



March 2014

FEDERAL CONTRACTING

Noncompetitive Contracts Based on Urgency Need Additional Oversight

GAO Highlights

Highlights of [GAO-14-304](#), a report to congressional committees

Why GAO Did This Study

Competition is a critical tool for achieving the best return on the government's investment. Federal agencies are generally required to award contracts competitively but are permitted to award noncompetitive contracts under certain circumstances, such as when requirements are of such an unusual and compelling urgency that the government would suffer serious financial or other injury. Contracts that use the urgency exception to competition must generally be no longer than one year in duration.

The conference report for the National Defense Authorization Act of Fiscal Year 2013 mandated GAO to examine DOD's, State's, and USAID's use of this exception. For the three agencies, GAO assessed (1) the pattern of use, (2) the reasons agencies awarded urgent noncompetitive contracts and the extent to which justifications met FAR requirements; and (3) the extent to which agencies limited the duration. GAO analyzed federal procurement data, interviewed contracting officials, and analyzed a non-generalizable sample of 62 contracts with a mix of obligation levels and types of goods and services procured across the three agencies.

What GAO Recommends

GAO recommends that DOD, State and USAID provide guidance to improve data reliability and oversight for contracts awarded using the urgency exception. GAO also recommends that OFPP provide clarifying guidance to ensure consistent implementation of regulations. Agencies generally agreed with the recommendations.

View [GAO-14-304](#). For more information, contact Belva Martin at (202) 512-4841 or martinb@gao.gov.

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What GAO Found

The Departments of Defense (DOD) and State and the U.S. Agency for International Development (USAID) used the urgency exception to a limited extent, but the reliability of some federal procurement data elements is questionable. For fiscal years 2010 through 2012, obligations reported under urgent noncompetitive contracts ranged from less than 1 percent to about 12 percent of all noncompetitive contract obligations. During that time, DOD obligated \$12.5 billion noncompetitively to procure goods and services using the urgency exception, while State and USAID obligated \$582 million and about \$20 million respectively, almost exclusively to procure services. Among the items procured were personal armor, guard services and communications equipment to support missions in Afghanistan and Iraq. GAO found coding errors that raise concerns about the reliability of federal procurement data on the use of the urgency exception. Nearly half—28 of the 62 contracts in GAO's sample—were incorrectly coded as having used the urgency exception when they did not. GAO found that 20 of the 28 miscoded contracts were awarded using procedures that are more simple and separate from the requirements related to the use of the urgency exception. Ensuring reliability of procurement data is critical as these data are used to inform procurement policy decisions and facilitate oversight.

For the 34 contracts in GAO's sample that were properly coded as having used the urgency exception, agencies cited a range of urgent circumstances, primarily to meet urgent needs for combat operations or to avoid unanticipated gaps in program support. The justifications and approvals—which are required by the Federal Acquisition Regulation (FAR) to contain certain facts and rationale to justify use of the urgency exception to competition—generally contained the required elements; however, some were ambiguous about the specific risks to the government if the acquisition was delayed.

Ten of the 34 contracts in GAO's sample had a period of performance of more than one year—8 of which were modified after award to extend the period of performance beyond 1 year. The FAR limits contracts using the urgency exception to one year in duration unless the head of the agency or a designee determines that exceptional circumstances apply. Agencies did not make this determination for the 10 contracts. The FAR is not clear about what steps agencies should take when a contract is modified after award to extend the period of performance over 1 year. Some contracting officials noted that these modifications are treated as separate contract actions and would not require the determination by the head of the agency or designee. Others considered them cumulative actions requiring the determination. *Standards for Internal Controls in the Federal Government* calls for organizations to maintain proper controls that ensure transparency and accountability for stewardship of government resources. The Office of Federal Procurement Policy (OFPP)—which provides governmentwide policy on federal contracting procedures—is in a position to clarify when the determination of exceptional circumstances is needed to help achieve consistent implementation of this requirement across the federal government. Further, under the urgency exception, the FAR requires agencies to seek offers from as many vendors as practicable given the circumstances. For some contracts in GAO's sample, lack of access to technical data rights and reliance on contractor expertise prevented agencies from obtaining competition.

United States Government Accountability Office

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Abbreviations

AFRL	Air Force Research Laboratory
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
IED	improvised explosive device
ISR	intelligence, surveillance and reconnaissance
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
PGSS	Persistent Ground Surveillance System
PTDS	Persistent Threat Detection System
State	Department of State
USAID	U.S. Agency for International Development

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March 26, 2014

Congressional Committees

In fiscal year 2013, the federal government obligated more than \$459 billion to procure goods and services, of which approximately \$164 billion—about 36 percent—were not competed. Competition in contracting is a critical tool for achieving the best return on investment for taxpayers and can help save the taxpayer money, improve contractor performance, and promote accountability for results. While federal statute and acquisition regulations generally require that contracts be awarded on the basis of full and open competition, they also allow agencies to award noncompetitive contracts in certain circumstances. For example, when the agency's need for goods and services is of an unusual and compelling urgency that precludes full and open competition, agencies may be permitted to award noncompetitive contracts where a delay in award would result in serious financial or other injury to the government. Nonetheless, the Federal Acquisition Regulation (FAR) pertaining to the award of a noncompetitive contract on the basis of urgency requires that agencies request offers from as many sources as is practicable given the circumstances; however, agencies may limit the number of sources from which it solicits offers.¹

Promoting competition—even in a limited form—increases the potential for quality goods and services at a lower price in urgent situations. Past GAO work has found that the federal government may realize significant cost savings when awarding contracts competitively. In fiscal year 2013, the federal government obligated about \$3 billion through noncompetitive contracts on the basis of a compelling urgency to procure goods and services. Noncompetitive contracts carry the risk of overspending because, among other things, they have been negotiated without the benefit of competition, to help establish pricing; one way to mitigate risk is to limit the contract's performance period. In 2009, a new requirement

¹ Contracts awarded on the basis of an unusual and compelling urgency where the government may limit the number of sources from which it solicits bids or proposals are considered noncompetitive contracts. For the purposes of this report we refer to the unusual and compelling urgency exception to full and open competition as the urgency exception. We use the term limited competition to refer to situations when the government seeks offers from as many potential sources as is practical under the circumstances when using the urgency exception.

was included in the FAR that, among other things, limits the period of performance for contracts awarded noncompetitively on the grounds of urgency to no longer than 1 year unless there is a determination that exceptional circumstances apply.²

The conference report for the National Defense Authorization Act for Fiscal Year 2013 mandated that GAO review the use of the unusual and compelling urgency exception to full and open competition by the Departments of Defense (DOD) and State and the U.S. Agency for International Development (USAID).³ This report addresses: (1) the pattern of DOD's, State's, and USAID's use of the unusual and compelling urgency exception, including the range of goods and services acquired; (2) the reasons that agencies awarded noncompetitive contracts on the basis of urgency, and the extent to which justifications met requirements in the FAR; and (3) the extent to which agencies limited the duration of the contract and achieved competition in urgent situations.

To determine patterns of DOD's, State's, and USAID's use of the unusual and compelling urgency exception to competition, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG) for fiscal years 2010 through 2012, which represented the time period after the duration requirement went into effect and reflected the most current data to show trends over time. We determined that the federal procurement data were sufficiently reliable to identify these three agencies' use of the urgency exception, in part by verifying a non-generalizable random sample of the data and adjusting the data to account for known limitations by limiting our analysis to the procurement data we could reasonably confirm were awarded using the urgency exception. To determine the reasons that agencies awarded noncompetitive contracts on the basis of urgency and the extent to which justifications met FAR requirements, we used federal procurement data to select a non-generalizable sample of 62 contract files based on largest

² 74 Fed. Reg. 52,849 (Oct. 14, 2009). In 2008, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 862, amended certain laws to require that contracts awarded using the urgency exception not exceed the time necessary to meet the unusual and compelling requirements and for the agency to enter into another contract, and may not exceed 1 year unless the head of the agency determines exceptional circumstances apply. The 2009 FAR amendment implemented this requirement.

³ H.R. Rep. No. 112-705, at 817 (2012) (Conf. Rep.).

obligations and a mix of products and services contracts. We analyzed justifications and other documents agencies used to seek approval to limit competition on the selected contracts to identify agencies' rationale for using the urgency exception and determined whether they met FAR requirements. We conducted legal research, analyzed DOD, State, and USAID policies and guidance, and interviewed officials on use of the urgency exception. We compared agencies' policies and procedures with the *Standards for Internal Control in the Federal Government* which calls for documenting transactions to provide evidence of implementation.⁴ To determine the extent to which agencies complied with the FAR requirement to limit the contract period and obtained competition, we performed an in depth review of contract files for 34 selected contracts that we identified from our sample of 62 contracts were awarded using the unusual and compelling urgency exception. In addition, we spoke with officials from the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB)—which has responsibility for federal procurement policy—about agencies' approaches to implement the FAR requirement to limit the period of performance for contracts awarded under the urgency exception. We compared agencies' approaches to implement the FAR requirement to limit the period of performance with *Standards for Internal Control in the Federal Government* which calls for organizations to maintain proper controls to ensure transparency and accountability for stewardship of resources.⁵

A more detailed description of our scope and methodology is presented in appendix I. We conducted this performance audit from March 2013 through March 2014 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

Agencies are generally required to use full and open competition—achieved when all responsible sources are permitted to compete—when

⁴ GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD 00 21.3.1](#) (Washington, D.C.: November 1999).

⁵ [GAO/AIMD-00-21.3.1](#).

awarding contracts. However, the Competition in Contracting Act of 1984 recognizes that full and open competition is not feasible in all circumstances and authorizes contracting without full and open competition under certain conditions.⁶ Examples of allowable exceptions to full and open competition include circumstances when the contractor is the only source capable of performing the work or when disclosure of the agency's need would compromise national security. An agency may also award a contract noncompetitively when the need for goods and services is of such an unusual and compelling urgency that the federal government faces the risk of serious financial or other injury.⁷

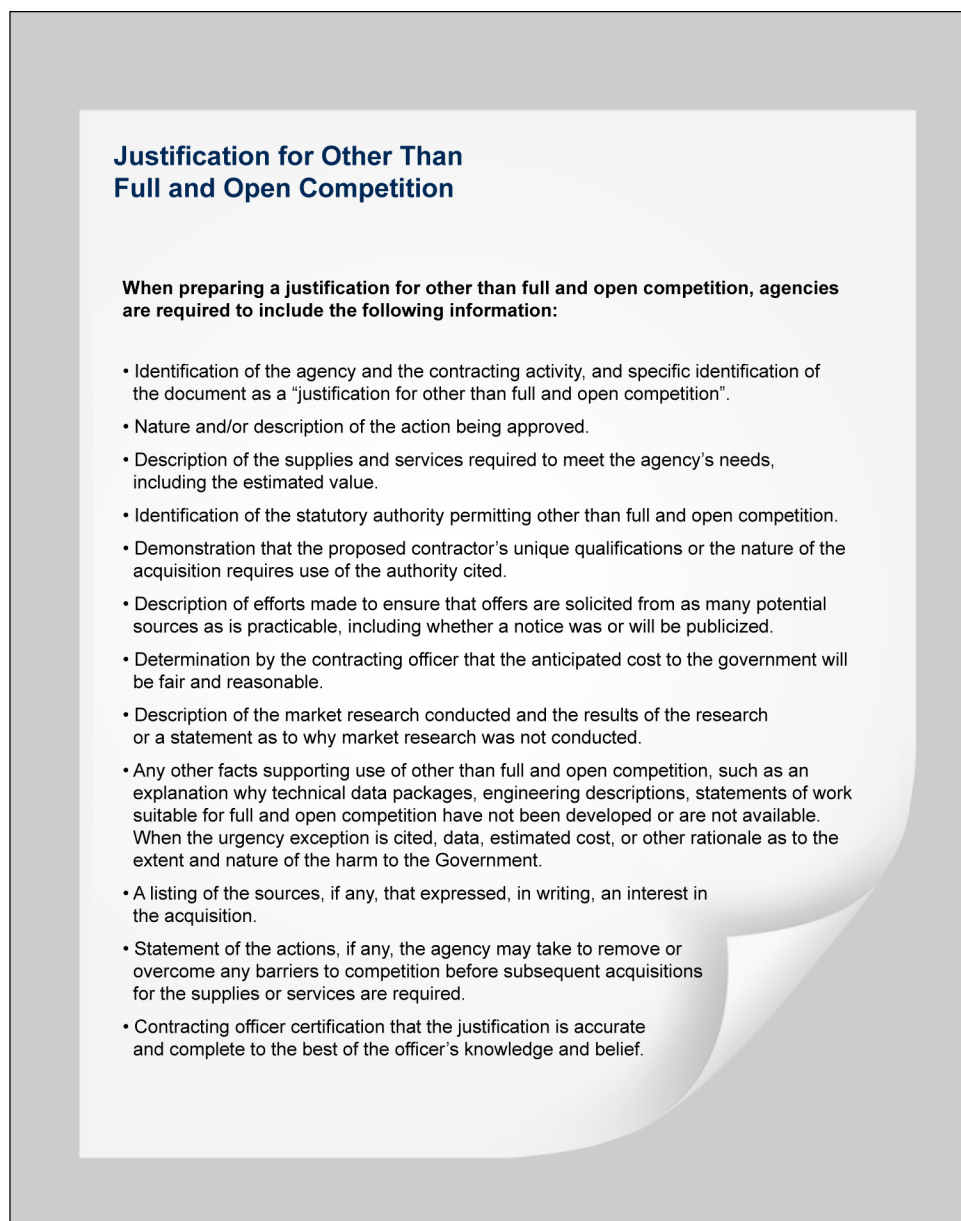
When using the urgency exception to competition, an agency may limit competition to the firms it reasonably believes can perform the work in the time available. However, an agency is not permitted to award a noncompetitive contract where the urgent need has been brought about due to a lack of advanced planning. Unlike the other exceptions to competition provided by the FAR, awards that use the urgency exception have certain time restrictions. Specifically, the total period of performance is limited to the time necessary to meet the requirement and for the agency to enter into another contract through the use of competitive procedures. Further, the period of performance may not exceed 1 year unless the head of the agency or appointed designee determines that exceptional circumstances apply.

