



November 2018

DEFENSE CONTRACTING

DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process

Accessible Version

Why GAO Did This Study

When awarding a contract competitively, DOD may use the LPTA process, under which the lowest price is the determining factor when selecting an offer. Section 813, as amended, contained a provision for GAO to submit four annual reports on DOD's use of the LPTA process for contracts exceeding \$5 million as well as how contracting officials considered eight specific criteria. GAO issued its first report in response to this provision in November 2017.

This second report, among other things, assesses the extent to which (1) DOD used the LPTA process in fiscal year 2017 and (2) contracting officials considered Section 813 criteria when using the LPTA process.

GAO selected a generalizable sample of 172 DOD contracts and orders valued at \$5 million and above that were competitively awarded in fiscal year 2017. GAO verified that 46 of these contracts and orders used the LPTA process by reviewing solicitations. GAO selected 14 contracts and orders from the 46 based on the most frequently purchased products and services, reviewed documents, and interviewed officials to determine if the Section 813 criteria were considered.

What GAO Recommends

GAO recommends that DOD address, as regulations are updated, how contracting officials should apply two Section 813 criteria that were generally not considered. DOD concurred with the recommendations and plans to revise its regulations and issue additional guidance by the end of fiscal year 2019.

View [GAO-19-54](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or tinapoli@gao.gov.

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DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process

What GAO Found

GAO estimates that about 26 percent of the Department of Defense's (DOD) contracts and orders valued \$5 million and above in fiscal year 2017 were competitively awarded using the lowest price technically acceptable (LPTA) process. DOD used the LPTA process to buy such things as equipment, fuel, information technology services and construction services.

Section 813 of the National Defense Authorization Act for Fiscal Year 2017, as amended, mandated that DOD revise its regulations to require that eight criteria be considered when using the LPTA process. As of September 2018, DOD had not yet done so. Accordingly, a DOD acquisition policy official stated that contracting officers are not yet required to consider these criteria. Nevertheless, GAO found that contracting officials generally considered five of the eight criteria for the 14 contracts and orders GAO reviewed (see table).

Criteria Considered by DOD Contracting Officials in 14 Contracts and Orders GAO Reviewed	
Criteria in Section 813 of the National Defense Authorization Act for Fiscal Year 2017	Generally considered?
DOD can clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.	Yes
DOD would realize no, or little, value from a proposal exceeding the solicitation's minimum technical requirements.	Yes
DOD would realize little or no additional innovation or future technological advantage by using a different methodology.	Yes
The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.	Yes
There is a high degree of certainty that a review of technical proposals other than that of the lowest-price offeror would not identify factors that could provide other benefits to the government.	Yes
A written justification for the use of the lowest price technically acceptable process is in the contract file.	No
For procurement of goods, the goods being purchased are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life	No
The lowest price reflects full life-cycle costs, including for operations and support.	No

Source: GAO analysis of Section 813, DOD source selection guidance, contract file documents and interviews with contracting officials.

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A DOD official stated that the updated regulations will reflect these eight criteria, including that justifications be documented. However, the official could not comment on whether the revisions will clarify how DOD contracting officials should implement the two other criteria that were generally not considered. Some contracting officials GAO interviewed were confused about how to apply these two criteria. Four of the 14 contracting officials stated that they did not understand how to apply the criterion regarding whether purchased goods are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life. Additionally, 8 of the 14 contracting officials stated the criterion regarding an assessment of life-cycle costs was not applicable to their acquisitions. Absent clarification on how to consider these two criteria, DOD increases the risk that its contracting officials will not consistently implement the requirements in Section 813, as amended.

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Abbreviations

DPC	Defense Pricing and Contracting
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
IDIQ	Indefinite Delivery Indefinite Quantity
LPTA	Lowest Price Technically Acceptable
NDAA	National Defense Authorization Act

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November 13, 2018

Congressional Committees

The Department of Defense (DOD) obligated about \$320 billion through contracts for goods and services in fiscal year 2017. When awarding a contract competitively, DOD has a number of source selection processes it can use to evaluate firms' proposals. One process DOD can use is a best value, lowest price technically acceptable (LPTA) process. In the LPTA process, DOD awards the contract to the firm presenting the lowest priced proposal that is technically acceptable, and no tradeoffs are permitted. Alternatively, DOD can use a best value tradeoff process, in which it can vary the relative importance of cost or price to other factors such as a firm's technical capability or past performance. In these cases, DOD may award a contract to a firm offering other than the lowest-priced proposal if it determines that a higher-priced proposal provides a worthwhile benefit to the department.

Section 813 of the National Defense Authorization Act for Fiscal Year 2017, as amended, required DOD to revise the Defense Federal Acquisition Regulation Supplement (DFARS) to allow the use of the LPTA process only when eight criteria are met.¹ For example, one criterion is that contracting officials must determine that no, or little, value would be gained from a proposal exceeding the solicitation's minimum technical requirements. The specific criteria are discussed in the background section of this report.

