

# 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](mailto:martinb@gao.gov).

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## FEDERAL CONTRACTING

### Noncompetitive Contracts Based on Urgency Need Additional Oversight

## 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.