Generally, noncompetitive awards must be supported by written justifications that contain sufficient facts and rationale to justify use of the specific exception to competition that is being applied to the procurement. At a minimum, justifications must include 12 elements specified in the FAR, including a description of the goods and services being procured, market research conducted, and efforts to solicit offers, among other things, as shown in figure 1.

⁶ Pub. L. No. 98-369, §§ 2711(a)(1) and 2723(a)(1), *codified as amended* at 41 U.S.C. § 3304 and 10 U.S.C. § 2304.

⁷ In all, there are seven exceptions to full and open competition. See FAR § 6.302.

Figure 1: Elements of a Justification for Other Than Full and Open Competition Required by the FAR



Source: Federal Acquisition Regulation.

For noncompetitive awards using the urgency exception, justifications may be prepared and approved within a reasonable time after award when doing so prior to award would unreasonably delay the acquisition. Justifications are to be published—on the Federal Business Opportunities website (FedBizOpps)—generally, within 30 days after contract award.⁸ Additionally, justifications must be approved at various levels within the contracting organization. These levels vary according to the estimated total dollar value of the proposed contract, including all options. As outlined in table 1, the approval levels range from the contracting officer for smaller dollar contracts up to the agency’s senior procurement executive for larger dollar contracts.

Table 1: FAR Approval Levels for Justifications for Other Than Full and Open Competition

Estimated value of proposed contract action	Approval by
\$650,000 or less	Contracting officer
Over \$650,000 but not exceeding \$12.5 million	Competition advocate for the procuring activity or officials authorized to approve at a higher level
Over \$12.5 million but not exceeding \$62.5 million (\$85.5 million for DOD, NASA ^a , and Coast Guard)	Head of the procuring activity, or designee meeting certain criteria
More than \$62.5 million (or \$85.5 million for DOD, NASA, and Coast Guard)	Agency senior procurement executive

Source: Federal Acquisition Regulation.

^aNational Aeronautics and Space Administration

The FAR has more streamlined procedures for awarding contracts under the simplified acquisition threshold—generally less than \$150,000. These smaller dollar awards are exempt from the justification and documentation requirements described above for contracts over this threshold. For example, contracting officers awarding a contract under simplified acquisition procedures must only document the determination that competition was not feasible; no approval beyond the contracting officer is required. Further, agencies do not have to document the extent and nature of the harm to the government that necessitates limiting competition when using simplified acquisition procedures. When using these procedures, agencies may solicit an offer from one contractor in

⁸ Justifications are also to be posted to the procuring agency’s website which may link to FedBizOpps. For most of the other exceptions to competition, justifications are to be published within 14 days of contract award.

certain circumstances, including when the contracting officer determines that only one source is reasonably available.⁹

In general, once a contract is awarded, the awarding agency must enter certain information into FPDS-NG, the federal government's database that captures information on contract awards and obligations. Agencies are responsible for the quality of the information entered into the database. Data captured includes, for example, the contract value, whether the contract was awarded competitively or not, and what authority was used to award the contract noncompetitively. In FPDS-NG, there are three fields for agencies to report competition data for contracts awarded:

- Extent competed: the competitive nature of the contract awarded, for example, whether the contract was awarded using full and open competition or not competed using simplified acquisition procedures.
- Solicitation procedure: the procedure an agency used to solicit offers for a proposed contract opportunity, for example, soliciting an offer from only one contractor because the agency deemed only one source available to fulfill the need or soliciting offers pursuant to simplified acquisition procedures.
- Other than full and open competition: the reason an award was not competed and the authority used to forego full and open competition, for example, the unusual and compelling urgency exception to competition. For the purposes of this report, we refer to this field as "the reason not competed" to be more descriptive of the content in the field.

⁹ For example, urgency, exclusive licensing agreements, brand name or industrial mobilization. FAR 13.106-1(b)(1)(i).

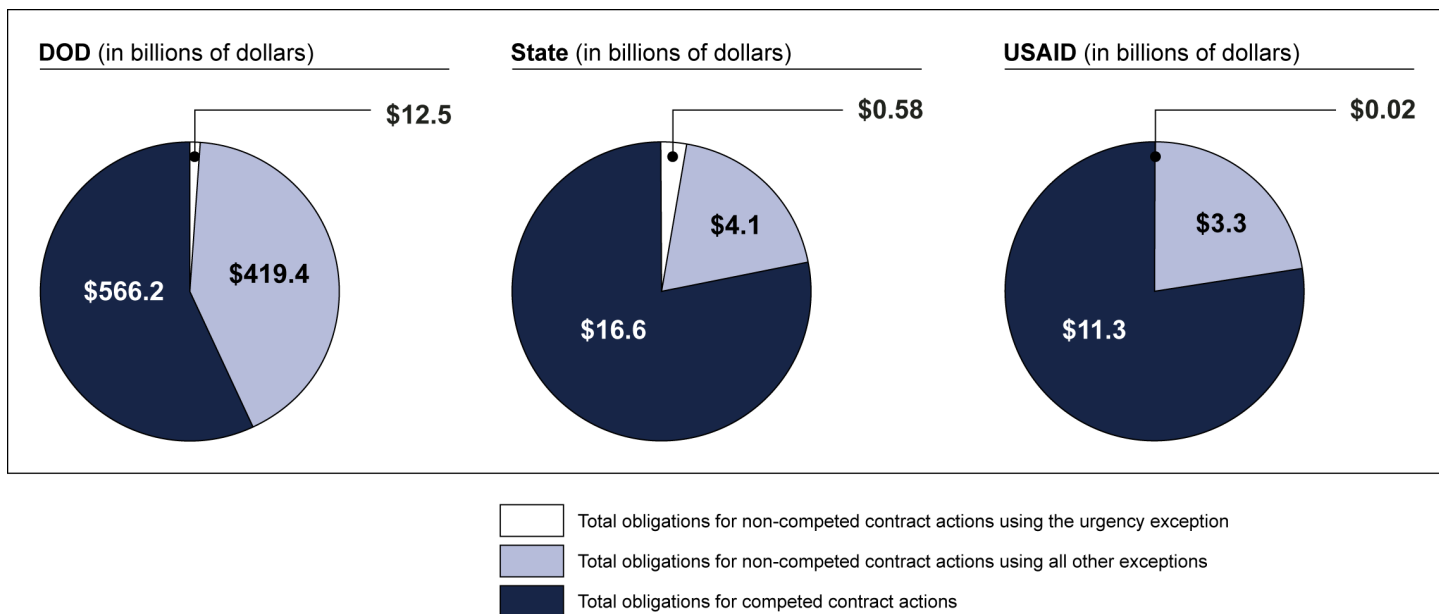
Agencies Used the Urgency Exception to a Limited Extent and Procured a Range of Goods and Services, but Data Reliability Is Questionable

DOD's, State's, and USAID's Use of the Urgency Exception Is Small Compared to Other Exceptions to Competition

Based on data from FPDS-NG, DOD, State, and USAID obligations for contracts and task orders reported as using the urgency exception during fiscal years 2010 through 2012 were small relative to other exceptions to full and open competition.¹⁰ Of the \$998 billion that DOD obligated for all contracts during this period, \$432 billion or 43 percent were awarded noncompetitively; however, only about \$12.5 billion—or about 3 percent—of DOD's noncompetitive obligations were awarded under the urgency exception. Less than 1 percent of USAID's noncompetitive obligations—\$3.3 billion—were obligated under the urgency exception. In comparison to DOD and USAID, State's obligations under the urgency exception were more substantial, accounting for 12.5 percent—or \$582 million—of its noncompetitive obligations, as shown in figure 2.

¹⁰ In our analysis we excluded awards that were below \$150,000 because of the high likelihood that these procurements followed simplified acquisition procedures, which are separate from the procedures that apply to the urgency exception.

Figure 2: Percent of Total Competitive and Noncompetitive Obligations for DOD, State, and USAID, Including Use of the Urgency Exception Compared to Use of Other Exceptions to Competition, Fiscal Years 2010 through 2012



Source: GAO analysis of federal procurement data.

DOD's obligations under the urgency exception accounted for more than 85 percent of the total dollars obligated using the urgency exception across the federal government from fiscal years 2010 through 2012. Among civilian agencies, State and USAID obligations using the urgency exception accounted for about 4 percent and less than 1 percent of total urgency obligations across the federal government, respectively. DOD and USAID's obligations under the urgency exception remained relatively constant for fiscal years 2010 through 2012; however, State's obligations in fiscal year 2011 were \$301.4 million, more than a twelvefold increase over its fiscal year 2010 obligations, which totaled \$24.4 million. Most of the increase can be attributed to three contracts, which altogether totaled more than 75 percent of State's total urgency obligations in fiscal year 2011.¹¹

¹¹ Two of the contracts provided guard services to protect the U.S. embassies in Iraq and Afghanistan, while the third provided administrative support services to the National Visa Center.

Agencies Procured a Range of Goods and Services Using the Urgency Exception

Our analysis of FPDS-NG data showed that use of the urgency exception varied in the types of goods and services acquired across DOD, State, and USAID for fiscal years 2010 through 2012. As figure 3 shows, State and USAID obligated funds to almost exclusively procure services while DOD obligated funds to procure an equal percentage of goods and services. During the 3-year period, DOD procured a broad range of items with more than half of funds—or over \$6 billion—for research and development and to purchase communications and radar equipment. For State, about 60 percent of funds—over \$335 million—were obligated to procure guard protection services at U.S. embassies and other facilities. For USAID, nearly half of its funds—more than \$9 million—were obligated to support construction of roads and highways and to procure education and training services.

Figure 3: Percentage of DOD, State, and USAID Dollars Obligated for Goods and Services and Examples of Items Procured Using the Urgency Exception for Fiscal Years 2010 through 2012

Agency	Percentage of goods and services procured	Examples of goods procured	Examples of services procured
DOD	<p>A pie chart for DOD showing two segments: a white segment labeled '\$6 billion' and a dark blue segment labeled '\$6.5 billion'.</p>	Goods procured included weapons, ammunition, and explosives; aircraft and vehicle components; radar equipment; personal armor; and clothing to protect against improvised explosive devices; and medical equipment and supplies.	Services procured included research and development of systems; engineering and technical support; information technology and telecommunications; equipment maintenance; program management and administrative support; education and training; operating air traffic towers, sewage and waste treatment and storage, and garbage collection.
State	<p>A pie chart for State showing two segments: a large dark blue segment labeled '\$550.8 million' and a small white segment labeled '\$30.1 million'.</p>	Goods procured included radio and television equipment, prefabricated doors and windows, and generators.	Services were procured to provide security, internet and telecommunications; and administrative and management support. In addition, other procurements categorized as services included travel and lodging, and facilities support to operate government-occupied buildings such as the U.S. embassy in Iraq.
USAID	<p>A pie chart for USAID showing two segments: a large dark blue segment labeled '\$19.4 million' and a very small white segment labeled '\$0.07 million'.</p>	All goods procured for this time period were reported in the federal procurement database as miscellaneous items, which are defined as items which cannot be otherwise classified in any existing federal procurement database class.	Services that were procured included education and training; engineering and program management support, contractors to perform personal services, such as providing short-term transition assistance in conflict prone countries; and construction of roads, bridges, and railways.



