



April 16, 2014

The Honorable Claire McCaskill
Chairman
Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate

Defense Contracting: DOD's Use of Class Justifications for Sole-Source Contracts

Dear Madam Chairman:

Awarding contracts through full and open competition is key to ensuring that the federal government efficiently acquires goods and services to best meet its needs. However there are certain circumstances when competition may not be practical. In fiscal year 2013, the Department of Defense (DOD) awarded contracts for about \$308 billion for products and services, of which 43 percent was awarded without competition. In addition, DOD accounted for over 80 percent of government-wide obligations that used noncompetitive contracts.

According to the Federal Acquisition Regulation (FAR), noncompetitive contracts must generally be supported by written justifications that address the specific exception to full and open competition that is being applied to the procurement.¹ Justifications may cover an individual contract or multiple contract actions under a single "class justification," which generally include a dollar limit and time period for all actions taken under the authority. Additionally, justifications must be approved at various levels within the organization based on the estimated dollar value of the contract or contracts, but there are no separate requirements for either the justification or approval of class justifications.

You asked us to review issues related to the use of class justifications. This report covers for identified DOD class justifications, (1) products and services included, (2) the rationale cited, and (3) efforts to obtain competition. You also asked us to review the use of "bridge contracts," which are awarded to avoid gaps between the end of one contract and the follow-on award. We are beginning work on that effort.

We selected DOD for this review because it accounted for the highest percentage of noncompetitive obligations across all federal agencies in fiscal year 2012. We included four DOD components: Army, Air Force, Navy, and Defense Logistics Agency (DLA)—which account for about 92 percent of DOD's non-competitive awards. The universe of contracts justified and approved on a class basis is unknown because the information is not tracked in the Federal Procurement Data System-Next Generation—the government's procurement database. To identify the facts and circumstances around noncompetitive contracts awarded by DOD under class justifications, we identified a nonprojectable sample of 65 class justifications from fiscal years 2009 through 2013. Beginning in 2009, the FAR generally has required federal agencies

¹ FAR §§ 6.303-1(a), 6.303-2.

to publish their justifications on the Federal Business Opportunity website—federal agencies’ primary tool for soliciting potential offers—which we used as a source for identifying these class justifications.² See the enclosure for a summary of the class justifications in our sample. We identified about half from prior and current GAO work that reviewed various aspects of DOD noncompetitive contracting, and the remainder by searching the Federal Business Opportunities website. We reviewed and summarized the information within each class justification, such as the description of the products or services covered; the estimated dollar value and time period covered; the cited exception to competition; efforts to ensure that offers are solicited from as many potential sources as is practicable; and the actions, if any, taken or planned to increase future competition. We did not independently verify the information contained in the justification documents. We reviewed the FAR and DOD policy to determine requirements, if any, related to class justifications. We also interviewed DOD and component officials to obtain their perspective on the use of class justifications.

We conducted our work from August 2013 to April 2014 in accordance with all sections of GAO’s Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

Results in Brief

The DOD class justifications included in our sample were used primarily for the acquisition of weapon systems or related subsystems and components. About 77 percent (50 of 65) covered specific weapon system development, production, sustainment, or modernization efforts; about 14 percent (9 of 65) covered logistics support of multiple weapon systems or training systems, and the remaining 9 percent (6 of 65) covered other requirements. Because weapon systems are typically used for many years, DOD officials told us class justifications provided an administrative efficiency by allowing one justification for multiple contracts that would essentially require the same justification. Most of the class justifications in our sample had a total value of over \$85.5 million and required approval at the highest level—the senior procurement executive of the DOD component. About 90 percent (59 of 65) of the class justifications in our sample cited only one responsible source as the exception to competition, generally because the contractor’s ownership of proprietary technical data or expertise prevented the ability to compete the contract.³ The class justifications we reviewed generally cited the publication of notices of proposed contract actions on the Federal Business Opportunities website or market research to identify other qualified sources, neither of which identified other contractors that could meet the requirements. About 17 percent (11 of 63) of the class justifications identified plans to compete future requirements.⁴ For example, three cited plans to acquire technical data

² Interim rule at 74 Fed. Reg. 2731 (Jan. 15, 2009) and final rule at 75 Fed. Reg. 34273 (June 16, 2010), implementing the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 844, “Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts.”

³ For the purpose of this report, technical data is recorded information used to define a design and to produce, support, maintain or operate an item.

⁴ There are two justifications that were amendments to original class justifications, and plans to compete future requirements were not included as part of the amendment. These were excluded from the overall calculations because the information is not known.

to enable future competition and two cited efforts to break out some portion of the requirement for competition.

