



June 2016

DOD SMALL BUSINESS CONTRACTING

Use of Sole-Source 8(a) Contracts over \$20 Million Continues to Decline

Accessible Version

Why GAO Did This Study

The Small Business Administration's 8(a) program is one of the federal government's primary vehicles for developing small businesses. Tribal 8(a) firms, such as firms owned by Alaska Native Corporations, can win sole-source contracts for any dollar amount in the 8(a) program, while other 8(a) firms generally must compete for contracts valued above certain dollar thresholds.

In March 2011, the Federal Acquisition Regulation was amended to include a new requirement for a written justification for sole-source 8(a) awards over \$20 million, where previously no justification was required. GAO has previously reported on tribal 8(a) contracting and recommended improved oversight.

The Appropriations Act of 2015 contained a provision for GAO to assess the impact of the 8(a) justification at DOD. This report addresses: (1) trends among DOD sole-source and competitive 8(a) awards from fiscal years 2006 through 2015; and (2) the factors to which DOD officials attribute these trends. GAO analyzed data from the Federal Procurement Data System-Next Generation, reviewed 14 sole-source 8(a) contracts over \$20 million—9 of which had been followed by additional contracts for the same requirement, and spoke with contracting officials. GAO judgmentally selected most of the 14 contracts from offices that had awarded numerous sole-source 8(a) contracts in the past.

GAO is not making any recommendations in this report. The Department of Defense had no comments on a draft of this report.

View [GAO-16-557](#). For more information, contact Michele Mackin at (202) 512-4841 or mackinm@gao.gov.

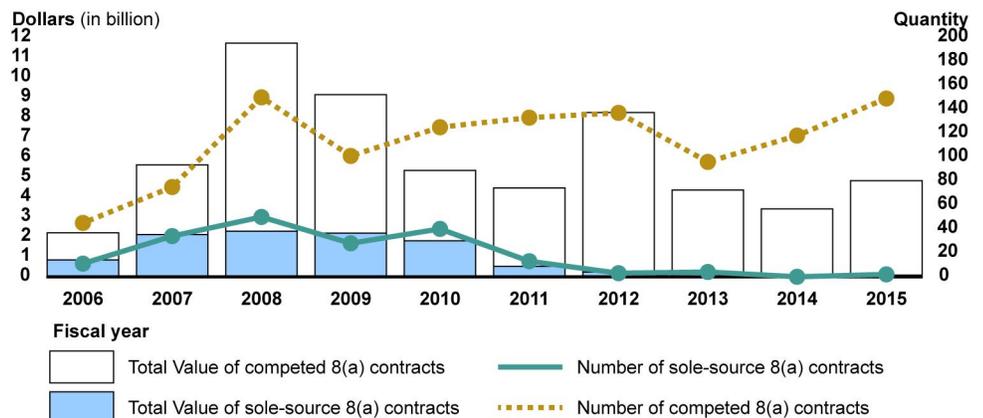
DOD SMALL BUSINESS CONTRACTING

Use of Sole-Source 8(a) Contracts over \$20 Million Continues to Decline

What GAO Found

The number of sole-source contracts over \$20 million that the Department of Defense (DOD) awards to small businesses under the 8(a) program has been steadily declining since 2011 when the new requirement for a written justification for these contracts went into effect. In contrast, the number of competitive 8(a) contracts over \$20 million has increased in recent years (see figure).

Number and Total Contract Value of Department of Defense Competitive and Sole-Source 8(a) Contracts over \$20 Million, Fiscal Years 2006 through 2015



Source: GAO analysis of Federal Procurement Data System - Next Generation. | GAO-16-557

Between GAO's last report on this topic in September 2014 and the end of fiscal year 2015, DOD awarded two sole-source 8(a) contracts over \$20 million—one for vehicle maintenance and repair and one for engineering services. The contracting officer for the vehicle repair contract told GAO that the service will not be needed in the future, while the contracting officer for engineering services stated that he intends to competitively award the next contract for these services. Tribal 8(a) firms eligible for sole-source contracts over \$20 million have won a growing number of competed 8(a) contracts since the justification went into effect in 2011.

DOD contracting officials GAO spoke to overwhelmingly cited an agency-wide emphasis on using competition to obtain benefits, such as better pricing, as a reason for the decline in the use of sole-source 8(a) contracts over \$20 million. Further, officials from almost half of the offices also noted that a decline in their budgets or the amount of goods and services needed rendered the 8(a) justification not applicable because most of their contracts fall below the \$20 million threshold. Of the 9 sole-source 8(a) contracts GAO reviewed with subsequently awarded contracts, over half were ultimately competed. For example, the Army competitively awarded a 4-year \$140 million contract for base operations support, a service that had been previously met by a 10-year \$397 million sole-source 8(a) contract.