Source: GAO analysis of federal procurement data.

Coding Errors and Limitations Highlight Federal Procurement Data Reliability Concerns

We found coding errors in FPDS-NG for contracts awarded by DOD, State, and USAID. Specifically, of the 62 contracts we selected for our sample, 28 were reported in FPDS-NG as being awarded noncompetitively using the urgency exception, but were not. Of the 28 contracts that were not correctly reported in FPDS-NG, three contracts were awarded using other exceptions to competition, such as national security, five were awarded using a unique authority to award noncompetitive contracts at USAID, and 20 contracts were awarded using

simplified acquisition procedures. We note that our sample is not representative of all dollars obligated for federal contracts.

We found three Air Force contracts that were incorrectly coded in FPDS-NG as awarded using the urgency exception to competition, but the contract file documentation confirmed that these contracts were awarded noncompetitively on the basis of national security concerns or that only one vendor could supply the requirement. Of these three contracts, two were awarded noncompetitively to procure an unmanned aircraft system and replacement aircraft accessories on the basis that disclosure of the agency's need would compromise national security. Officials explained that these coding errors were due to an administrative oversight. For the remaining contract which was awarded on the basis that only one contractor could perform the work, officials identified and corrected the error during a routine inspection that occurred after we included the contract in our sample.

We identified five USAID contracts that were noncompetitive awards using an authority unique to USAID that allows the agency to award noncompetitive contracts where competition would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.¹² FPDS-NG does not include an option to report noncompetitive awards using USAID's unique exception to competition. Thus, according to USAID officials, contracting staff use their professional judgment to choose an option in FPDS-NG that most closely matches the circumstances of the award. This may include reporting the noncompeted award as being procured using the urgency exception. We did not assess the extent to which USAID consistently reported these awards using the urgency exception versus other exceptions to competition.

Twenty of the contracts were awarded for less than \$150,000 using simplified acquisition procedures. These contracts were awarded noncompetitively on the basis that the good or service was required immediately and only one source was deemed reasonably available. The contract file documentation showed that DOD, State, and USAID procured various goods and services—including water purification systems, furniture storage space, drapes and holiday gifts—using

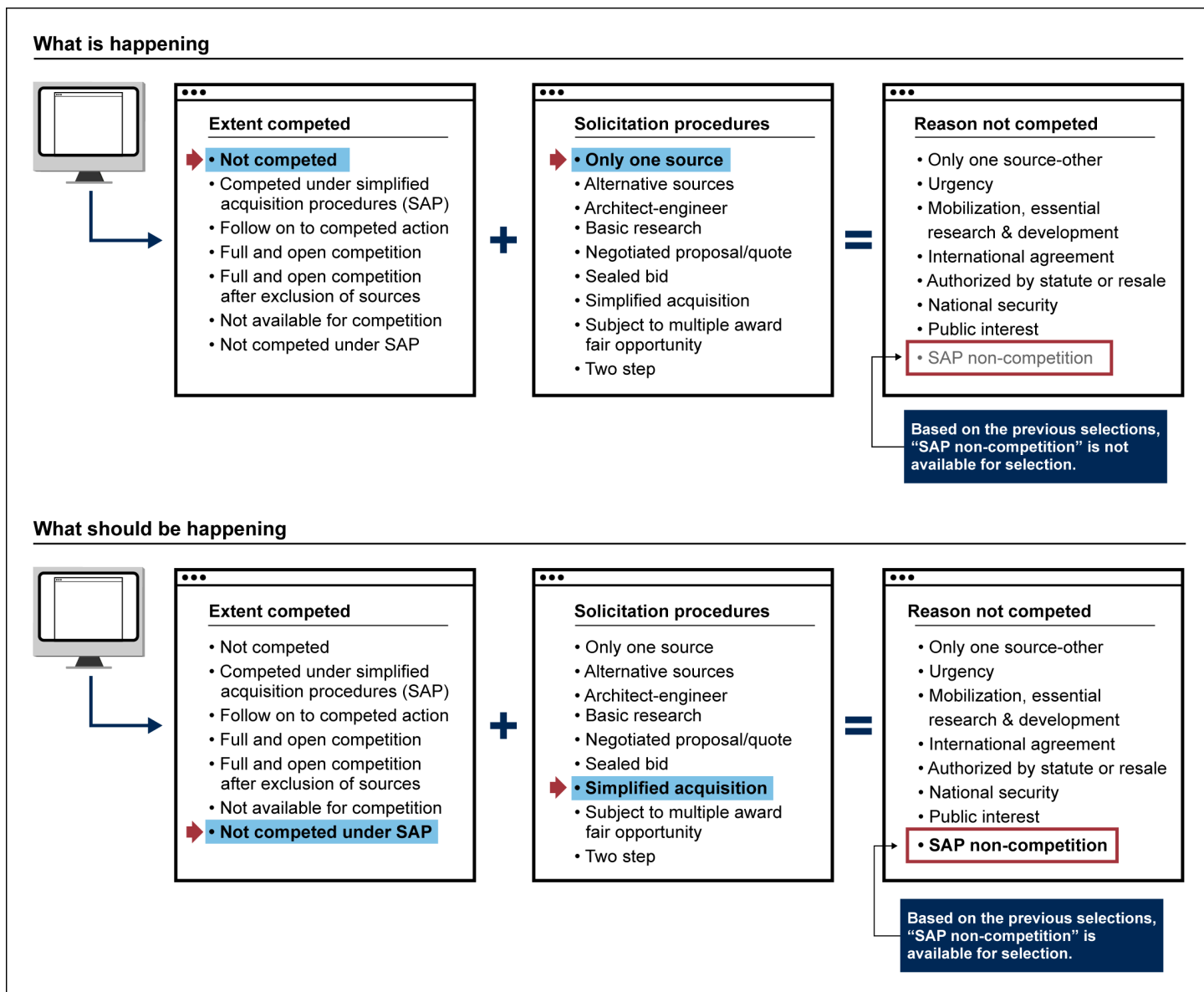
¹² U.S. Agency for International Development Acquisition Regulation, § 706.302-70.

streamlined procedures for simplified acquisitions. However, when recording the reason these contracts were not competed in FPDS-NG, DOD, State, and USAID incorrectly reported that these contracts were awarded using the unusual and compelling urgency exception to full and open competition. Contracting officials attributed these coding errors to an administrative oversight and some officials admitted to confusion about how to input data in FPDS-NG. Such inaccurate reporting adds to existing concerns about the reliability of some data elements in FPDS-NG which GAO has reported on previously.¹³

For the 20 contracts awarded using simplified procedures, we found that the potential for confusion arises when agencies are directed in FPDS-NG to record the solicitation procedure and the extent to which a contract was competed. Based on our analysis of contracts reported as using the urgency exception to competition, when reporting which solicitation procedure was used, contracting staff frequently selected the entry labeled “only one source.” This denotes that the agency did not solicit offers from potential vendors because it determined only one source was reasonably available given the urgent need. Agencies also selected the entry labeled “not competed” when reporting the extent to which a contract was competed.

¹³ We have previously reported on data reliability issues with FPDS-NG. See, e.g., GAO, *Federal Contracting: Observations on the Government’s Contracting Data Systems*, [GAO-09-1032T](#) (Washington, D.C.: Sept. 29, 2009); *Improvements Needed to the Federal Procurement Data System-Next Generation*, [GAO-05-960R](#) (Washington, D.C.: Sept. 27, 2005).

Figure 4: Illustration of Data Entry Practices and FPDS-NG Validation Rules for Contracts Awarded Using Simplified Procedures



Source: GAO analysis of Federal Procurement Data System-Next Generation documents.

As figure 4 illustrates, when contracting staff select "only one source" in the solicitation procedure field, FPDS-NG validation rules do not allow the

selection of simplified acquisition procedures in the field for the “reason not competed”. For these contracts, per FPDS-NG instructions, contracting staff should have reported these awards as “simplified acquisition” under solicitation procedure and “not competed under simplified acquisition procedures” in the extent competed field. Consistent with FPDS-NG database instructions, using this approach would restrict the data entry options available when reporting the reason not competed to simplified acquisition procedures. During the course of our review, the Defense Logistics Agency (DLA) within DOD used this approach to correct the entry in FPDS-NG for two awards under \$150,000 that are now recorded as sole-source awards using simplified acquisition procedures which is consistent with the records maintained in the corresponding contract files. In 2010, DOD issued guidance to, among other things, help improve the quality of data reported in FPDS-NG for contracts awarded using simplified acquisition procedures. For fiscal years 2010 through 2012, data in FPDS-NG showed that collectively DOD, State, and USAID reported 13,040 noncompetitive contracts under \$150,000 as being awarded under the urgency exception. The total obligation for these contracts was over \$284 million. Ensuring contracts are correctly coded in FPDS-NG is critical as the data are used to inform procurement policy decisions and facilitate congressional oversight.

Agencies Cited a Range of Urgent Circumstances to Award Noncompetitive Contracts and Justifications Generally Contained Required Elements

After excluding the contracts we identified with data errors, we found that 34 contracts were awarded noncompetitively using the unusual and compelling urgency exception to competition to meet a range of urgent situations.¹⁴ Our sample included DOD contracts that were awarded to meet urgent operational needs for combat operations in Afghanistan and Iraq, including two contracts that highlight the risk of using the urgency exception for research and development initiatives to immediately field capabilities for combat operations. In addition, our sample consisted of contracts awarded to avoid a lapse in program support resulting from firms protesting the award of a competitive contract or from changes in program requirements. Generally, noncompetitive awards—such as those using the urgency exception—must be supported by written justifications that contain the facts and rationale to justify use of an exception to competition. While justifications in our sample generally contained the

¹⁴ Going forward in this report, our analysis does not include the 28 contracts that were miscoded.

required information, some fell short of the FAR requirements and did not obtain the necessary signatures or make justifications publicly available. Other justifications were written ambiguously in terms of including other facts supporting the use of the urgency exception, such as the nature of the harm to the government.

Agencies Awarded Noncompetitive Contracts to Meet a Range of Urgent Situations

For the 34 contracts in our sample, DOD, State, and USAID cited a range of urgent situations that precluded full and open competition. More than half of the contracts were awarded to procure goods and services to support various missions in Afghanistan and Iraq. The two most common reasons agencies cited for awarding noncompetitive contracts on the basis of urgency—sometimes for the same contract—were to meet urgent operational needs for combat operations and to avoid a gap in program support resulting from unanticipated events. The remaining contracts supported unique circumstances such as fulfilling increased demand for fuel, providing telecommunications support for a foreign delegation visit, obtaining equipment for an unscheduled naval mission, and addressing emergency vehicle repairs. See Appendix II for a summary of the 34 contracts in our sample.

DOD Sought to Meet Urgent Operational Needs for Combat Operations

DOD awarded 16 contracts, valued at \$1.2 billion, to rapidly acquire and provide capabilities to meet urgent needs that, DOD maintained, if not addressed immediately, would seriously endanger personnel or pose a threat to ongoing combat operations. These needs involved two primary capabilities: intelligence, surveillance, and reconnaissance (ISR)—such as airships—and systems to protect against attacks from improvised explosive devices. DOD's acquisition policy states that urgent operational needs are among the highest priority acquisitions and identifies the urgency exception as one of the tools available to provide urgently needed capabilities to the warfighter more quickly by reducing the amount of time needed to award a contract.¹⁵ In an April 2012 report, GAO found that some DOD programs to meet urgent operational needs were able to reach contract award sooner by relying on urgent noncompetitive awards; however, this reliance could affect the price the government pays.¹⁶

¹⁵ Interim DOD Instruction 5000.02, "Operation of the Defense Acquisition System" (Nov. 25, 2013) and DOD "Acquisition Actions in Support of Joint Urgent Operational Needs" (Mar. 29, 2010).

¹⁶ GAO, *Urgent Warfighter Needs: Opportunities Exist to Expedite Development and Fielding of Joint Capabilities*, [GAO-12-385](#) (Washington, D.C.: Apr. 24, 2012).

Recognizing the need to quickly deliver capabilities in urgent conditions—sometimes within days or months—DOD policy calls for delivering solutions for urgent needs within 24 months of when the urgent operational need is identified and validated. Within the sample of urgent DOD awards we reviewed, many of the capabilities acquired in response to urgent operational needs were fielded within 3 to 20 months of when the requirement was identified. For example, by relying on an existing technology, the Army was able to quickly field 29 surveillance aerostats within 10 months of validating the urgent operational need. DOD contracting officials we spoke with told us they expect decreases in the number of noncompetitive awards on the basis of urgency to meet urgent operational needs because of the drawdown in military operations in Iraq and Afghanistan.

