers Individual and Developmental Center and Goodwill Industries of South Florida, Inc.

We also interviewed officials from the AbilityOne Commission, which is the organization that oversees NIB and NISH agencies, and Massif Mountain Gear Company, LLC, which is the company that produces the flame-resistant, moisture-wicking fabrics used in the manufacture of the Army Combat Shirt.

²³For example, Alaska Native Corporation-owned and Indian tribe-owned, 8(a) firms could receive sole-source 8(a) contracts for any amount without a justification and approval when the fiscal years 2007 and 2008 contracts were awarded, but sole-source awards to other 8(a) firms generally must be made under certain competitive dollar amount thresholds (\$6.5 million for manufacturing contracts or \$4 million for all other types of acquisitions).

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

Enclosure II: Glossary of Relevant Regulations for Awarding Supply Contracts

The regulations for awarding contracts for supplies like the Army Combat Shirt for the Army and Defense Logistics Agency include the Federal Acquisition Regulation (FAR) and Small Business Regulations below.

Federal Acquisition Regulation—

- FAR § 8.002 – *Priorities for Use of Government Supply Sources* – sets forth the priority order government agencies must follow to acquire required supplies and services from government supply sources.

- FAR Part 10 – *Market Research* – sets forth, among other things, the policies for conducting market research to arrive at the most suitable approach to acquiring and distributing supplies and services, including how to find vendors capable of producing required supplies.

- FAR § 19.805 – *the 8(a) Program* – sets forth the requirements for determining whether acquisitions offered to the Small Business Administration under the 8(a) program are awarded on a (1) competitive basis limited to eligible 8(a) firms, or (2) sole-source basis, including requirements accepted on behalf of firms owned by Indian tribes or Alaska Native Corporations:
 - Competitive 8(a): Except for when an acquisition is made under FAR § 19.805-1(b), an acquisition offered to the Small Business Administration under the 8(a) program must be awarded on the basis of competition limited to eligible 8(a) firms if—(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and (2) The anticipated total value of the contract, including options, will exceed \$6.5 million for acquisitions assigned manufacturing North American Industry Classification System codes and \$4 million for all other acquisitions. FAR § 19.805-1(a).
 - Sole-Source 8(a): Where an acquisition exceeds the competitive threshold (will exceed \$6.5 million for acquisitions assigned manufacturing North American Industry Classification System codes and \$4 million for all other acquisitions), the Small Business Administration may accept the requirement for a sole-source 8(a) award if—(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price or (2) the Small Business Administration accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation. FAR § 19.805-1(b).

- FAR § 19.803(c) – *Selecting Acquisitions for the 8(a) Program* – sets forth how agencies identify requirements which may be offered to SBA’s 8(a) program.
- FAR § 19.806 – *Pricing the 8(a) contract*—sets forth how a contracting officer must price an 8(a) contract.
- FAR § 15.404-1 – *Proposal analysis techniques*—sets forth the various proposal analysis techniques an agency uses to ensure that the final agreed-to price is fair and reasonable.

Small Business Regulations implementing provisions of the Small Business Act—

- 13 C.F.R. § 124.506(a) – sets forth the dollar thresholds at which an 8(a) procurement must be competed among eligible participants; and 124.506(b)—sets forth an exemption from competitive thresholds for participants owned by Alaska Native Corporations, Indian tribes, and (for Department of Defense contracts) Native Hawaiian Organizations.
- 41 C.F.R. § 51-3.2 – sets forth the responsibilities of each central nonprofit agency under the AbilityOne Program. Specifically, each central nonprofit agency is required, among other things, to (1) represent its participating nonprofit agencies in dealing with the AbilityOne Commission²⁴ under the Javits-Wagner-O’Day Act (41 C.F.R. § 51-3.2(a)) ; and (2) as market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the Federal Procurement List. (41 C.F.R. § 51-3.2(i)).
- 41C.F.R. § 51-2.4 – *Determination of Suitability* – sets forth the required criteria for a commodity or service to be suitable for addition to the Federal Procurement List. The required criteria, among others, include the following:
 - *Level of impact on the current contractor for the commodity or service.* In deciding whether or not a proposed addition to the Federal Procurement List is likely to have a severe adverse impact on the current contractor for the specific commodity or service, the AbilityOne Commission gives particular attention to: (1) the possible impact on the contractor's total sales, including the sales of affiliated companies and parent corporations; the AbilityOne Commission also considers the effects of previous AbilityOne Commission actions; and (2) whether that contractor has been a continuous supplier to the government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the government. If there is not a current contract for the commodity or service being proposed for addition to the Federal Procurement List, the AbilityOne Commission may consider the most recent contractor to furnish the item to the government as the current contractor for the purpose of determining the level of impact. 41 C.F.R. § 51-2.4(a) (4).

²⁴The Committee for Purchase for the Blind or Severely Disabled operates as the AbilityOne Commission. For purposes of this report, we use the term “AbilityOne Commission” to refer to the Committee.

- 41 C.F.R. § 51-2.5 – *Committee Decision* – sets forth the particular facts and circumstances the AbilityOne Commission considers in each case when determining whether a commodity or service is suitable for addition to the Federal Procurement List. If the AbilityOne Commission determines that a proposed addition is likely to have a severe adverse impact on a current contractor, it takes this fact into consideration in deciding not to add the commodity or service to the Federal Procurement List, or to add only a portion of the government requirement for the item. If the AbilityOne Commission decides to add a commodity or service in whole or in part to the Federal Procurement List, that decision is announced in the Federal Register with a notice that includes information on the effective date of the addition.
- 15 U.S. Code § 644(g) – *Annual Preference Program Goals* – The President must annually establish government-wide goals of providing not less than 23 percent of federal prime contract dollars to various categories of small businesses. The Small Business Administration negotiates agency-specific goals to ensure that the federal government meets the statutory goal of awarding at least 23 percent of prime contract dollars to small businesses.

Enclosure III: GAO Contact and Staff Acknowledgments

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In addition to the contact named above, key contributors to this report were Larry Junek, Assistant Director; Alfonso Garcia; Mae Jones; Carol Petersen; Sylvia Schatz; and Angela Watson.

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