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June 8, 2016

Congressional Committees

The Small Business Administration’s (SBA) 8(a) program is one of the federal government’s primary vehicles for developing small businesses owned by socially and economically disadvantaged individuals. In fiscal year 2015, \$16.6 billion was obligated through the 8(a) program. Contract awards to businesses in this program can be competed among eligible 8(a) firms or awarded on a sole-source basis to 8(a) firms in certain instances, such as when the firm is owned by an Alaska Native Corporation or Indian Tribe (we collectively refer to these as tribal 8(a) firms). Tribal 8(a) firms can win sole-source contracts for any dollar amount in the 8(a) program, while other firms generally must compete for contracts valued above certain thresholds: \$4 million or \$7 million, depending on what is being purchased.¹

In March 2011, the Federal Acquisition Regulation (FAR) was amended—per Section 811 in the National Defense Authorization Act of Fiscal Year 2010—to include a new requirement for a written justification and approval for sole-source 8(a) awards over \$20 million where previously no justification was required.² This new 8(a) justification brought more attention to large sole-source contracts in the 8(a) program, which have primarily gone to tribal 8(a) firms.³ In October 2015, the threshold value for contracts requiring an 8(a) justification was raised from \$20 million to \$22 million.⁴

¹FAR §§ 19.805-1(b)(2) & 19.805-1(a).

²FAR § 6.303-1(b); Pub. L. No. 111-84, § 811 (2009) for discussion of the elements required in an 8(a) justification.

³For more details on tribal 8(a) contracting, see GAO, *Alaska Native Corporations: Oversight Weaknesses Continue to Limit SBA’s Ability to Monitor Compliance with 8(a) Program Requirements*, [GAO-16-113](#) (Washington, D.C.: Mar. 21, 2016); *Federal Contracting: Monitoring and Oversight of Tribal 8(a) Firms Need Attention*, [GAO-12-84](#) (Washington, D.C.: Jan. 31, 2012); and *Contract Management: Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight*, [GAO-06-399](#) (Washington, D.C.: Apr. 27, 2006).

⁴See 80 Fed. Reg. 38293 (July 2, 2015) for notice updating relevant thresholds at FAR §§ 6.303-1(b) & 19.808-1(a) effective October 1, 2015. Because the time frame for the analysis in this report ends with fiscal year 2015, the \$20 million threshold applied.

The Consolidated and Further Continuing Appropriations Act of 2015 contained a provision for us to assess the impact of the 8(a) justification. It also required us to evaluate a Department of Defense (DOD) report—also mandated in this law—on the effect of the 8(a) justification on sole-source 8(a) contracts awarded over \$20 million.⁵ DOD submitted its report to the Congressional Defense Committees in March 2015.⁶ Our report assesses (1) trends among DOD sole-source and competitive 8(a) awards over \$20 million from fiscal years 2006 through 2015; and (2) the factors to which DOD officials attribute these trends. As part of our work, we also reviewed the DOD report.

To identify trends in DOD 8(a) contracts over \$20 million, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG) on 8(a) contracts from fiscal years 2006 through 2015. We took several steps to assess data reliability, including reviewing 36 8(a) contracts that were coded as competed—which represent 3 percent of the total number of competed contracts for fiscal years 2006 through 2015—and reviewing contract documentation to compare against key data points in FPDS-NG. Further, when determining the value of the competed 8(a) contracts, we identified and grouped multiple award indefinite-delivery indefinite-quantity (IDIQ) contracts stemming from the same solicitation together so as not to double count the total contract values for contracts for the same requirement—that is, the goods or services being procured.⁷ We determined that the federal procurement data for this period was sufficiently reliable to identify 8(a) contracts that exceeded the \$20 million threshold.

To determine DOD officials' opinions on factors influencing these trends, we identified 14 contracting offices that (1) had awarded the highest number of sole-source 8(a) contracts over \$20 million over the period in question (10 offices); (2) were identified in our prior work on this subject as having used a sole-source 8(a) contract to meet a large requirement

⁵Pub.L. No. 113-235, § 8135(b) (2014).

⁶Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Report to Congress: Assessment of Justification and Approval Requirements Implemented Under Section 811 of the National Defense Authorization Act for Fiscal Year 2010* (Washington, D.C.: March 2015).

⁷IDIQ contracts do not procure or specify a firm quantity (other than a minimum and maximum) and provide for the issuance of orders for individual requirements during the contract period. FAR §16.504.

(2 offices); or (3) had awarded a sole-source 8(a) contract over \$20 million in fiscal year 2015 (2 offices). For each office, we selected one contract for a requirement that was met by a sole-source 8(a) contract over \$20 million. For 9 of the 14 contracts selected, we reviewed the subsequently awarded contracts for the same requirement, which we refer to as follow-on contracts. Of the remaining 5 contracts, 2 were awarded in fiscal year 2015, and 2 were for construction and thus did not have follow-on contracts. For one \$76 million contract for duffel bags, contracting officials were in the process of awarding the follow-on competitively, but it had not yet been awarded at the time of our review. We interviewed contracting officials about their experiences with the 8(a) justification and, where applicable, how they are now meeting requirements previously met by sole-source 8(a) contracts over \$20 million. Our sample of contracting offices included eight Army contracting offices; three Navy contracting offices (including two from the Marine Corps); one Air Force contracting office; and two other DOD offices (Defense Logistics Agency Troop Support and U.S. Special Operations Command). We also reviewed DOD's March 2015 report on sole-source 8(a) contracts over \$20 million and compared the number of contracts DOD reported that met this criterion to the number of contracts we identified.

We conducted this performance audit from August 2015 to June 2016 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. A more detailed description of our audit scope and methodology is presented in appendix I.