Two DOD awards within our sample highlighted the risks of using the urgency exception to competition to award contracts for research and development initiatives to meet immediate combat operation needs. DOD policy identifies efforts best suited for rapid fielding of urgently needed capabilities as those that do not require substantial development effort, are based on proven and available technologies, and can be acquired under a fixed price contract.

In the first example, the Air Force's Blue Devil Block 2 program used the urgency exception to purchase previously unproven technology for improved ISR capability. GAO and the DOD Inspector General have previously reported that the program faced various challenges.¹⁷ In 2009, the Air Force first identified the need for the program following a presentation from the contractor for an airship concept that could take off and land vertically while requiring fewer personnel to assist with landing than traditional airships. In March 2010, the contractor submitted an unsolicited proposal to the Air Force for the development of the Blue Devil Block 2 airship. The Air Force Research Laboratory (AFRL) conducted an assessment of the program and determined that the proposed 24 month schedule was aggressive and likely unachievable. As an alternative, AFRL proposed a strategy to develop the airship in 34 months using

¹⁷ GAO, *Defense Acquisitions: Future Aerostat and Airship Investment Decisions Drive Oversight and Coordination Needs*, [GAO-13-81](#) (Washington, D.C.: Oct. 23, 2012). DOD, Office of the Inspector General, *Air Force and Army Corps of Engineers Improperly Managed the Award of Contracts for the Blue Devil Block 2 Persistent Surveillance System* (Sept. 19, 2013).

competitive procedures. In September 2010, the Secretary of Defense designated the procurement of the airship as an urgent need to be rapidly acquired, and set the expectation that it be deployed within 13 months. The following month, AFRL conducted a second assessment of the program and again determined that it was not suitable for rapid fielding within 24 months due to concerns about the technical capability of the contractor and poorly defined requirements. Despite AFRL's assessment, the Air Force awarded an \$86.2 million contract in March 2011 based on urgency for delivery of the airship in January 2012. In an October 2012 report, GAO found that this program experienced significant technical problems resulting in cost overruns and schedule delays that led to termination of the program in June 2012, which was 5 months after the planned fielding date of January 2012.¹⁸ Ultimately, the program was terminated after spending more than \$149 million and without fulfilling the urgent requirement for a deployable ISR airship.

In the second example, the Air Force awarded a noncompetitive contract in 2011 on the basis of urgency for the development of the Orion unmanned aerial system in response to an urgent operational need for ISR capabilities to support multiple services in Afghanistan. The new system was expected to provide greater uninterrupted flight times than other available systems. The contract was awarded with a period of performance of 13 months; however, the justification did not specify a fielding date. After award, the cost of the contract nearly tripled from the initial estimate of \$5 million to a total of about \$15 million and the period of performance doubled from 13 months to 26 months. Contracting officials said that cost increases and schedule delays were due to technical problems experienced by the contractor in developing the proposed technology. Nearly 3 years since the requirement was validated as an urgent need, this system has not been fielded in Afghanistan and is still under development through a follow-on contract.

GAO has previously found that initiatives for urgent operational needs that required technology development often take longer to field.¹⁹ Contracting officials we spoke with said that both programs relied heavily on unproven technologies that required extensive research and development, which contributed, in part, to the cancelation and delay of

¹⁸ [GAO-13-81](#).

¹⁹ [GAO-12-385](#).

Agencies Sought to
Avoid a Gap in Program
Support Resulting from
Unanticipated Events

the Blue Devil and Orion systems, respectively. Further, officials noted that initiatives to respond to urgent operational needs tend to have more successful outcomes when the solutions are based on proven, mature technologies.

DOD, State, and USAID awarded 12 noncompetitive contracts when unexpected events threatened the agencies' ability to continue program support. Referred to as bridge contracts, such awards are typically short term to avoid a lapse in program support while the award of a follow-on contract is being planned. The contract period for the 12 bridge awards in our sample averaged 11 months and collectively they were valued at a total of over \$466 million. For the bridge contracts that we reviewed, the delay in awarding a competitive contract was due to unforeseen personnel changes, competitors filing bid protests, and changes in program requirements, among other things. For 10 of the 12 bridge contracts in our sample, agencies awarded the contract to a vendor that had previously performed the work.

- In one instance, the Air Force's plans to competitively award a follow-on contract for engineering support services was disrupted by the unexpected loss of the program manager who had specialized expertise and had been working independently on the acquisition strategy for about 1 year. A new program manager was assigned but had difficulty accessing his predecessor's files which further delayed the acquisition effort. The justification cited that a gap in program support would jeopardize ongoing research and expose the Air Force to certain fines and penalties. Faced with the possibility of costly delays estimated to be \$1.5 million per month, the Air Force opted to award a non-competitive bridge contract to the incumbent vendor who was deemed most capable of meeting the program's requirements within the timeframes needed. Officials determined that the 12-month bridge contract valued at \$1.4 million would provide sufficient time to complete market research and other acquisition planning for the subsequent award.
- In another instance, State awarded a competitive follow-on contract to provide operational and maintenance support services at the U.S. Embassy compound in Baghdad, Iraq, three months before the existing contract expired. However, the new contract, which was awarded to the incumbent vendor, was protested, thus preventing the contractor from starting performance on the contract. Citing concerns about the health and safety of 4,200 U.S. government personnel, State awarded a 6-month bridge contract valued at \$38 million to the incumbent vendor to ensure continuity of services. The justification

cited that transitioning to a contractor other than the incumbent vendor would take at least 90 days because of visa processing, among other things.

- A USAID program for oversight, outreach, and legislative assistance to the National Assembly of Afghanistan was extended to ensure continued support to the Afghan parliament during the upcoming budget cycle. The contract USAID planned to use to obtain these services was not awarded in time. As a result, USAID awarded a 7-month bridge contract to the incumbent vendor with a value of \$5 million to avoid a break in service, with the goal of awarding a competitive follow-on contract during the parliament's upcoming summer recess. USAID determined that for the bridge contract, a new vendor could not transition within the time available due to security clearances and other requirements.

Justifications Generally Contained the Required Elements and Provided Varied Levels of Insight about the Risks that Led to Use of the Urgency Exception

Justifications in our sample generally contained the required information; however, some fell short of the FAR requirements and did not obtain the necessary signatures, among other things. Other justifications were written ambiguously in terms of including other facts supporting the use of the urgency exception, such as the nature of the harm to the government.

Justifications Generally Contained the Required Elements, Yet Several Did Not Meet All FAR Requirements

Consistent with acquisition regulations, DOD, State, and USAID prepared written justifications for all of the 34 urgent contracts in our sample to include the required elements specified in the FAR—such as the contracting officer's determination that the cost will be fair and reasonable and the extent of the agencies' market research efforts. In addition, nearly all of the justifications that we reviewed were prepared and approved prior to award. The FAR permits agencies to prepare and approve justifications within a reasonable time after contract award when doing so prior to award would unreasonably delay the acquisition. This provision is unique to use of the urgency exception, as preparation and approval of the justification prior to award can delay the quick response time needed to meet urgent needs. Contracting officials told us that they work together with the program office to prepare justifications and, at a minimum, obtain verbal approvals when it is unlikely the justification can be routed to approving officials prior to award.

In three instances, however, we found justifications were not signed by the appropriate approving authority as required by the FAR. For example, a USAID justification to award a \$5 million contract to support missions in Afghanistan was not signed by the Competition Advocate due to an administrative oversight. In a second example, officials at the Defense Logistics Agency did not obtain the necessary written approvals justifying a \$32 million award for an emergency fuel purchase also due to an administrative oversight; however, according to officials, verbal approvals had been obtained from all requisite approving officials including the head of the contracting activity prior to award. After we brought this to their attention, DLA officials obtained the necessary signatures on the justification for this contract, even though the contract was complete. The office that awarded this contract has since put a tool in place to route justifications and ensure appropriate signatures are obtained in a timely manner. Lastly, an Air Force justification for a noncompetitive award valued at \$130 million was not signed by the Senior Procurement Executive, as required by the FAR. Officials we spoke with could not confirm the reason the procurement executive did not sign the justification and this individual is no longer employed by the Air Force.

We also found four DOD justifications that were not signed in time to meet the FAR requirement to make them publicly available within 30 days of award. While the FAR permits agencies to prepare and approve justifications awarded using the urgency exception within a reasonable time after award; it does not identify a specific timeframe to do so. However, agencies are required to make justifications for urgent noncompetitive contracts available on the FedBizOpps website within 30 days of award.²⁰ Thus, agencies would need to prepare and approve justifications within 30 days in order to meet FAR requirements to make them publicly available. DOD contracting officials who administered the awards included in our sample told us it is customary to obtain verbal approvals on justifications for noncompetitive procurements prior to award; but such justifications are not made publicly available without signatures from the appropriate approving official. The justifications for these contracts were not signed until 58 to 314 days after award, meaning that the fully approved justifications were not made publicly available within 30 days of award as required by the FAR. In one of these

²⁰ In general, justifications for the other exceptions to full and open competition must be posted within 14 days of award.

cases, an Army justification for a 3-month noncompetitive award for satellite equipment was not prepared and approved, in writing, until 138 days after award. Citing concerns about compliance, the Army attorney who provided legal review of the justification noted the absence of regulatory procedure or agency policy when approval of the justification has far exceeded the timing requirements for making the justification publicly available. Officials subsequently posted the justification which occurred more than 6 months after the contract award date and 90 days after the contract expired. Some DOD, State, and USAID contracting officials we spoke with emphasized the importance of complying with the posting requirement to provide transparency into agency's contracting activity, but others were unsure of the appropriate course of action when approval of the justification does not occur within 30 days.

For 15 of the justifications we reviewed, we could not confirm whether justifications were posted to the FedBizOpps website within the required timeframes, or at all, as no documentation was available. The FAR does not require agencies to maintain documentation that the justification was made publicly available; however, we found that in some instances, officials printed the confirmation page from the FedBizOpps website to document compliance with the requirement. After we brought this issue to their attention, officials subsequently posted five justifications. Some officials told us that justifications were not posted due to an administrative oversight.

DOD, State, and USAID have developed guidance to implement FAR requirements for justifications for noncompetitive contracts; however, none of the agencies have included instructions addressing how staff should document compliance with the FAR requirement to make justifications publicly available or what to do when the justification is not approved and ready for posting within 30 days. USAID officials acknowledged the benefit of documenting that the justification was posted to demonstrate the posting requirement was met and told us they would include a process to do so in their guidance to contracting officers. *Standards for Internal Control in the Federal Government* states that internal controls—such as agency policies and procedures—are an integral part of an organization's management function that provides reasonable assurance of compliance with laws and regulations. Control activities include the creation and maintenance of records which provide evidence of implementation, such as documentation of transactions that

Justifications Provided Varied Levels of Insight about Risks

is readily available for inspection.²¹ Contracting officials told us that documenting their efforts to make the justification publicly available provides transparency into the steps they took to comply with applicable regulations.

Generally, justifications for the 34 contracts in our sample described the nature of the harm—serious financial or other risk—facing the government if the award were to be delayed using traditional competitive procedures. Some justifications were specific about the potential harm to the government while others were ambiguous. The FAR states that agencies may use the urgency exception when delay of the contract award would pose a serious injury—financial or other—to the government. The FAR further provides that agencies are to include other facts, such as data, estimated cost, or other rationale as to the extent and nature of the harm to the government—which provides some flexibility about how such risks should be described in the justification.

Most of the justifications in our sample—23 of 34—quantified the potential harm to the government if the acquisition was delayed by using competitive procedures in terms of potential dollars lost or schedule delays. The Air Force and the Army have guidance for preparing justifications which states that the most critical aspect of justifications that cite use of the urgency exception is quantifying the nature of the serious injury to the government if the urgent requirement is competed.²² Accordingly, nearly all of the Air Force and Army justifications we reviewed estimated the potential costs to the government if the urgent award were to be delayed by using competitive procedures. For instance, one Air Force justification for an unmanned aerial system explained that no other vendors had mature technology and estimated that the effort of bringing at least one other vendor to an equivalent capability would cost \$5.7 million and result in at least a 3-month delay. Further, the justification stated that it is unlikely these costs would be recovered through competition. Similarly, the justification for an Army contract to obtain new parts for tactical wheeled vehicles to help protect against attacks from improvised explosive devices estimated that DOD would incur \$2.5 million in transportation costs if the parts were not acquired by a certain date to meet the time frame of a scheduled ship deployment.

²¹ [GAO/AIMD-00-21.3.1](#).

²² The Army has draft guidance which is in the final stages of review.