Background

The FAR generally requires that contracting officers provide for full and open competition in soliciting proposals and awarding government contracts.⁵ However, the FAR recognizes the statutory authorities that permit contracting without full and open competition under certain conditions. For example, exceptions to full and open competition are permitted where there is only one responsible source and no other supplies or services will satisfy agency requirements; an unusual and compelling urgency; or in the interest of national security.⁶

Generally, noncompetitive contracts must be supported by a written justification with sufficient information to justify the use of the specific exception to full and open competition, including

- the supplies or services required and estimated dollar value;
- a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition require use of the exception cited;
- efforts made to solicit offers from as many potential sources as is practicable; and
- the actions, if any, the agency may take to overcome barriers to competition for any subsequent acquisitions.⁷

The justifications can generally be made on an individual or class basis. We found class justifications covered contract actions for the same or related supplies or services or other contract actions that require essentially identical justification. Class justifications generally include a dollar limit and specified time period for the contract actions taken under the authority of the justification.

Justifications must be approved by agency officials, with the approval level based on dollar value of the proposed contracts. For class justifications, the approval level is determined by the estimated total value of the class. The approval levels range from the contracting officer for proposed contracts not exceeding \$650,000 up to the agency senior procurement executive for contracts over \$85.5 million.⁸ Neither the FAR or DOD policy specify separate requirements for the justifications or approvals of class justifications—they are justified and approved using the same process and dollar thresholds as individual justifications considering the estimated total value of the class.⁹

DOD Class Justifications Are Used Primarily for the Acquisition of Weapon Systems and Related Components

⁵ FAR § 6.101.

⁶ See FAR §§ 6.302-1 through 6.302-7 for the seven exceptions to competition.

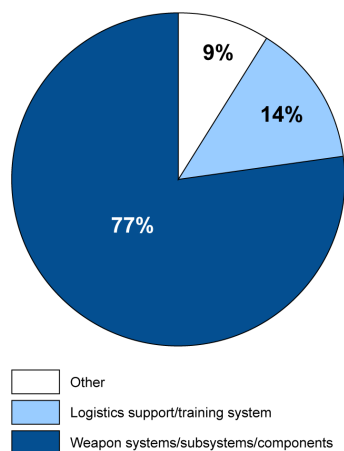
⁷ FAR §§ 6.303-1(a)(1), 6.303-2.

⁸ FAR § 6.304.

⁹ FAR § 6.303-1 requires that any justification for contracts awarded under the public interest exception to full and open competition only be made on an individual basis.

The DOD class justifications in our non-projectable sample of 65 class justifications from fiscal years 2009 through 2013 were primarily weapon systems related. As shown in figure 1, 77 percent (50 of 65) of the class justifications in our sample were for the acquisition of specific weapon systems or related subsystems and components.

Figure 1: Percentage of Identified Fiscal Year 2009 through 2013 DOD Class Justifications by Type of Product or Service Covered



Source: GAO analysis of a sample of 65 DOD class justifications from fiscal years 2009 – 2013.

For these weapon system related justifications, the contracts covered were generally for production, sustainment, or modernization efforts. About 14 percent (9 of 65) covered logistics support or supplies for multiple weapon systems or training systems. The remaining 9 percent (6 of 65) of class justifications covered counternarcotics and terrorism programs, information technology, utilities, and disaster relief.

Although some of the weapon system-related class justifications covered development contracts, most covered production quantities and related support, such as test equipment and initial spare and repair parts; supplies, equipment, and support services; and upgrades or modernization. For example, the class justification for the Army's Guided Multiple Launch Rocket System included production of various rockets, rocket pods, special tooling, test equipment, and quality assurance testing. The Navy's Trident II missile MK6 Guidance System life extension program class justification covered various engineering support, test, repair, and maintenance and design, and production activities.

According to DOD acquisition officials, class justifications are primarily used for sole-source weapon systems contracts because these systems are typically used for decades, and DOD is often reliant on the original manufacturer for production and support. For these noncompetitive acquisitions, DOD officials told us class justifications provide an administrative efficiency by allowing one justification for multiple contracts that would essentially require the same justification.

About 14 percent (9 of 65) of the class justifications covered logistics support—spare and repair parts and support services that covered multiple systems—or training systems. For example, the class justification for the Air Force's Aging Aircraft Fleet program covered specialized engineering services in support of developing and transitioning emerging technologies and methodologies for various aging aircraft, including studies, investigations, and analysis. In another case, the Army's Logistics, Maintenance and Supply Support Program class justification

covered various contracts to provide mission-critical support for logistics, maintenance, and supply functions and associated technologies to numerous DOD entities.