Background

SBA administers the 8(a) program, which includes determining whether it will accept requirements into the 8(a) program. Agencies must submit an offer letter to SBA identifying the requirement as well as any procurement history for the requirement, the estimated dollar amount, and, if the award is sole-source, the name of the particular 8(a) firm. SBA requires that agencies keep follow-on acquisitions in the 8(a) program until SBA releases them from the program.

Our prior work—going back to 2006—has found that contracting officials have turned to tribal 8(a) firms as a quick, easy, and legal method of awarding contracts for any value, but that these benefits are not without oversight challenges for SBA, which is responsible for managing 8(a)

firms' participation in the program. For example, in January 2012, we found that SBA lacked the data and insight to enforce some of the new requirements put in place to ensure that tribal 8(a) firms do not operate in the program in perpetuity. We made a number of recommendations to improve oversight of tribal 8(a) firms, such as ensuring that a new SBA 8(a) database has the capability to track information on 8(a) contracts to help ensure SBA officials have the information necessary to enforce the 8(a) program regulations.⁸ SBA has taken some actions to address these recommendations, but some have not yet been addressed. In March 2016, we found that SBA's oversight of tribal 8(a) firm's participation in the 8(a) program continued to be a challenge and made several recommendations to help improve its oversight strategy.⁹

Our prior reports have also found that the number of sole-source 8(a) awards over \$20 million at DOD overall has significantly declined over time—from 50 in 2008 to 4 in 2013.¹⁰ In December 2012, we reported that there was confusion regarding the requirements of the 8(a) justification.¹¹ We recommended that the Administrator of the Office of Federal Procurement Policy (OFPP) promulgate guidance to clarify circumstances in which an 8(a) justification is required. OFPP, as chair of the FAR council which oversees changes to the acquisition regulations, is in the process of changing the regulations to address our recommendation.

⁸[GAO-12-84](#).

⁹[GAO-16-113](#). SBA agreed with two of the six recommendations, disagreed with two recommendations, and stated that it has already taken action to address the remaining two recommendations.

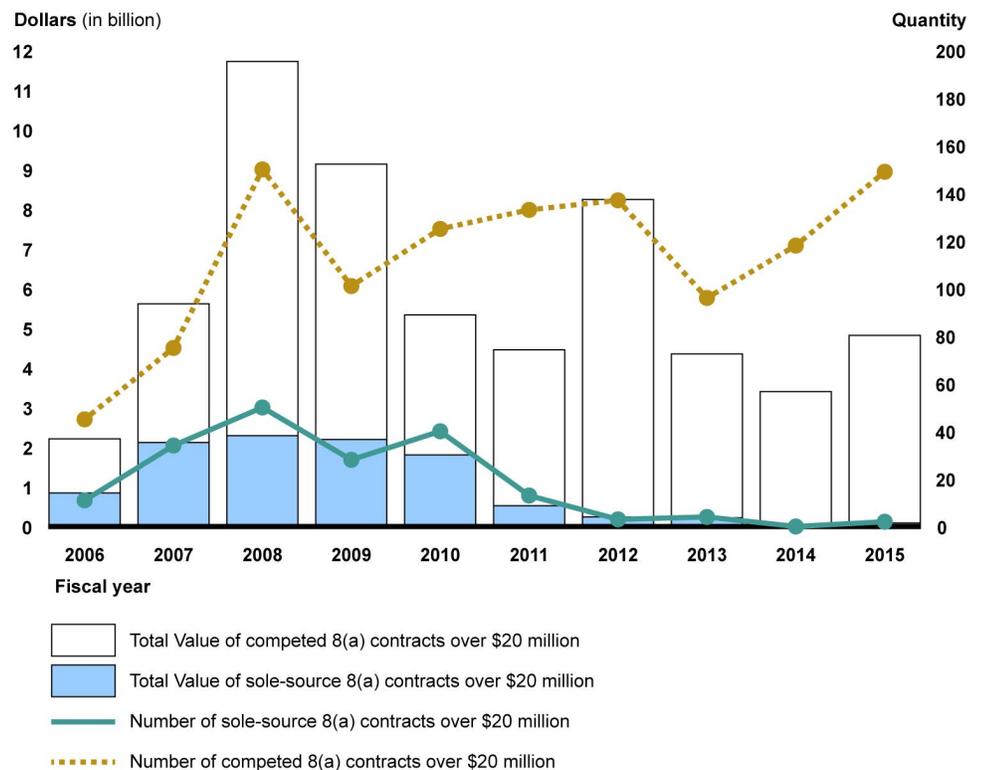
¹⁰GAO, *Contract Management: DOD's Implementation of Justifications for 8(a) Sole-Source Contracts*, [GAO-14-721R](#) (Washington, D.C.: Sept. 9, 2014); and *DOD's Implementation of Justifications for 8(a) Sole-Source Contracts*, [GAO-13-308R](#) (Washington, D.C.: Feb. 8, 2013).

¹¹GAO, *Federal Contracting: Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts*, [GAO-13-118](#) (Washington, D.C.: Dec. 12, 2012).