By contrast, 11 of the justifications we reviewed were more ambiguous in describing the nature of the harm if a noncompetitive contract was not awarded. Some of the ambiguous justifications described the following:

- At Navy, justifications for four procurements to provide goods or services related to persistent ground surveillance systems cited that only one source was available as other sources would duplicate costs or cause delays. The justifications did not provide additional information about the potential time or dollars to be saved by using the urgency exception.
- At State, one justification cited the need to award a noncompetitive contract using the urgency exception to provide telecommunications support for a meeting of foreign leaders. The justification emphasized the vendor's prior experience in providing similar services, thereby facilitating the agency's mission in the most cost-effective manner. But it did not provide additional information regarding the extent and nature of the harm posed to the government. For such events, according to agency officials, security concerns often hinder the agency's ability to conduct advanced planning; thus necessitating the use of the urgency exception.
- Two USAID justifications did not fully describe the harm to the government. The justifications cited the need to comply with a requirement to conduct annual financial audits of local expenses incurred in Afghanistan; however, the extent and nature of the serious risk of financial or other injury to the government was not stated. Officials justified the noncompetitive award citing a shortage of qualified audit firms in Afghanistan which could affect USAID's ability to meet auditing requirements. Thus, awarding a noncompetitive contract would provide an opportunity to assess the audit capabilities of the selected contractor, develop a pool of acceptable audit firms to choose from thereby increasing competition for future procurements.

Agencies Did Not Always Limit the Duration to 1 Year and Achieved Limited Competition in Selected Instances

The FAR limits the total period of performance of contracts awarded using the urgency exception to 1 year—unless a determination from the head of the agency is made that exceptional circumstances apply. This provides the time necessary to enter into another contract using competitive procedures, which reduces the risk of overspending. Within our sample of 34 contracts, nearly a third of the contracts—10—had a period of performance that was more than 1 year, either established at the time of award or during performance of the contract. Two of these contracts exceeded 1 year at award and the contracting officers did not obtain a

determination from the head of the agency, as required by the FAR. The remaining eight contracts were extended beyond 1 year through subsequent modifications, which contracting officials considered separate contract actions that, in their view, would not require a determination by the head of the agency. Treating modifications to contracts awarded on the basis of urgency as separate rather than cumulative contract actions makes it harder for senior department officials to provide oversight over significant increases in contract cost. DOD, State, and USAID conducted limited competitions for 4 of the 34 contracts in our sample by using knowledge from recent competitions to solicit multiple bids. Lack of technical data rights and reliance on the expertise of the contractor limited the agencies' abilities to seek competition.

**Approaches Used to
Extend Period of
Performance Beyond
1 Year and to
Increase Funding
Diminish Oversight**

We found that 10 of the 34 contracts in our sample had either a period of performance of more than 1 year at the time of award or, the period of performance was extended beyond 1 year during performance of the contract. The FAR provides that the contract period should be limited to the time required to meet the urgent need and for the agency to compete and award another contract for the required goods and services. In addition, contracts may not exceed more than 1 year unless the head of agency, or their designee, determines that exceptional circumstances apply. Limiting the length of noncompetitive awards under the urgency exception helps minimize the risk of overspending while providing sufficient time for the agency to enter into another contract using competitive procedures, according to officials from the OFPP—the office within OMB which provides governmentwide guidance on federal contracting.

In 2 of the 10 cases, we found that DOD officials did not seek a determination from the head of the agency or appropriate designee, as required, for awards where it was known at time of award that the period of performance would be more than 1 year. In one of these instances at the Navy, the justification estimated a 9-month contract period; however, the award documents indicate a total period of performance of 17 months that included 5 months for delivery of upgraded radio kits to protect against attacks from improvised explosive devices followed by 12 months of engineering support services.²³ Navy officials acknowledged that the

²³ The contractor completed the work in less than 1 year; however, a determination from the head of the agency would still have been required at the time of contract award because the undefinitized contract appears to have had a period of performance of more than 1 year.

period of performance at time of award was ambiguous and said they did not seek a determination because the terms and conditions of the contract had not yet been finalized at the time work began. In the other case at the Air Force, work on the contract began under a pre-contract cost agreement prior to the contract award date and the contract identifies the period of performance as beginning on the date the pre-contract cost agreement started. As a result, the period of performance at award was 13 months. Air Force officials told us they did not get the determination because the contract was expected to end within 12 months of the award date and they did not consider the pre-contract cost agreement as part of the period of performance for the contract, contrary to the language in the contract.

In the remaining eight instances, we found that DOD, State, and USAID used different approaches to modify the contracts to extend the period of performance beyond 1 year after the initial contract award. While the FAR clearly limits the period of performance to 1 year, it does not address whether the duration requirement applies only at the time of award or if the requirement applies to cases where the contract is modified to extend the period of performance after award. Contracting officials did not seek a determination of exceptional circumstances from the head of the agency or appropriate designee before extending the period of performance beyond 1 year. In four of the eight instances, officials extended the period of performance through contract modifications and no additional action was taken. For the remaining four instances, officials exercised a contract clause to extend the contract or prepared an additional justification to extend the contract beyond 1 year.²⁴

Using a Contract Clause to Extend the Contract for 6 Months

In two of the eight cases, contracting officials extended the contracts beyond 1 year by using a contract clause that allows agencies to extend services up to 6 months within the limits and at the rates specified in the contract.²⁵ For urgent, noncompetitive contracts where the 1 year duration requirement applies, the FAR is not clear about whether a determination of exceptional circumstances is necessary when using this clause results in the contract's period of performance exceeding a year. In one of the two cases, for example, State awarded a 1-year bridge contract (4 month

²⁴ These extensions of contract performance are not exclusive to urgency contracts.

²⁵ FAR 52.217-8 "Option to Extend Services" is included in solicitations and contracts for services when the inclusion of an option is appropriate.

base contract with two 4 month options) to the incumbent vendor—with an estimated value of \$100 million—using the urgency exception to procure local guard services in Afghanistan. The bridge contract was intended to allow time for a new contractor—the awardee of a competitive award—to set up its operations to take over the performance of these services. However, during the bridge contract period of performance, State realized that the new awardee could not establish its operations to meet the timeframes required in the contract and therefore defaulted, leading to termination of the competitive award. To allow sufficient time to re-compete the requirement and transition to a new vendor, State used the contract clause to extend the existing bridge contract for an additional 6 months but did not seek a determination of exceptional circumstances. The additional time increased the total period of performance to 18 months and added \$78 million to the contract value—which included retention bonuses to provide an incentive for guards to continue working in the event the contract was extended beyond 1 year. The contracting officer did not take into consideration whether using this clause would have any bearing on the requirement to seek a determination of exceptional circumstances for an urgency award exceeding 1 year. Contracting officials we spoke with maintained that an additional determination was not required because the terms of the contract included the clause to extend services. As a result, no additional oversight occurred when the contract’s period of performance exceeded 1 year.

Preparing an Additional Justification

In two of the eight cases, we found that contracting officials extended the period of performance beyond a year after award through the preparation of additional justifications for other than full and open competition. Contracting officials at DOD, State, and USAID stated their belief that urgency contracts could be extended without a determination of exceptional circumstances by the head of agency when using this approach. In their view, each additional justification represents an individual contract action; thus, there is no need to consider the cumulative effect of a modification resulting in a period of performance beyond 1 year.²⁶

²⁶ Modifications that are outside the original scope of the contract—such as changes to requirements, quantities and period performance—must comply with competition requirements—and agencies must prepare justifications for other than full and open competition. See, e.g., *Neal R. Gross & Co., Inc.*, B-237434, Feb. 23, 1990, 90-1 CPD ¶ 212 at 2-3.

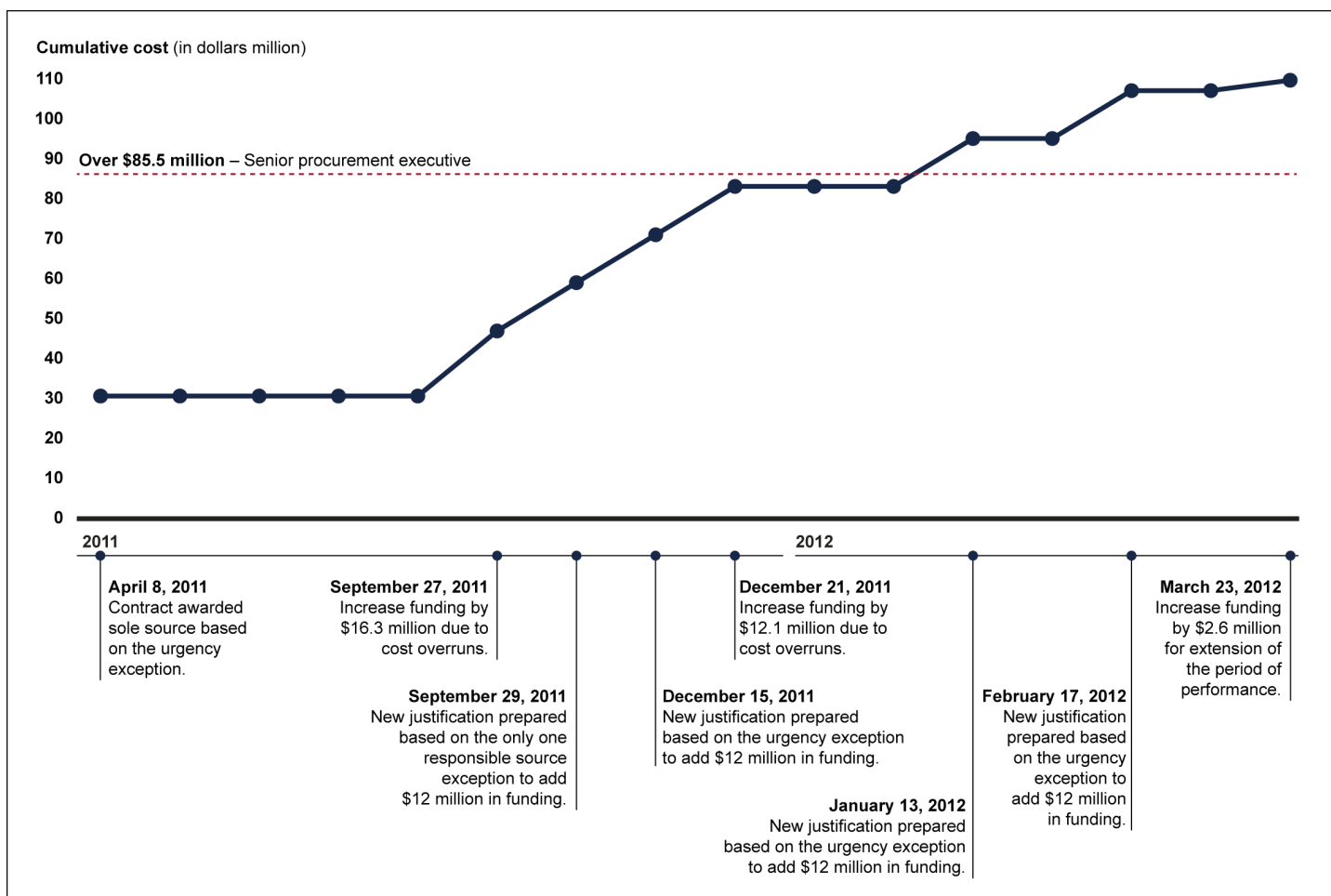
In one of these instances, the Army TACOM Life Cycle Management Command identified an urgent operational need for 513 medium armored security vehicles and related support—valued at more than \$757 million to support the Afghanistan National Army. To meet the timeframes for delivery, officials determined that the circumstances warranted use of a noncompetitive award on the basis of urgency to one contractor with prior experience on similar acquisitions. After identifying a multi-year requirement to provide vehicles to the Afghanistan National Army, contracting officials planned to fulfill the requirement in multiple phases. For the first phase, the Army decided to purchase 73 vehicles and prepared a noncompetitive justification citing the urgency exception for an award valued at \$85.1 million—which is \$0.4 million below the level that requires approval from the Senior Procurement Executive. The first phase was awarded in January 2011 as an undefinitized contract action which allows the contractor to start the work quickly without negotiating all the terms and conditions for a contract.²⁷ However, 3 months into the performance of the contract, another justification for a modification to the undefinitized contract action was approved by the Senior Procurement Executive using a different exception citing that only one responsible source could fulfill the procurement of the remaining 440 vehicles needed to meet the requirement. The additional justification for the second phase, valued at more than \$576 million, added 3 years (a base year and two 1-year options); extending the procurement to 2014. According to the contracting officer, a determination from the head of the agency was not obtained as the second phase is considered a separate action rather than cumulative; thus the period of performance under the urgency justification would not exceed 1 year. Approving the requirement between two justifications allowed for the initial contract award to be within the 1 year period of performance as required. However, when the contract exceeded a year with the subsequent modification on the grounds that only one source was capable; no additional oversight was performed by the head of the agency to determine if exceptional circumstances applied. . See appendix 3 for additional information about the 10 contracts in our sample where the period of performance was more than 1 year.