The remaining 9 percent (6 of 65) of class justifications in our sample covered counter-narcotics and terrorism programs, information technology, utilities, and disaster relief. Examples of the programs and related products and services acquired under these class justifications included:

- The Army's Counter Narco-Terrorism Program covered technology development and application, training, operations, and logistics support.
- The Air Force's Local Area Network Standard Architecture Program acquired hardware, software, maintenance, and associated equipment in support of the Air Force Institute of Technology's Local Area Network.
- The Air Force's Wastewater Treatment Reconfiguration and Services program covered recurring wastewater treatment services.
- The Defense Logistics Agency disaster relief for Hurricane Sandy covered emergency relief (food, water, heat, housing, generators); transportation and electricity restoration; and wreckage removal.

The estimated dollar value of contracts covered by the class justifications in our sample ranged from under \$1 million to \$19 billion. Of the 55 class justifications in our sample with an identifiable estimated dollar value, about 71 percent (39 out of 55) were over \$85.5 million, requiring approval at the highest level—the senior procurement executive of the DOD component—and about one-third (16 out of 55) were over \$1 billion.¹⁰ About 70 percent (45 of 65) of the time periods covered under the class justifications we reviewed were 5 years or less. For weapon system-related class justifications, the average time period was slightly less than 5 years. The longest time period covered in our sample was 12 years—a Defense Logistics Agency class justification covering sole source parts used on multiple weapon systems.

Most DOD Class Justifications Cite Only One Responsible Source

Over 90 percent (59 of 65) of the class justifications in our sample cited “only one responsible source” as the exception to competition. As noted in DOD's annual competition report, much of the noncompetitive contracts are for weapon systems and specialized equipment that may have been originally competed, but now require sole-source contracts because the programs have moved past the stage in their program lifecycle where competition is economically viable.¹¹

The class justifications we reviewed that use the “only one responsible source” exception generally cited the contractor's ownership of proprietary technical data or expertise that prevented the ability to compete the requirements. We found in previous work that a long-standing factor affecting DOD's competition rate is the reliance on an original equipment manufacturer throughout the life cycle of a program because of a previous decision not to purchase proprietary technical data. Without technical data, any new potential contractor would not possess or have access to the information necessary to meet the government's

¹⁰ For 10 of the 65 class justifications, we could not identify the estimated dollar value. For 9, the value was redacted or was referenced to another document we were not able to identify, and one was a no-cost modification.

¹¹ Department of Defense Competition Report for Fiscal Year 2012.

requirements.¹² DOD has recognized the lack of ownership of technical data as a challenge and is taking steps to address this through its Better Buying Power initiative, which outlined a series of actions to promote competition including outlining an approach for the acquisition of technical data rights.¹³

DOD policy now provides that the acquisition strategy will address how program management will create and sustain a competitive environment, from program inception through sustainment, including considering acquiring complete technical data packages.¹⁴

Other exceptions to competition in our sample of class justifications include “unusual and compelling urgency” for natural disaster recovery and urgent warfighter needs; “industrial mobilization” for research and development centers; and “national security” for classified and sensitive programs.¹⁵

DOD Contracting Officials Publicized Contract Actions, but Few Class Justifications Identified Plans for Future Competition

The class justifications we reviewed generally cited the publication of notices of proposed contract actions on the Federal Business Opportunities website.¹⁶ The primary purposes of these notices are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. However, according to the information in the justification documents, either no other contractors responded to the notices or contractors who did respond were determined to be unable to meet the stated requirements. In addition, some class justifications cited various market research efforts to identify additional contractors but did not identify any additional contractors that were capable of meeting the requirement.

About 17 percent (11 of 63) of the class justifications in our sample identified plans to compete all or part of future requirements. Three class justifications in our sample cited plans to acquire technical data in order to compete some future requirements. For example, the class justification for the Navy’s T-45 Aircraft Training System cited plans to procure data rights to enable competition for future service life extension programs. Two cited breaking out some portion of the acquisition for competition, and one cited a certification program to qualify additional sources. Four of the justifications citing future competitive efforts were for bridge contracts where a delay in the competitive award of the follow-on contracts required non-competitive extensions to existing contracts.

¹² GAO, *Defense Contracting: Actions Needed to Increase Competition*, GAO-13-325 (Washington, D.C.: March 28, 2013).