DOD Sole-Source 8(a) Contract Awards over \$20 Million Have Declined While the Number of Competitive 8(a) Awards Has Increased in Recent Years

From fiscal years 2006 through 2015, the number of sole-source 8(a) contract awards over \$20 million at DOD started to decline in 2011 and remained low through 2015, while the number of competitive contract awards over \$20 million increased in recent years. Consistent with findings from our past reports, we found that sole-source awards generally declined in both number and value since 2011, when the 8(a) justification requirement went into effect. DOD awarded 22 of these contracts from fiscal years 2011 through 2015, compared to 163 such contracts in the prior 5-year period (fiscal years 2006 through 2010). The most common products and services acquired through 8(a) contracts over \$20 million—under both competed and sole-source contracts—are construction, facilities support services, and engineering services. Figure 1 shows the decline in sole-source 8(a) contracts over \$20 million and trends in competitively awarded 8(a) contracts of the same size.

Figure 1: Number and Total Contract Value of Department of Defense Competitive and Sole-Source 8(a) Contracts over \$20 Million, Fiscal Years 2006 through 2015



Source: GAO analysis of Federal Procurement Data System - Next Generation. | GAO-16-557

Note: Total contract values in 2008, 2009, and 2012 were driven by especially large requirements competed in the 8(a) program in those years (the requirements in 2008 and 2009 were each valued at \$3 billion and the 2012 requirement was valued at \$4.5 billion).

Pursuant to the mandate, we reviewed DOD's March 2015 report to Congress and found that DOD reported a different number of sole-source 8(a) contract awards over \$20 million than what we found in fiscal years 2011 through 2013. DOD reported awarding 23 such contracts in fiscal year 2011, 8 in 2012, and 5 in 2013, while we identified 13, 3, and 4 such contracts in those fiscal years, respectively. Consistent with our findings, DOD found no sole-source 8(a) contracts over \$20 million awarded in fiscal year 2014 and a general decline in such contract awards since 2011. Based on our analysis of DOD's report and discussions with the official responsible for the report, the differences are due to DOD's inclusion of individual task or delivery orders in its count of sole-source 8(a) contracts. We did not include individual task or delivery orders in our numbers because they are not subject to the 8(a) justification.

We found that DOD awarded two sole-source 8(a) contracts over \$20 million with a total value of over \$87 million in fiscal year 2015, one of which did not complete the 8(a) justification as required. In both cases, the contracting officers explained that they used sole-source 8(a) contracts because they were pressed for time.

- In one case, a Marine Corps contracting officer awarded a \$24 million sole-source 8(a) contract for vehicle maintenance and repair to the incumbent contractor. However, the contracting officer did not complete an 8(a) justification as required. This contracting officer told us that the previous contracting officer for the requirement had retired without warning and there was limited time to award the follow-on contract. The contract went through several levels of review, including general counsel, and no one realized that a justification was required. She explained she had very limited experience awarding 8(a) contracts and was not aware of the required 8(a) justification. In fact, our analysis of FPDS-NG data showed that this office had not awarded any other sole-source 8(a) contracts over \$20 million since fiscal year 2006. We did not pursue this issue because the contracting officer recognized that more training was needed and noted that the director of her office was developing training to address this issue. She further noted that there will not be a follow-on contract for this particular requirement, as the service is no longer needed.
- In the other case, Army officials said that they had a limited amount of time to ensure continuity of an engineering services contract for \$63 million after a contract awarded through full and open competition was protested twice by the previous vendor. Contracting staff said that a sole-source 8(a) contract, which was not awarded to the previous vendor, was the only way to meet the requirement without a gap in

services. Officials explained that they decided to shorten the period of performance on the sole-source contract from 5 years to 3 years and that the follow-on contract will be competed among 8(a) firms.

Our analysis of the period of performance for sole-source and competitive 8(a) contracts over \$20 million from fiscal years 2006 through 2015 showed that the average length of sole-source contracts has declined since 2012, while the average length of competitive contracts has remained more consistent over the time period. In fiscal year 2006, the average period of performance for a sole-source 8(a) contract was 4.8 years, yet starting in 2012 the average period of performance—which was 3.7 years—began to decline. By fiscal year 2015, the average period of performance was 2.1 years. For competed contracts 8(a) over \$20 million, the contract length has consistently averaged between 4 and 5 years since 2007.

Since 2011, tribal 8(a) firms have won an increasing number of competitively awarded 8(a) contracts over \$20 million at DOD. Although these firms represent less than 10 percent of the overall pool of 8(a) contractors, the number of competitively awarded DOD 8(a) contracts over \$20 million to tribal 8(a) firms grew from 26 in fiscal year 2011—or 20 percent—to 48 contracts in fiscal year 2015—or 32 percent of the total. In addition, since 2011, tribal 8(a) firms have consistently won higher value awards than other 8(a) firms for competitive 8(a) contracts over \$20 million. In fiscal year 2015, the average award size of a competed 8(a) contract to a tribal 8(a) firm was \$98 million, while other 8(a) firms had an average award size of \$48 million. See appendix II for more data on awards to tribal versus other 8(a) firms.