²⁷GAO has previously reported on the risks associated with undefinitized contract actions, which authorize DOD contractors to begin work before reaching a final agreement on contract terms and must be definitized within certain parameters described in DOD regulation. See GAO, *Defense Contracting: DOD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvement*, [GAO-10-299](#) (Washington, D.C.: Jan. 28, 2010).

Limited Oversight of
Urgent Contracts with
Significant Cost Growth

In addition to extending the period of performance through the preparation of additional justifications, we found instances where agencies also increased funding on urgency contracts after award to well beyond the original contract value. For seven contracts in our sample, total obligations increased by more than 30 percent from the original estimate in the justification that was approved to award a noncompetitive contract using the urgency exception. In these cases where total obligations grew considerably, contracting officials did not alert senior procurement officials when these increases occurred. In one example, Navy officials modified a contract to provide training and other support services for a surveillance system several times which grew to more than three times the estimated value. The contract value at time of award was \$30 million, and the justification was signed by the head of the procuring activity, as required by the FAR for awards greater than \$12.5 million but not exceeding \$85.5 million. However, after award, three modifications added a total of \$31 million to the contract primarily due to cost overruns. Additionally, four modifications with accompanying justifications—because the work being added was determined to be outside the original scope of the contract—added \$12 million each time, bringing the total contract value to more than \$109 million, as illustrated in figure 5.

Figure 5: Increases in Contract Value to Procure Training and Program Support for the Persistent Ground Surveillance System



Source: GAO analysis of DOD contract documents.

The four supplemental justifications were each approved by the competition advocate, as required. However, because each justification is contemplated individually without regard to the cumulative value of the contract, the senior procurement executive did not have an oversight mechanism to be made aware of the cost growth on this contract. If this contract had been estimated to be \$109 million at the time of award, the senior procurement executive would have had oversight through approval of the justification. The FAR does not provide guidance to contracting officials on the degree of oversight senior agency officials should exercise

when contract modifications significantly raise the cumulative dollar value of a contract awarded using the urgency exception.

Using multiple modifications to increase funding or extend the period of performance and treating these as separate rather than cumulative contract actions make it harder for senior department officials to provide oversight. Competition advocates at DOD, State, and USAID had differing views about whether contract modifications to extend the period of performance should be considered cumulatively. Some thought the actions should be viewed cumulatively as it provides greater oversight; while others thought the actions should be considered independent of each other. OFPP officials told us that generally, the total period of performance of urgent contracts should be considered cumulatively either at time of award or when the contract is modified to extend the period of performance to more than 1 year. While OFPP officials stated that the period of performance should be considered cumulatively, the FAR does not specify what to do when these contracts are modified beyond 1 year, and no guidance is available on what to do in these situations. As the entity responsible for federal procurement policy, OFPP is best suited to clarify when determinations of exceptional circumstances are needed when extending the period of performance on an urgency contract beyond 1 year. Additionally, in the absence of an oversight mechanism for noncompetitive contracts awarded under the urgency exception with significant increases in value over time, senior procurement officials are not assured of the transparency necessary to help strengthen accountability for these situations. *Standards for Internal Control in the Federal Government* calls for organizations to maintain proper controls that ensure transparency and accountability for stewardship of government resources.²⁸

²⁸ [GAO/AIMD-00-21.3.1.](#)

Some Urgent Contracts Achieved Limited Competition, While Lack of Access to Technical Data Rights and Reliance on Contractor Expertise Thwarted Competition in Others

Even in urgent situations, agencies are required to seek offers from as many potential sources as practicable given the circumstances and some programs in our sample were able to use the prior expertise or market knowledge to hold limited competitions. For 4 of the 34 contracts in our sample, DOD and State sought competition by seeking offers from firms with which the agency had prior experience through recent procurements and reasonably believed could perform the work in the time available. For example, to avoid an unanticipated disruption in supplying fuel to the government of Israel, DLA solicited four firms the agency had worked with on similar acquisitions in the past. In the justification, DLA cited that having the benefit of market information from prior competitive awards helped the agency reduce the time it would normally take to compete the new procurement. In another instance, State had an existing indefinite delivery indefinite quantity contract in place for the purchase of ballistic resistant doors for embassy security. During embassy renovations it was determined that the required specification could not be met through the negotiated terms of the existing contract. State officials conducted a limited competition among three vendors who were approved vendors under the existing contract. Further, State justified this limited competition as the preferred cost-effective method as these three vendors had been the lowest bidders on similar procurements, thus, limiting the risk of overspending.

For 10 DOD contracts in our sample, the government was unable to compete requirements because of a lack of access to technical data packages or proprietary data coupled with the urgency of the requirement. In some instances, program officials explored the possibility of acquiring the data only to learn that the package was not available for sale or would be cost-prohibitive. In our prior work, DOD described the acquisition of technical data for weapon systems, such as design drawings and specifications as critical to enabling competition throughout a system's life cycle.²⁹ Within our sample, we found in one instance where DLA was in the process of negotiating the purchase of the technical data, but the purchase could not be completed in a timeframe that would have allowed competition for the urgent requirement. While DLA was not able to benefit from the purchase of the technical data package for the current award, the agency would be better positioned to

²⁹ GAO, *Defense Acquisitions: DOD Efforts to Adopt Open Systems for Its Unmanned Aircraft Systems Have Progressed Slowly*, [GAO-13-651](#), (Washington D.C.: July 31, 2013)

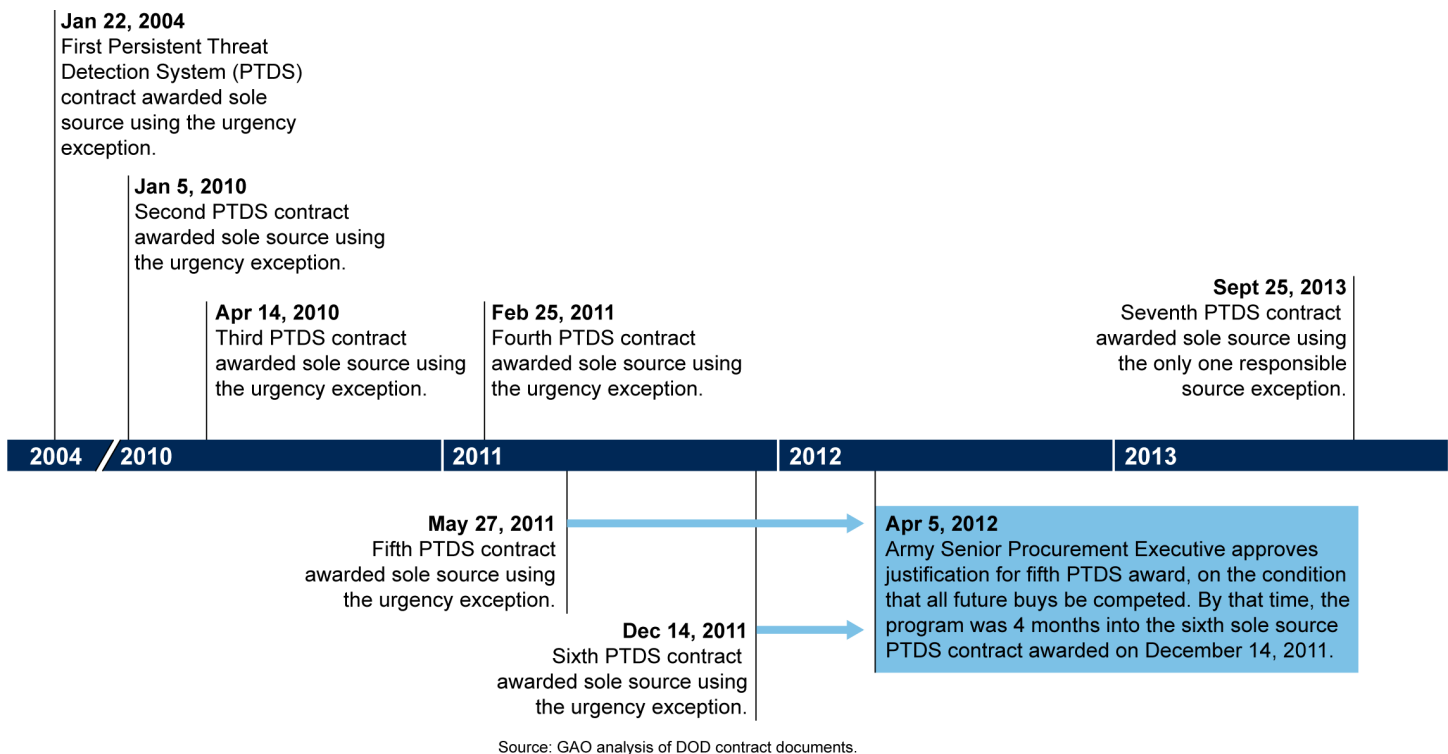
compete future procurements. For more than a decade we have reported on the limitations to competition when DOD does not purchase technical data rights and the increased costs as a result.³⁰ In May 2013, DOD implemented guidance for program managers to consider acquiring technical data rights as part of the acquisition planning.

In examining the procurement history for two contracts in our sample, we found one DOD program involving an aerostat, the Persistent Threat Detection System (PTDS) that spanned 10 years without achieving competition for the acquisition of the aerostat. The Army has awarded six noncompetitive contracts for the PTDS program since 2004 on the basis of urgency to the same contractor, as illustrated in figure 6.³¹

³⁰GAO, *Defense Management: Opportunities to Enhance the Implementation of Performance-Based Logistics*, [GAO-04-715](#) (Washington, D.C.: Aug. 16, 2004); *Weapons Acquisition: DOD Should Strengthen Policies for Assessing Technical Data Needs to Support Weapons Systems*, [GAO-06-839](#) (Washington, D.C.: July 14, 2006); and *Defense Acquisition: DOD Should Clarify Requirements for Assessing and Documenting Technical-Data Needs*, [GAO-11-469](#) (Washington, D.C.: May 11, 2011).

³¹ The PTDS program has competitively awarded three contracts to procure operators for the aerostat since 2006. These three contracts were awarded to the same contractor.

Figure 6: Time Line of Events to Procure the Aerostat for the Persistent Threat Detection System Program



While awarding the fourth PTDS contract in February 2011, the Army identified six capable sources and determined that competition was viable for long-term non-urgent requirements. However, the Army determined that only one contractor with prior experience could satisfy the urgent requirement at that time. In May 2011, the Army awarded a noncompetitive urgency contract to that contractor for 29 aerostats and cited the future need for spares in fiscal year 2012 when additional funding would be available. The senior procurement executive approved the May 2011 urgency justification nearly a year after award—due to confusion about changes in the review process—on the condition that all future related procurements be competed. However, by the time that the senior procurement executive approved the justification for the May 2011 urgent award, the Army had already awarded the follow on urgent award for spares in December 2011. While the Army identified six sources that were capable of competing and providing the PTDS aerostat in 2011, it ultimately awarded a 3-year noncompetitive contract to the same contractor valued at \$306 million on the basis of “only one responsible

source” because the government did not own the technical data packages. Despite the recurring nature of the requirement, Army officials reported that it was difficult to plan for competition because each requirement was short term in nature.

In 2013, DOD concurred with our recommendation to develop guidance to enable DOD components to apply lessons learned from past procurements to increase competition for the same goods and services.³² This recommendation was, in part, intended to help senior department officials capture the benefit of information on past procurements when approving individual justifications for subsequent noncompetitive awards. To address concerns about missed opportunities for learning why past acquisitions were not competed and to help remove barriers to competition in future procurements, in April 2013, the Air Force implemented a new policy to include justifications from predecessor acquisitions as a reference document to justification approving officials. Air Force officials observed that contracting officers were splitting requirements across multiple justifications at lower approval thresholds, which reduced oversight by higher level approving officials. The Navy has a similar policy in place and DLA officials told us they are planning to implement a similar process. The Army, which has added increased scrutiny of justifications particularly for urgency awards as one its goals for improving competition, is in the process of revising its guidance for preparing justifications to include a process similar to that of the Air Force.

Conclusions

The benefits of competition—such as cost savings and improved contractor performance—in acquiring goods and services from the private sector are well documented. Awarding a noncompetitive contract on the basis of unusual and compelling urgency is necessary in select circumstances. However these contracts should be limited in duration to minimize the amount of time that the government is exposed to the risks of contracts that are awarded quickly without the benefits of competition. Mechanisms for transparency and oversight of these contracts —such as posting justifications publicly and a determination that exceptional circumstance apply to extend the contract period of performance beyond

³² GAO, *Defense Contracting: Actions Needed to Increase Competition*, [GAO-13-325](#) (Washington, D.C.: March 28, 2013).