¹³ In June 2010, DOD announced its “Better Buying Power” initiative and issued implementing guidance in September 2010, which outlined a series of actions to promote competition including requiring a business case analysis prior to the official start of the program that outlines an approach for acquiring technical data rights.

¹⁴ Interim DOD Instruction 5000.02, Operation of the Defense Acquisition System (Nov. 25, 2013).

¹⁵ See GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, [GAO-14-304](#) (Washington, D.C.: March 26, 2014) for information on DOD and other agencies’ use of the unusual and compelling urgency exception to competition.

¹⁶ The FAR generally requires the publication of notices of various proposed contract actions to the Federal Business Opportunities website. FAR § 5.201.

About 83 percent (52 of 63) of the class justifications we reviewed did not indicate any specific plans to compete future requirements. In some cases, this was because the acquisitions covered in the class justification completed the requirements of the program and no additional acquisitions were planned. In other cases, future competition was cited as not feasible because the incumbent was the only source available to meet the requirement. For about one-third of the class justifications in our sample, future competition was uncertain. In most cases, the agency was evaluating competition opportunities and cited continued plans to conduct market research and monitor markets for potential additional sources. In other cases, future competition was uncertain because follow-on requirements were undetermined.

Agency Comments

We provided a draft of this product to DOD for comment and DOD responded it had no comments on the report.

We are sending copies of this report to the Secretary of Defense as well as interested congressional committees. The report also is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841 or martinb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. In addition to the contact named above, LaTonya Miller, Assistant Director; Helena Brink; Julia Kennon; Bradley Terry; and Marie Ahearn, made key contributions to this report.

Sincerely yours,

A handwritten signature in black ink that reads "Belva M. Martin". The signature is written in a cursive, flowing style.

Belva M. Martin
Director, Acquisition and Sourcing Management

Enclosure: Summary of Class Justifications

Table 1 below provides a summary of the class justifications we reviewed including the Military Department approving the justification; the program name or requirements covered; the total estimated dollar value of contracts covered, the FAR exception to competition cited, and the category of products or services covered. For 10 of the 65 class justifications, we could not identify the estimated dollar value. For 9, the value was either redacted or was not identifiable because the value was referenced to another document we were not able to identify and one was a no-cost modification.

Table 1: Summary of Class Justifications in Our Sample

Military Department	Program Name/Requirements Covered	Dollar Value \$Millions	FAR Exception	Category
Air Force	Evolved Expendable Launch Vehicle	\$19,000	one responsible source	Weapon System
Air Force	Joint Surveillance Target Attack Radar System (STARS) System Improvement Program II modernization	\$929	one responsible source	Weapon System
Air Force	Raptor Enhancement, Development, and Integration	Redacted	one responsible source	Weapon System
Air Force	Advanced Medium-Range Air-to-Air Missile	\$4,400	one responsible source	Weapon System
Air Force	C-17 Globemaster III Aircraft (Fiscal Year 2009 Overseas Contingency Operations aircraft)	Redacted	one responsible source	Weapon System
Air Force	C-17 Globemaster III Aircraft (Fiscal Year 2008 Supplemental Appropriations Act aircraft)	Redacted	one responsible source	Weapon System
Air Force	Predator /Reaper	\$7,400	one responsible source	Weapon System
Air Force	Embedded Global Positioning System /Inertial Navigation System	\$613	one responsible source	Weapon System
Air Force	Sniper Advanced Targeting Pod Post-Production Support	\$842	one responsible source	Weapon System
Air Force	Large Aircraft Infrared Countermeasures	\$3,200	one responsible source	Weapon System
Air Force	F-16 Mode 5 Advanced Identification Friend/Foe	\$201	one responsible source	Weapon System
Air Force	Big Safari - aircraft, avionics, specialized mission equipment	\$15,200	National Security	Weapon System
Air Force	Hard Target Void Sensing Fuze	\$250	one responsible source	Weapon System
Air Force	Laser Target Imaging Program	\$39	one responsible source	Weapon System
Air Force	Counter Communications System	\$3	Unusual and Compelling Urgency	Weapon System
Air Force	Blue Devil Block II	\$4	Unusual and Compelling Urgency	Weapon System
Army	H-60 Helicopters	Redacted	one responsible source	Weapon System
Army	Guided Multiple Launch Rocket System	\$2,400	one responsible source	Weapon System
Army	Husky Mounted Detection Systems	\$579	one responsible source	Weapon System
Navy	EA-18G Aircraft	\$869	one responsible source	Weapon System
Navy	Trident II missile MK6 Guidance System life extension	\$626	one responsible source	Weapon System
Navy	Harpoon/ Slam-ER All-Up-Round missiles	\$78	one responsible	Weapon