DOD Officials Cited a Variety of Reasons They Are No Longer Awarding Sole-Source 8(a) Contracts over \$20 Million

Contracting officials from the 14 offices in our review stated that there is, in general, a renewed agency-wide emphasis on competition. Whereas in the past they used sole-source 8(a) contracts to quickly, easily, and legally meet agency needs—as we have previously reported—officials explained that awarding large sole-source 8(a) contracts is less palatable in the current environment. Our review of 9 sole-source 8(a) contracts and their follow-on procurements supported this view. Five of the 9 sole-source 8(a) contracts we reviewed were competed in the follow-on contracts, and, for most of the remaining 4 contracts with follow-on sole-source contracts, officials stated that they plan to competitively award future procurements or are already in the process of doing so. In addition, DOD officials from almost half of the offices noted that a decline in their budgets or a decline in the size of their requirements rendered the 8(a) justification not applicable because most of their contracts fall below the

\$20 million threshold. Finally, DOD officials had varying opinions about whether the 8(a) justification was a deterrent to awarding large sole-source 8(a) contracts. Some noted that the 8(a) justification review process would deter them, while others said they would award a sole-source contract over \$20 million if they found that only one vendor could meet the requirement.

Preference for Competition and Decreasing Requirements Reported as Primary Reasons for Decline

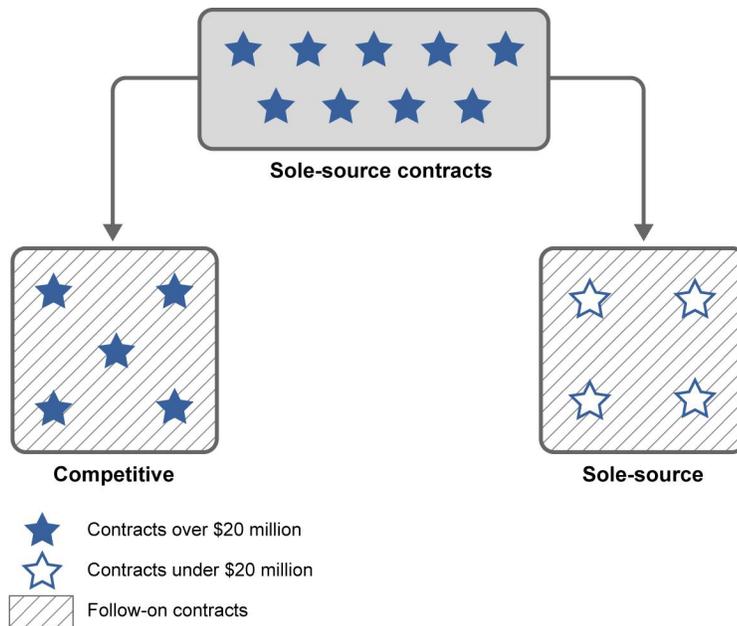
DOD officials we spoke with said that they prefer to compete high-dollar awards and reported a renewed agency-wide emphasis on competition, which steered them away from awarding large sole-source 8(a) contracts. Our prior work has found that agencies liked to use the unique provisions of tribal 8(a) contracting because they could quickly, easily, and legally award contracts to meet agency needs.¹² However, in 2012, we reported that contracting officers—which included DOD contracting officers—were moving away from sole-source contracts to tribal 8(a) firms and toward competition.¹³ We noted examples where follow-on requirements were subsequently competed, resulting in estimated savings, according to agency officials. We also reported that with regard to Alaska Native Corporations, the Acting Deputy Assistant Secretary of the Army (Procurement) issued a memo in January 2011, citing the increased attention around the Army's extensive use of sole-source contracts awarded to 8(a) Alaska Native Corporation firms. It stated that high-dollar sole-source awards to 8(a) Alaska Native Corporation firms should be the exception rather than the rule and laid out the expectation that these awards be scrutinized to ensure they are in the government's best interest. Officials we spoke with on this review echoed some of these sentiments—noting that they had to consider whether the benefits of awarding a large sole-source 8(a) contract outweighed the negative aspects. For example, DOD officials from four offices stated that they prefer competition because it is easier to determine price reasonableness as compared to a sole-source procurement. Some of these officials noted that it is harder to negotiate with vendors under a sole-source approach, especially when they lack the staff to handle complex negotiations associated with larger contracts. One official also said that he prefers competition because the process of the contracting office performing market research and outreach to 8(a) contractors promotes transparency, in contrast to larger sole-source 8(a) contracts directed to specific vendors which had faced increased scrutiny due to allegations of fraud.

¹²[GAO-06-399](#) and [GAO-12-84](#).

¹³[GAO-12-84](#).

Of the 9 sole-source 8(a) contracts we reviewed that had follow-on awards, 5 had follow-on contracts that were competitively awarded, while the other 4 had follow-on contracts that were awarded on a sole-source basis.¹⁴ All of the sole-source follow-on contracts had values less than \$20 million. See figure 2.

Figure 2: Original and Follow-on Contracts for DOD Sole-Source 8(a) Contracts over \$20 Million



Source: GAO analysis of Department of Defense (DOD) documentation. | GAO-16-557

Of the 5 contracts where the follow-on requirement was completed, the contract values and circumstances varied, as illustrated by the following examples:

¹⁴Most of the 9 contracts we selected had multiple follow-on contracts. In cases where sole-source bridge contracts were awarded while contracting officials were planning to—and ultimately did—award a competitive follow-on contract, we counted these as competitive follow-on contracts. In one case, the agency awarded most of the follow-on work under multiple sole-source contracts, but some of the tasks of the requirement were awarded under separate competitive contracts. We counted these contracts as a sole-source follow-on contract.