1 year—are necessary to ensuring that they are used only in circumstances when no other option is available and to promote competition in the future. Transparency and oversight during performance of the contract, particularly when adding significant time or money, ensures that the government is making sound decisions in the best interest of taxpayers. In light of this, having OFPP provide guidance to clarify when determinations are needed when extending the period of performance on an urgency contract could help achieve consistent implementation of the duration requirement across the government. Additionally, having agencies develop mechanisms to ensure that senior procurement officials are made aware of noncompetitive contracts with significant increases in value, particularly those that were not initially approved at the senior procurement executive level, could help to increase transparency in noncompetitive awards and strengthen oversight. And finally, although the data show that DOD, State, and USAID buy a relatively small amount of goods and services noncompetitively on an urgent basis, maintaining reliable data is critical to ensuring that agencies can effectively manage the use of this exception.

Recommendations for Executive Action

To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, we recommend the Secretaries of Defense and State and the Administrator of the U.S. Agency for International Development take the following four actions:

- Provide guidance to contracting staff on the correct procedures for accurately reporting competition data for contracts using simplified acquisition procedures that are awarded on an urgent basis and DOD should re-emphasize existing guidance.
- Establish a process for documenting that justifications were posted in compliance with the requirements in the FAR.
- Provide guidance to contracting staff on what actions to take when required signatures are not obtained in order to post the justifications within 30 days.
- Develop an oversight mechanism when the cumulative value of noncompetitive contracts awarded on the basis of unusual and compelling urgency increases considerably beyond the initial contract award value.

To help ensure consistent implementation of the FAR requirement to limit the period of performance for noncompetitive contracts using the unusual

and compelling urgency exception, we recommend that the Director of the Office of Management and Budget, through the Office of Federal Procurement Policy, take the following action:

- Provide guidance to clarify when determinations of exceptional circumstances are needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds 1 year, either at time of award or modified after contract award.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD, State, USAID, and OMB for their review and comment. We received written comments from DOD, State and USAID, which are reproduced in appendices IV through VI. OMB provided comments via email. The agencies generally agreed with the recommendations and in most cases described planned actions in response. We also received technical comments from DOD, which we incorporated as appropriate.

DOD concurred with three recommendations and partially concurred with one recommendation. In written comments, DOD stated that the Defense Procurement and Acquisition Policy (DPAP) office will issue guidance to the contracting activities to remind them of instructions on completing data fields in FPDS-NG for simplified acquisition procedures, and to clarify documentation related to posting of justifications and actions to take when approval signatures are not obtained within the 30-day posting requirement. These actions are responsive to three of our four recommendations. For the fourth recommendation, DOD's proposed action to issue guidance emphasizing that the cumulative value of a contract should be considered when obtaining approval to increase the value of a contract awarded under the urgency exception does not fully address our recommendation. Although this guidance could be helpful, the recommendation was to develop an oversight mechanism for when contracts awarded under the urgency exception increase in value considerably over the course of time. The oversight mechanism would provide higher level contracting officials with visibility into awards that grow in small dollar increments that do not meet the thresholds for a new justification. One example of how this mechanism could be implemented would be to require approval at a higher level when the cumulative contract value increases by a certain percentage.

In written comments, State agreed with the recommendations, stating it will seek to implement them by August 30, 2014. State did not provide any further details on implementation plans.

In its written response, USAID concurred with the recommendations, and outlined steps it will take in response to them, including assessing and updating current guidance, policy and training components.

In an email response, OMB agreed that there is a need for clarification regarding the use of exceptional circumstance determinations when contracts awarded using the urgency exception exceed 1 year. These officials further noted that they intend to work with the FAR Council, which updates the FAR, to discuss the issues raised in the report about the current FAR language and the best way to address those issues.

We are sending copies of this report to the Director of OMB, the Secretaries of Defense and State, and the Administrator of the U.S. Agency for International Development, and interested congressional committees. 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 martinb@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 VII.



Belva Martin
Director, Acquisition and Sourcing Management

List of Committees

The Honorable Richard Durbin
Chairman

The Honorable Thad Cochran
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Patrick Leahy
Chairman

The Honorable Lindsey Graham
Ranking Member
Subcommittee on State, Foreign Operations, and Related Programs
Committee on Appropriations
United States Senate

The Honorable Carl Levin
Chairman

The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Robert Menendez
Chairman

The Honorable Bob Corker
Ranking Member
Committee on Foreign Relations
United States Senate

The Honorable Thomas R. Carper
Chairman

The Honorable Tom Coburn
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Rodney Frelinghuysen
Chairman

The Honorable Pete Visclosky
Ranking Member

Subcommittee on Defense
Committee on Appropriations
House of Representatives

The Honorable Kay Granger
Chairwoman
The Honorable Nita Lowey
Ranking Member
Subcommittee on State, Foreign Operations, and Related Programs
Committee on Appropriations
House of Representatives

The Honorable Howard P. McKeon
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Ed Royce
Chairman
The Honorable Eliot Engel
Ranking Member
Committee on Foreign Affairs
House of Representatives

The Honorable Darrell Issa
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The objectives for this review were to examine (1) the pattern of use of the unusual and compelling urgency exception, including the range of goods and services acquired by the Departments of Defense (DOD) and State, and US Agency for International Development's (USAID); (2) the reasons that agencies awarded noncompetitive contracts on the basis of urgency and the extent to which justifications met requirements in the Federal Acquisition Regulation (FAR); and (3) the extent to which agencies limited the duration of the contract and achieved competition.

To address these objectives, we used data in the Federal Procurement Data System-Next Generation (FPDS-NG), which is the government's procurement database, to identify DOD, State, and USAID obligations for noncompetitive contracts awarded using the unusual and compelling urgency exception. We selected a non-generalizable, random sample of 62 contracts by using data from FPDS-NG to analyze which components within DOD, State, and USAID had the most obligations using the urgency exception for fiscal years 2011 and 2012, which, at the time, were the most recent fiscal years for which data was available. To narrow our focus on which contracts to include in our review, we identified the contracting offices within DOD, State, and USAID that had the largest total obligations for contracts reported as being awarded using the urgency exception under the "reason not competed" field in the FPDS-NG database. We then selected contracts that represented a mix of large and smaller dollar awards and types of products and services procured. Table 2 below shows the contracting offices and the number of contracts included in our review.

Table 2: Contracting Offices and the Number of Contracts Reviewed

Agency	Contracting Office	Number of contracts reviewed
Air Force	Air Force Materiel Command, Hanscom Air Force Base, Massachusetts	1
	Aeronautical Systems Center, Wright Patterson Air Force Base, Ohio	5
	Air Force Research Laboratory, Wright Patterson Air Force Base, Ohio	3
Army	TACOM Life Cycle Management Command, Warren, Michigan	5
	Army Contracting Command-Aberdeen Proving Ground, Aberdeen, Maryland	6
Navy	Naval Air Systems Command, Warfare Center Aircraft Division, Lakehurst, New Jersey	5
	Naval Sea Systems Command, Washington, D.C.	5
Defense Logistics Agency (DLA)	DLA-Energy, Fort Belvoir, Virginia	3
	DLA-Land and Maritime, Warren, Michigan	4
State	Office of Acquisition Management, Arlington, Virginia	7
	American Embassy Brussels	6
USAID	Office of Acquisition and Assistance, Afghanistan	4
	Office of Acquisition and Assistance, Washington, D.C.	1
	Office of Foreign Disaster Assistance, Washington, D.C.	1
	Office of Transition Initiatives, Washington, D.C.	6

Source: GAO analysis.

To assess patterns in DOD’s, State’s, and USAID’s use of the unusual and compelling urgency exception to competition, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG). We included contracts and task orders coded as using the urgency exception under the field “reason not competed” from fiscal years 2010 through 2012 which represented the time period after the requirement to limit the duration of urgent contracts went into effect and reflected the most current reliable data to show trends over time. We determined that a contract was miscoded if it was coded in FPDS-NG as being awarded under the urgency exception, but our analysis of the contract file documentation showed that the contract was awarded using other procedures—such as the streamlined procedures under the simplified acquisition threshold—generally \$150,000—or other exceptions to full and open competition such as national security. We analyzed DOD, State, and USAID obligation data and the types of goods and services based on product code fields. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, (2)

reviewing existing information about the data and the system that produced them; and (3) comparing reported data to information from contract files that we sampled. In our analysis we excluded awards that were below \$150,000 because of the high likelihood that these procurements followed simplified acquisition procedures which are separate from the procedures that apply to the urgency exception. Taking this approach allowed us to account for known data limitations. Thus, we determined that the federal procurement data were sufficiently reliable to examine patterns in DOD's, State's, and USAID's use of the urgency exception. To compare use of the urgency exception versus other exceptions to full and open competition, we conducted an analysis of the other values listed under the "reason not competed" field. In addition, we reviewed FPDS-NG instructions to identify protocols for entering contract data in the database and interviewed DOD, State, and USAID contracting officials and FPDS-NG subject matter experts about their procedures and processes for entering data in the procurement database.

To assess the reason that agencies awarded noncompetitive contracts on the basis of urgency and the extent to which justifications met FAR requirements, we performed an in depth review of contract files for 34 selected contracts that we determined—based on our review of contract file documentation and interviews with contracting officials—were awarded using the unusual and compelling urgency exception. Of the 62 contracts that we initially selected for our sample, we narrowed our analysis to 34 because 28 of the contracts were miscoded in FPDS-NG. For these 34 contracts, we reviewed contract file documentation such as acquisition plans, justifications and other documents agencies used to seek approval to limit competition on the selected contracts to determine agencies' rationale for using the urgency exception. We also reviewed DOD, State, and USAID guidance regarding the preparation and approval of justifications to use the urgency exception. Additionally, we reviewed the Federal Acquisition Regulation and reviewed agency policies and guidance to inform our analysis of the extent to which justifications met FAR requirements such as ensuring the justifications were signed by the appropriate individuals and made publicly available within the required timeframes. We compared agencies' policies and procedures with the *Standards for Internal Control in the Federal Government* which calls for documentation of transactions that is readily available for inspection, thus providing evidence of implementation.¹ We interviewed contracting and

¹ [GAO/AIMD-00-21.3.1.](#)

acquisition policy officials, procurement attorneys, program officials, and competition advocates at DOD, State, and USAID to discuss the facts and circumstances regarding use of the urgency exception and agency policies and procedures to implement FAR requirements for publicly posting justifications

To determine the extent to which agencies complied with the FAR requirement to limit the total period of performance of a contract awarded using the urgency exception to no more than a year unless the head of the agency makes a determination of exceptional circumstances, we reviewed contract file documents for 34 selected contracts that we identified were awarded using the urgency exception. We also conducted legal research and interviewed contracting and acquisition policy officials at DOD, State, and USAID on the implementation of the duration requirement. We reviewed contract file documentation such as contract awards to determine the estimated period of performance. Further, we reviewed contract modifications and additional justifications prepared after award to determine the actual period of performance and action taken by the agencies when extending the period of performance for urgency contracts, such as preparing additional justifications for other than full and open or exercising the option to extend services. We also interviewed officials from the Office of Federal Procurement Policy within OMB to obtain their perspectives on the approaches that DOD, State, and USAID used to address the FAR requirement to limit the period of performance or obtain a determination from the head of the agency that exceptional circumstances necessitate a period of performance greater than 1 year. We also analyzed contract documents to identify instances where DOD, State, and USAID increased funding for the 34 contracts in our sample. We assessed the implications of inconsistent implementation of the FAR requirement to limit the period of performance of urgent contracts and the absence of an oversight mechanism to monitor increases in contract value against criteria in *Standards for Internal Control in the Federal Government*.² These criteria call for organizations to maintain proper controls that ensure transparency and accountability for stewardship of resources. To determine the extent to which DOD, State and USAID achieved competition with the use of the urgency exception, we interviewed contracting officials and reviewed contract documents, such as acquisition plans and price negotiation

² [GAO/AIMD-00-21.3.1](#).

memorandums, to identify the barriers to competition that agencies cited and, to assess the extent to which the agencies solicited offers from multiple vendors.

We conducted this performance audit from March 2013 through March 2014 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: Summary of Contracts Included in Our Sample

Of the 62 contracts included in our sample, we determined that 34 were awarded using the unusual and compelling urgency exception to competition. Table 3 below provides an overview of the contracts in our sample including the awarding agency, a description of the item procured and the total dollars obligated. In addition, the table highlights the circumstances that, according to the Departments of Defense (DOD) and State, and the US Agency for International Development (USAID), led to use of the urgency exception such as to avoid a gap in program support or meet an urgent operational need.