Military Department	Program Name/Requirements Covered	Dollar Value \$Millions	FAR Exception	Category
			source	System
Navy	Trident II SSBN Fire Control System and US SSGN Attack Weapon Control System	\$49	one responsible source	Weapon System
Navy	Trident II missile	\$213	one responsible source	Weapon System
Navy	F/A-18 and EA-18G Aircraft	\$467	one responsible source	Weapon System
Navy	Littoral Combat Ships	\$12,600	one responsible source	Weapon System
Navy	Joint Strike Fighter	\$1,300	one responsible source	Weapon System
Navy	AN/SPS-67 Radar	\$0.43	one responsible source	Weapon System
Navy	T-AO Class Vessels	\$5	one responsible source	Weapon System
Navy	OHIO class submarine replacement	\$2,900	one responsible source	Weapon System
Navy	Trident I and II missile subsystems	\$1,000	one responsible source	Weapon System
Navy	H-1 Helicopter Parts Upgrade (AH-1Z/ UH-1Y Common Cuff and Yoke)	\$114	one responsible source	Weapon System
Navy	H-1 Helicopter Upgrades	\$1,800	one responsible source	Weapon System
Navy	Medium Tactical Vehicle Replacement	\$420	one responsible source	Weapon System
Navy	DDG 1000 Zumwalt Class Destroyer	\$500	one responsible source	Weapon System
Navy	Aircraft Wireless Intercom Communications System	Not identifiable	one responsible source	Weapon System
Navy	F/A-18E/F and EA-18G Aircraft	\$568	one responsible source	Weapon System
Navy	DDG 1000 Class ships	\$1,600	one responsible source	Weapon System
Navy	F/A-18 and EA-18G Aircraft	\$1,600	one responsible source	Weapon System
Navy	DDG-1002 ship Advanced Gun System	\$868	one responsible source	Weapon System
Navy	Harpoon/SLAM-ER missile	\$128	one responsible source	Weapon System
Navy	MH-60R helicopter Program ANIAQS-22 Airborne Low Frequency Sonar	\$439	one responsible source	Weapon System
Navy	LPD Amphibious Transport Dock Ship	\$1,600	one responsible source	Weapon System
Navy	F/A-18, AV-8B, and T-45 Aircraft Computer Systems	Not identifiable	one responsible source	Weapon System
Navy	E-2D Advanced Hawkeye	\$2,300	one responsible source	Weapon System
Navy	System for Navy Target Control	\$21	one responsible source	Weapon System
Navy	MH-60R Helicopter Situational Awareness Technology Insertion	\$65	one responsible source	Weapon System
Navy	V-22 Osprey Tiltrotor Aircraft	\$8,100	one responsible source	Weapon System
Navy	H-60 Helicopter	\$79	one responsible source	Weapon System
Navy	P-8A Aircraft	\$6,400	one responsible source	Weapon System
Air Force	Raytheon Enterprise Wide Strategic Corporate Contracts	\$286	one responsible source	Logistics Support

Military Department	Program Name/Requirements Covered	Dollar Value \$Millions	FAR Exception	Category
Air Force	USAF Aging Aircraft Fleet	\$46	Industrial mobilization	Logistics Support
Army	Logistics, Maintenance, and Supply Support	Redacted	one responsible source	Logistics Support
DLA	Honeywell Spare Parts	\$765	one responsible source	Logistics Support
DLA	Parker Hannfin Spare Parts	\$502	one responsible source	Logistics Support
Navy	Low Temperature Fresh Water Cooling System	\$.7	one responsible source	Logistics Support
Navy	T-45 Aircraft Training System	\$215	one responsible source	Training System
Navy	Aviation, Undersea, and Surface Training Systems	\$12	one responsible source	Training System
Navy	T-45 Aircraft Training System	\$268	one responsible source	Training System
DLA	Disaster relief for Hurricane Sandy	\$50	Unusual and Compelling Urgency	Disaster relief
Air Force	Local Area Network Standard Architecture	Redacted	one responsible source	Information Technology
Army	Counter Narco-Terrorism Program	\$0 – no cost modification	one responsible source	Counter Narco-Terrorism
Army	Counter Narcotics Transnational Threats Project	Not identifiable	one responsible source	Counter Narco-Terrorism
Air Force	Local Exchange Services (dial tone)	\$3	Unusual and Compelling Urgency	Utilities
Air Force	Wastewater Treatment Reconfiguration and Services	\$41	one responsible source	Utilities

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