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- The Air Force awarded a 5-year \$76 million competitive follow-on contract for base operations support to replace a 10-year \$523 million sole-source contract. Officials told us that they made a concerted effort to engage different 8(a) firms for the follow-on contract because their market research indicated that multiple firms could meet the requirement. Although they had to award two short-term sole-source 8(a) bridge contracts to the incumbent to meet the requirement while preparing the competitive follow-on award, once the requirement was opened for competition, they received proposals from seven vendors and awarded the competitive contract to a new vendor.¹⁵ In addition to shortening the period of performance, they removed a construction component of the requirement, and officials told us the removed component is now being met through a multiple award IDIQ contract that was competitively awarded to six vendors. The contracting officials also stated that they were exploring possible ways to insource other functions previously performed under the sole-source contract.
 - The Army competitively awarded a 4-year \$140 million contract for base operations support, which was previously met by a 10-year \$397 million sole-source 8(a) contract. The contracting office had to award three short-term sole-source bridge contracts to the incumbent vendor to provide more time to prepare a competitive follow-on award. However, during the competitive process, six 8(a) firms competed for the follow-on award and the current contract value is about \$7 million less annually than the value of the most recent sole-source bridge contract. The follow-on award went to an 8(a) firm owned by the same tribal entity as the incumbent firm.¹⁶
 - The Navy awarded a competitive follow-on to a \$49 million sole-source contract for engineering services. The requirement is now met by a multiple award IDIQ contract to six 8(a) vendors with a total value of \$99 million. A Navy contracting official told us that the prior sole-source 8(a) contract was one of many contracts providing similar services across this particular command, and, in 2011, the contracting

¹⁵For more information on bridge contracts, see GAO, *Sole Source Contracting: Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, [GAO-16-15](#) (Washington, D.C.: Oct. 14, 2015).

¹⁶Tribal entities—such as Alaska Native Corporations—can own multiple subsidiaries in the 8(a) program as long as each of those subsidiaries operates under a different primary industry code. See 13 CFR § 124.109(c)(3)(ii).

office implemented a new contracting strategy that would increase competition and meet its small business goals. This official noted that the multiple award contract is intended to avoid duplicative contracts across various contracting offices and that this new strategy is expected to result in cost savings.

Officials from almost half of the 14 offices we spoke with noted that a decline in budgets or a decline in the size of requirements rendered the 8(a) justification not applicable because most of their contracts fall below the \$20 million threshold. This was the case in all 4 of the contracts with sole-source follow-on contracts we reviewed, where requirements are currently being met by sole-source 8(a) contracts under \$20 million, which are not subject to the 8(a) justification.

- The Army awarded a \$17 million sole-source 8(a) contract for systems engineering services as a follow-on to a \$31 million sole-source contract. An Army official told us that the requirement decreased due to management changes and anticipated growth in need that never materialized.
- As follow-ons to a 5-year \$319 million sole-source 8(a) contract for pre-deployment training exercises, the Marine Corps awarded 2 one-year-long sole-source 8(a) contracts, slightly under \$10 million apiece, within a 6-month period to the same vendor. The current contracting officer did not know why the previous contracting officer awarded separate contracts for this requirement. The market research for the more recent contract stated that there used to be a greater need for pre-deployment training and estimated that funding for the requirement had decreased from \$85 million annually to less than \$10 million in recent years. The contracting officer told us that he intends to competitively award future follow-on contracts.
- Army officials told us that they now use a series of smaller contracts to meet a technical support services requirement that used to be met by a \$50 million sole-source contract. Officials explained that the change in acquisition strategy was due to a decline in the need for these services and an increase in efficiency by using various contracting vehicles, such as smaller sole-source 8(a) contracts, competitive 8(a) awards, and task orders from an existing government-wide IDIQ contract to meet the requirement. They added that they preferred this strategy to the original \$50 million dollar contract, which was designed to cover a wide swath of requirements,

and that they want to compete more contracts to replace the smaller sole-source contracts in the future.

Even though the FAR states that competition is the preferred contracting approach, we previously reported—and officials reaffirmed during this review—that large sole-source 8(a) contracts were an expedient way to respond to an increased workload and volume of requirements in the mid to late 2000s.¹⁷ For example, one office we spoke with said that the total value of the contracts awarded out of his office each year had increased from \$200 million to \$1.2 billion over a 10-year period while staff levels remained constant. Now that the growth in requirements has slowed while staff levels have risen and the workload has become more manageable, the contracting officers have more time to prepare competitive awards.

DOD Officials' Opinions Varied on Whether the 8(a) Justification Will Affect Future Awards of Sole-Source 8(a) Contracts over \$20 Million

DOD contracting and small business officials had differing views about whether the 8(a) justification was a deterrent to awarding sole-source 8(a) contracts over \$20 million. A few officials noted that the 8(a) justification is “not that hard to write,” but it does act as a deterrent because people have to be willing to review and sign it, which could slow down the contracting process. Others said that the ability to award sole-source 8(a) contracts is “another tool in the toolbox” that they would be open to using, even with the justification requirement, if their market research results showed that only one 8(a) firm could perform the work. However, a Navy official noted that a sole-source 8(a) acquisition strategy would be hard to justify because her office typically awards contracts for services, such as engineering, that are likely to have multiple vendors that can meet the requirement. She noted that some of the vendors that were previously awarded sole-source contracts are now winning competitively awarded contracts as part of the office’s shift towards competition.