Table 3: Summary of Contracts in Our Sample Awarded Under the Unusual and Compelling Urgency Exception

Item Procured	Funds obligated (in millions)	Contract Awarded to Meet an Urgent Operational Need	Contract Awarded to Avoid a gap in programming	Contract Awarded to meet other urgent needs ^a	Support missions in Afghanistan or Iraq
USAID					
Parliamentary support to the Afghanistan National Assembly	\$4.9		●		Afghanistan
Financial audit services	\$0.2			●	Afghanistan
Financial audit services	\$0.2			●	Afghanistan
State					
Guard protection services	\$178.1		●		Afghanistan
Ballistic resistant doors and window	\$0.5			●	
Radio and television security equipment	\$9.9			●	Afghanistan
Telecommunications and information technology services	\$0.2			●	
Operations and maintenance support services at the U.S. Embassy compound in Baghdad, Iraq	\$49.4		●		Iraq
Air Force					
Intelligence, surveillance and reconnaissance (ISR) airship	\$114.9	●			Afghanistan
ISR unmanned aerial system	\$14.9	●			Afghanistan
Secure communications equipment for ISR airship	\$0.5	●			Afghanistan
Airborne system to protect against improvised explosive devices (IED)	\$39.8	●			Afghanistan, Iraq
Professional support	\$1.7		●		
Engineering support	\$3.9		●		

**Appendix II: Summary of Contracts
Included in Our Sample**

Army				
Airborne radar equipment	\$338.6	●		Afghanistan
Information technology and telecommunications services	\$14.7		●	Afghanistan, Iraq
Spare parts for the Persistent Threat Detection System.	\$47.0	●		Afghanistan
Armored security vehicles	\$525.4	●		Afghanistan
Equipment and accessories for tactical wheeled vehicles	\$16.0			●
Rocket propelled grenade net kits for tactical wheeled vehicles	\$59.4	●		Afghanistan
Production of tactical wheeled vehicles	\$177.6	●		Afghanistan
Management Support	\$104.4		●	Afghanistan, Iraq
Personal armor	\$4.4	●	●	Afghanistan
Navy				
Vehicle-mounted counter-IED system	\$12.0	●		Afghanistan, Iraq
Mine identification and neutralization device	\$48.2	●		
Ground Fault Interrupter for sonar system	\$1.0			●
Operational support for the Persistent Ground Surveillance System (PGSS)	\$105.8	●		Afghanistan
PGSS spare parts and logistics support	\$26.4	●	●	Afghanistan
Program support for PGSS operators	\$6.4	●	●	Afghanistan
PGSS program support	\$44.6	●	●	Afghanistan
Defense Logistics Agency				
Fuel	\$31.8			●
Jet fuel	\$69.7		●	
Vehicle accessories for tactical wheeled vehicles	\$4.7			●
Automatic fire extinguishing systems for tactical wheeled vehicles	\$6.3			●











Source: GAO analysis of contract documents.



^a Other urgent needs include non-recurring urgent needs such as, construction of temporary work spaces, an unexpected break in oil refinery production, or support for a one time military mission.

Appendix III: DOD, State, and USAID Contracts That Exceeded 1 Year

Figure 7 highlights the items procured and the estimated versus actual duration of the 10 contracts we found with a period of performance of more than 1 year.

Figure 7: Period of Performance for Contracts that Exceeded 1 Year

Agency	Contract	Contract duration
State	Guard protection services	 12 18
USAID	Education and training services	 7 16
Air Force	Intelligence, surveillance and reconnaissance airship	 10 20
Air Force	Intelligence, surveillance and reconnaissance unmanned aerial system	 13 26
Army	Program support	 10 18
Army	Tactical wheeled vehicle upgrade kits	 10 21
Army	Tactical wheeled vehicle modification	 5 16
Army	Armored vehicles	 12 40
Navy	Mine detection system	 12 22
Navy	Vehicle mounted counter-improvised explosive device kits	 7 17 ^a

 Estimate in months
 Actual in months

Source: GAO analysis of DOD contract documents.

^aThis undefinitized contract action had an estimated period of performance of 17 months at award. When definitized, the contract duration was shortened to 7 months.

Appendix IV: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

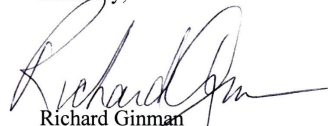
MAF 20 2014

Ms. Belva M. Martin
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Martin:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report, GAO-14-304, "FEDERAL CONTRACTING: Noncompetitive Contracts Based on Urgency Need Additional Oversight," dated February 20, 2014 (GAO Code 121124). Detailed comments on the report recommendations are enclosed.

Sincerely,


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated

**GAO Draft Report Dated February 20, 2014
GAO-14-304 (GAO CODE 121124)**

**“FEDERAL CONTRACTING: NONCOMPETITIVE CONTRACTS BASED ON
URGENCY NEED ADDITIONAL OVERSIGHT,”**

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

RECOMMENDATION 1: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, the Government Accountability Office (GAO) recommends the Secretaries of Defense and State and the Administrator of the U.S. Agency for International Development provide guidance to contracting staff on the correct procedures for accurately reporting competition data for contracts using simplified acquisition procedures that are awarded on an urgent basis and DoD should reemphasize guidance.

DoD RESPONSE: Concur. Defense Procurement and Acquisition Policy (DPAP) will issue guidance to contracting activities reminding them of the Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI) Section 204.6, Contract Reporting, which provides detailed instructions for completing each data field in the contract action report of the Federal Procurement Data System, including competition data for contracts using simplified acquisition procedures.

RECOMMENDATION 2: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, the GAO recommends the Secretaries of Defense and State and the Administrator of the U.S. Agency for International Development establish a process for documenting that justifications were posted in compliance with the requirements in the FAR.

DoD RESPONSE: Partially concur. The process exists, however, DPAP will issue guidance to clarify how contracting officers are to document the posting of Justification and Approvals (J&As) to demonstrate compliance with the requirements of FAR 6.305 - Availability of the Justification.

RECOMMENDATION 3: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, the GAO recommends the Secretaries of Defense and State and the Administrator of the U.S. Agency for International Development provide guidance to contracting staff on what actions to take when required signatures are not obtained in order to post the justifications within 30 days.

DoD RESPONSE: Concur. DPAP will issue guidance to contracting activities reminding them of the requirements of FAR 6.303 - Justifications, and FAR 6.304 - Approval of Justifications; and advising what actions to take when approval signatures are not obtained in within the 30 day posting requirement.

RECOMMENDATION 4: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, the GAO recommends the Secretaries of Defense and State and the Administrator of the U.S. Agency for International Development develop an oversight mechanism when the cumulative value of noncompetitive contracts awarded on the basis of unusual and compelling urgency increases significantly beyond the initial contract award value.

DoD RESPONSE: Concur. DPAP will issue guidance to contracting activities emphasizing the cumulative value of a contract should be considered when obtaining approval to increase the value of noncompetitive contracts initially awarded under the authority of FAR 6.302-2, Unusual and Compelling Urgency.

Appendix V: Comments from the Department of State



Dr. Loren Yager
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

United States Department of State
Comptroller
P.O. Box 150008
Charleston, SC 29415-5008

MAR 17 2014

Dear Dr. Yager:

We appreciate the opportunity to review your draft report, "FEDERAL CONTRACTING: Noncompetitive Contracts Based on Urgency Need Additional Oversight" GAO Job Code 121124.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Eric Moore, Director, Bureau of Administration at (703) 875-4079.

Sincerely,

A handwritten signature in blue ink, appearing to read "James L. Millette".

James L. Millette

cc: GAO – Belva Martin
A – Joyce A. Barr
State/OIG – Norman Brown

Department of State Comments to GAO Draft Report

**Federal Contracting: Noncompetitive Contracts Based on Urgency Need
Additional Oversight**
(GAO-14-304, GAO Code 121124)

The Department of State appreciates the opportunity to comment on GAO's draft report "*Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight.*"

GAO Recommendations: Provide guidance to contracting staff on the correct procedures for accurately reporting competition data for contracts using simplified acquisition procedures that are awarded on an urgent basis and DOD should reemphasize existing guidance. Establish a process for documenting that justifications were posted in compliance with the requirements in the FAR. Provide guidance to contracting staff on what actions to take when required signatures are not obtained in order to post the justification within 30 days. Develop an oversight mechanism when the cumulative value of noncompetitive contracts awarded on the basis of unusual and compelling urgency increases significantly beyond the initial contract award value.

Department Response: Concur- The Department of State agrees the recommendations in this report are prudent and will seek to implement them all by August 30, 2014.

Appendix VI: Comments from the U.S. Agency for International Development



Belva Martin
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
Washington, DC 20548

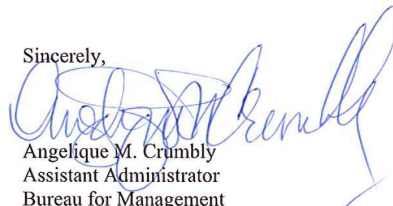
Dear Ms. Martin:

I am pleased to provide USAID's formal response to the Government Accountability Office (GAO) draft report entitled, "FEDERAL CONTRACTING: Noncompetitive Contracts Based on Urgency Need Additional Oversight" (GAO-14-304).

This letter, together with the enclosed USAID comments, is provided for incorporation as an appendix to the final report.

Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff in the conduct of this audit review.

Sincerely,



Angelique M. Crumbly
Assistant Administrator
Bureau for Management
U.S. Agency for International Development

Enclosure: a/s

- 2 -

USAID COMMENTS ON GAO DRAFT REPORT
No. GAO-14-304

The following sections reflect USAID's formal response to the Government Accountability Office (GAO) draft report, entitled "FEDERAL CONTRACTING: Noncompetitive Contracts Based on Urgency Need Additional Oversight" (GAO-14-304).

Recommendation 1: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, we recommend the Secretaries of Defense and State and the Administrator of U.S. Agency for International Development take action to provide guidance to contracting staff on the correct procedures for accurately reporting competition data for contracts using simplified acquisition procedures that are awarded on an urgent basis and DOD should reemphasize guidance.

USAID agrees that it is prudent to take action to ensure it is reporting as accurately as possible all federal procurement data related to using simplified acquisition procedures that are awarded on an urgent basis. USAID will take action in the form of assessing its current guidance provided to its contracting officer workforce. USAID will additionally update guidance, policy and training components to address any issues related to existing guidance and to improve procedures to more accurately report competition data for contracts using simplified acquisition procedures that are awarded on an urgent basis.

Recommendation 2: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, we recommend the Secretaries of Defense and State and the Administrator of U.S. Agency for International Development take action to establish a process for documenting that justifications were posted in compliance with the requirements in the FAR.

USAID concurs that the reporting of federal procurement data and proper oversight of contracts are paramount as a steward of the taxpayer dollar. USAID will take measures to reassess its current processes for documenting the justifications it records, processes and posts for those contracts awarded on the basis of an unusual and compelling urgency. USAID will further address its processes to ensure that when using these justifications that it is in compliance with the requirements established in the FAR.

Recommendation 3: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, we recommend the Secretaries of Defense and State and the Administrator of U.S. Agency for International Development take action to provide guidance to contracting staff on what actions to take when required signatures are not obtained in order to post the justifications within 30 days.

USAID will conduct an assessment of its current guidance and policy as it relates to communicating with its contracting staff specific to actions to take when required signature(s)

- 3 -

are not obtained in order to post the justifications within 30 days. Based on the conduct of its assessment, USAID will update any guidance and associated policy to inform its contracting staff on required actions when signatures are not obtained to post a justification within the required 30 days.

Recommendation 4: To help improve reporting of federal procurement data and strengthen oversight of contracts awarded on the basis of an unusual and compelling urgency, we recommend the Secretaries of Defense and State and the Administrator of U.S. Agency for International Development take action to develop an oversight mechanism when the cumulative value of noncompetitive contracts awarded on the basis of unusual and compelling urgency increases significantly beyond the initial contract award.

USAID concurs with this recommendation and agrees that internal assessments of mechanism(s) of oversight on noncompetitive contracts are crucial for all international development agencies. However, the section of the GAO report specific to this recommendation with the heading of “Limited oversight of urgent contracts with significant cost growth”, did not specifically identify USAID nor mention USAID as an agency that conducts this practice. USAID will of course take this recommendation under advisement and will work to comply within the approved framework.

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Belva Martin, (202) 512-4841 or martinb@gao.gov

Staff Acknowledgments

In addition to the contact named above, Tatiana Winger, Assistant Director and Candice Wright, analyst-in-charge, managed this review. MacKenzie Cooper, Beth Reed Fritts, and Erin Stockdale made significant contributions to the work. Julia Kennon and Alyssa Weir provided FPDS-NG data analysis expertise and legal support, respectively. Roxanna Sun provided graphics support.

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