Army officials responsible for one of the contracts in our review told us that they viewed the 8(a) justification as a means of increasing transparency and that it was not overly burdensome. In fact, they explained that they had recently completed an 8(a) justification for a contract awarded in December 2014—not in our sample—that they modified to exceed \$20 million in potential obligations after the original contract was awarded for less than \$20 million. The justification explained that the modification would extend the length of the contract and allow enough time for the contracting office to award a competitive follow-on

¹⁷[GAO-12-84](#).

contract without a gap in service. We have previously reported that contracting officials told us that it was not clear to them if a justification would be required for modifications to sole-source 8(a) contracts. We recommended that the Administrator of OFPP promulgate guidance to clarify circumstances in which an 8(a) justification is required, including cases when the contract is modified.¹⁸ OFPP generally agreed with our recommendation and is in the process of amending the FAR to address this issue. Clarifying the regulations for these instances could help; we found in our analysis of FPDS-NG data that DOD awarded six sole-source 8(a) contracts with base and all options values between \$19 million and \$20 million in fiscal year 2014 and eight in fiscal year 2015.¹⁹ If these contracts experience price growth, contracting officers may look to the updated regulations for guidance on whether an 8(a) justification is necessary.

Agency Comments

The Department of Defense had no comments on a draft of this report.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Defense. 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 MackinM@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Michele Mackin
Director
Acquisition and Sourcing Management

¹⁸[GAO-13-118](#).

¹⁹No one contracting office awarded more than three of these contracts, including contracts equal to \$20 million, since the 8(a) justification rule was finalized in April 2012.

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Appendix I: Objectives, Scope, and Methodology

The objectives of this review were to determine (1) trends among Department of Defense (DOD) sole-source and competitive 8(a) awards over \$20 million from fiscal year 2006 through fiscal year 2015; and (2) the factors to which DOD officials attribute these trends. The Consolidated and Further Continuing Appropriations Act of 2015 contained a provision for us to assess the impact of the justification and approval for sole-source 8(a) contracts over \$20 million, which we refer to as 8(a) justification.¹ The mandate also contained a provision for us to evaluate a DOD report—also mandated in this law—on the effect of the 8(a) justification on sole-source 8(a) contracts awarded over \$20 million. To do so, we reviewed DOD’s March 2015 report on sole-source 8(a) contracts over \$20 million and compared the number of contracts DOD reported that met this criterion to the number of contracts we identified.

To determine the trends among DOD sole-source and competitive 8(a) awards over \$20 million, we analyzed contract data from Federal Procurement Data System-Next Generation (FPDS-NG) for contracts awarded from October 1, 2005 through September 30, 2015. We used the Base & All Options and obligations values to identify contracts over \$20 million, as well as contracts between \$19 and \$20 million. We took several measures to assess the reliability of the FPDS-NG data:

- We found that many of the competed 8(a) contracts in our dataset were multiple award contracts in which more than one vendor was awarded a contract for a single solicitation. We rolled up the multiple award indefinite-delivery indefinite-quantity contracts in the FPDS-NG dataset into a single entry per requirement to avoid double counting Base & All Options values in the summations of total contract values.
- Because we have not previously reported on the contract value data for competed 8(a) contracts, we took additional steps to assess the reliability of these data. We reviewed 36 8(a) contracts over \$20 million that were coded as competed—which represents approximately 3 percent of the total number of competed contracts for fiscal years 2006 through 2015—for data reliability purposes and

¹Pub.L. No. 113-235, § 8135(b) (2014). The language of the provision is as follows, “The Comptroller General shall analyze and report to the congressional defense committees on the sufficiency of the Department’s report in addressing the requirements; review the extent to which section 811 has negatively impacted the ability of covered entities to be awarded sole-source contracts with the Department, discouraged agencies from awarding contracts, or been misconstrued and/or inconsistently implemented.”

found 1 sole-source contract that was miscoded as competed. We also confirmed contract values for 15 competed 8(a) contracts that were part of the same solicitation but had different contract values. We obtained these contracts using DOD's Electronic Document Access website, a repository for DOD contracts and related documents.

- We also compared the data reported in FPDS-NG to the information in the contract files we reviewed.

We determined that the data for this period were sufficiently reliable to identify competed and sole-source 8(a) contracts over \$20 million and describe trends in these contracts. To identify what is being purchased with 8(a) contracts over \$20 million, we identified common products and services using North American Industry Classification System (NAICS) codes. The NAICS assigns codes to all economic activity within 20 broad sectors, and the codes reflect the industry in which the firm operates, e.g., wireless telecommunication carriers or industrial building construction. Our analysis of FPDS-NG data for trends among tribal 8(a) firms included firms owned by Alaska Native Corporations, Indian Tribes, and Native Hawaiian Organizations.

To determine the factors to which DOD officials attribute these trends, we interviewed officials and reviewed contract files from 14 DOD contracting offices that met the following criteria:

- The 10 contracting offices that awarded the most sole-source 8(a) contracts over \$20 million from fiscal years 2006 through 2015. We identified these offices using FPDS-NG data and confirmed that the offices with the most contract awards also had a high total value of sole-source 8(a) contract awards, either in obligations or Base & All Options value.
- We selected two offices that had large requirements previously met by sole-source 8(a) contracts. These contracts were identified in our past work on this topic. We wanted to determine how these requirements are currently being met. We selected an Air Force base operations support services requirement and a U.S. Special Operations Command translation services requirement.
- The two offices that awarded sole-source 8(a) contracts over \$20 million in fiscal year 2015.

Our final sample of DOD contracting offices included in our review were as follows:

- Defense Logistics Agency Troop Support, Philadelphia, Pennsylvania
- Kirtland Air Force Base, New Mexico
- Marine Corps Logistics Command, Albany, Georgia
- Marine Corps Systems Command, Quantico, Virginia
- National Guard Bureau, Arlington, Virginia
- Space and Naval Warfare Systems Center Atlantic, North Charleston, South Carolina
- U.S. Army Contracting Command, Natick, Massachusetts
- U.S. Army Contracting Command, Redstone Arsenal, Alabama
- U.S. Army Contracting Command – Aberdeen Proving Ground, Maryland
- U.S. Army Corps of Engineers, Fort Worth District
- U.S. Army Corps of Engineers, Philadelphia District
- U.S. Army Corps of Engineers, Savannah District
- U.S. Army Mission and Installation Contracting Command, Fort Belvoir, Virginia
- U.S. Special Operations Command, MacDill Air Force Base, Florida

For each of the 14 offices, we judgmentally selected one sole-source 8(a) contract over \$20 million for review, and, where applicable, we reviewed subsequently awarded contracts for the same requirement, which we refer to as follow-on contracts. Specifically, we reviewed:

- Nine sole-source 8(a) contracts that had follow-on contracts. We confirmed with agency officials that a contract had a follow-on procurement. We interviewed the contracting officials responsible for each contract and reviewed relevant paperwork from the contract file. Our contract file review included looking at follow-on contracts, 8(a) justifications, acquisition plans, and other contract documents to compare old and new contracting approaches and determine any effects of the 8(a) justification. We also met with small business officials to discuss general trends and their contracting offices' use of the 8(a) program.
- Two sole-source 8(a) contracts over \$20 million that did not have follow-on contracts. We selected these contracts because they were awarded by offices that were top users of sole-source 8(a) contracts over \$20 million from fiscal years 2006 through 2015. The offices confirmed that the two selected contracts, in addition to the other sole-source 8(a) contracts over \$20 million awarded by the office, were for construction services and would not have follow-on contracts. We interviewed contracting officials about their experiences with the 8(a)

justification requirement more generally and sole-source 8(a) contracts over \$20 million.

- Two sole-source 8(a) contracts awarded in fiscal year 2015.
- One sole-source 8(a) contract that did not have a follow-on contract because the contracting officials were in the process of awarding the follow-on; we looked at the solicitation to confirm their acquisition strategy.

We conducted this performance audit from August 2015 to June 2016 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: Analysis of Trends in Tribal 8(a) Awards over \$20 Million Since 2011 When the 8(a) Justification Went into Effect

Table 1: Number of Completed 8(a) Contracts over \$20 Million Awarded to Tribal 8(a) Firms versus Other 8(a) Firms

Fiscal year	Tribal 8(a) firms	Other 8(a) firms	Total
2011	26 (20%)	107 (80%)	133
2012	33 (24%)	104 (76%)	137
2013	33 (34%)	63 (66%)	96
2014	36 (31%)	82 (69%)	118
2015	48 (32%)	101 (68%)	149

Source: GAO Analysis of Federal Procurement Data System – Next Generation data. | GAO-16-557

Table 2: Average Size of Completed 8(a) Contracts over \$20 Million Awarded to Tribal 8(a) Firms versus Other 8(a) Firms (in dollars)

Fiscal Year	Tribal 8(a) firms	Other 8(a) firms
2011	64,916,175	65,705,637
2012	251,789,150 ^a	48,920,283
2013	104,881,992	51,799,202
2014	76,204,513	36,006,347
2015	98,158,851	47,971,579

Source: GAO Analysis of Federal Procurement Data System – Next Generation data. | GAO-16-557

^aThe spike in the tribal 8(a) average in 2012 is due to a \$4.5 billion requirement awarded as a competitive 8(a) award.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Michele Mackin, (202) 512-4841 or MackinM@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Tatiana Winger (Assistant Director), Peter Anderson, Miranda Berry, Kurt Gurka, Julia Kennon, Roxanna Sun, and Jocelyn Yin made key contributions to this report.

Appendix IV: Accessible Data

Data Tables

Data Table for Highlights Figure and Figure 1: Number and Total Contract Value of Department of Defense Competitive and Sole-Source 8(a) Contracts over \$20 million, Fiscal Years 2006 through 2015

	Total Value of sole-source 8(a) contracts	Total Value of competed 8(a) contracts	Number of competed 8(a) contracts	Number of sole-source 8(a) contracts
"2006	0.846	1.361	45	11
"2007	2.118	3.493	75	34
"2008	2.289	9.43	150	50
"2009	2.191	6.941	101	28
"2010	1.803	3.529	125	40
"2011	0.526	3.925	133	13
"2012	0.24	8	137	3
"2013	0.221	4.128	96	4
"2014	No data	3.402	118	0
"2015	0.087	4.731	149	2

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