Section 813 also included a provision that we report no later than December 1, 2017, and annually thereafter for 3 years on the number of

¹Section 813 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 originally required DOD to revise the DFARS to include only six criteria to be met before DOD may use the LPTA process. It also required GAO to submit four annual reports on the number of instances DOD used the LPTA process for contracts exceeding \$10 million. Section 822 of the NDAA for fiscal year 2018 amended Section 813 by adding two additional criteria for inclusion in the DFARS. Further, it lowered the threshold for GAO's reports to contracts exceeding \$5 million. Throughout this report, our references to Section 813 of the fiscal year 2017 NDAA are to Section 813 as it was amended by Section 822 of the fiscal year 2018 NDAA. See National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 813, 130 Stat. 2000, 2270-71 (2016) (codified at 10 U.S.C. § 2305 note); National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 822, 131 Stat. 1283, 1465 (2017).

instances where DOD used the LPTA process for contracts exceeding \$5 million, as well as an explanation of how contracting officials considered the criteria identified in Section 813. In November 2017, we issued our first report as required by Section 813.² This second report (1) determines the extent to which DOD used the LPTA process in competitively awarded contracts and orders valued at \$5 million and above in fiscal year 2017; (2) identifies the reasons why contracting officials used the LPTA process for selected contracts and orders; and (3) for those same selected contracts and orders, assesses the extent to which contracting officials considered the eight criteria listed in Section 813.

DOD does not maintain centralized data on which source selection procedure is used to award contracts and orders. Consequently, to determine the extent to which DOD used the LPTA process in competitively awarded contracts and orders valued at \$5 million and above in fiscal year 2017, we used data from the Federal Procurement Data System-Next Generation (FPDS-NG) to identify the population of DOD contracts that were reported as competitively awarded contracts and valued at \$5 million and above in fiscal year 2017.³ This resulted in the identification of approximately 3,000 contracts. We focused our review on the Army, Navy, Air Force, and Defense Logistics Agency (DLA) because they accounted for 96 percent—or almost 2,900—of the DOD contracts competitively awarded during this time. In addition to contracts, we used data from FPDS-NG to identify a population of approximately 1,800 DOD task and delivery orders with an estimated value of \$5 million and above that were reported in FPDS-NG as competed under multiple award, indefinite delivery indefinitely quantity (IDIQ) contracts during this time.⁴ We again focused our analysis on the Army, Navy, Air Force and DLA which accounted for 81 percent—or about 1,400—of these orders.

²GAO, *Defense Contracting: DOD's Use of Lowest Price Technically Acceptable Source Selection Procedures to Acquire Selected Services*, [GAO-18-139](#) (Washington, D.C.: Nov. 30, 2017).

³FPDS-NG is the government's central repository for contracting data. Competitive contracts are those contracts reported as awarded using full and open competition or full and open competition after exclusions.

⁴An IDIQ contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Competitive orders are those orders that were reported as involving fair opportunity for all contract holders to compete or having been competitive small business set-asides.

Using these data, we randomly selected a generalizable sample of 94 contracts and 91 orders from the respective populations of contracts and orders above.⁵ For each contract and order in our sample, we requested that DOD identify the source selection method used. We independently verified DOD's responses by reviewing solicitations. We removed five contracts and eight orders from our sample. Of the five contracts, we removed three contracts from our sample because they were incorrectly classified in FPDS-NG as having been competed when they were not; one contract because it was terminated after award due to a bid protest; and one contract because it was classified. Similarly, of the eight orders, we removed seven from our sample because they were incorrectly classified in FPDS-NG as being competitively awarded when they were not and one because it was incorrectly identified as having a value over \$5 million. After removing these contracts and orders, our generalizable sample consisted of 89 contracts and 83 orders. By tracing relevant FPDS-NG data to the contracts and orders we reviewed, we determined these data were sufficiently reliable for us to project the number of contracts and orders valued over \$5 million that the Army, Navy, Air Force, and DLA competitively awarded in fiscal year 2017 using the LPTA process.

To identify the reasons why contracting officials chose to use the LPTA process and to assess whether those officials considered the eight criteria in Section 813, we selected from our sample six contracts and eight orders that used the LPTA process. We selected these 14 contracts and orders to include a mix of the most frequently purchased products and services. Of these 14 contracts and orders, four orders were for services for which Section 813 directs DOD to avoid using the LPTA source

⁵We followed a probability procedure based on random selections. Therefore, our sample is only one of a large number of samples that could have been drawn. Because each sample could have provided different estimates; we express the uncertainty associated with any particular estimate as a 95 percent confidence interval. This is the interval that, with repeated sampling, would be expected to contain the actual population value for 95 percent of the samples we could have drawn. As a result, 95 percent of the samples could have been drawn would contain the true percentage of competed contracts valued \$5 million or more and competed orders valued at \$5 million or more.

selection process, to the maximum extent practicable.⁶ For all of these selected contracts and orders, we obtained and analyzed relevant contract file documents including the acquisition plan, solicitation, and source selection decision document, and we interviewed contracting officials. Findings from our review of these 14 contracts and orders cannot be generalized to all contracts and orders that used the LPTA process. We also reviewed applicable sections of the Federal Acquisition Regulation (FAR), the DFARS, and DOD's March 2016 Source Selection Procedures to identify existing criteria regarding the appropriate use of the LPTA process.⁷

We conducted this performance audit from January 2018 through November 2018 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

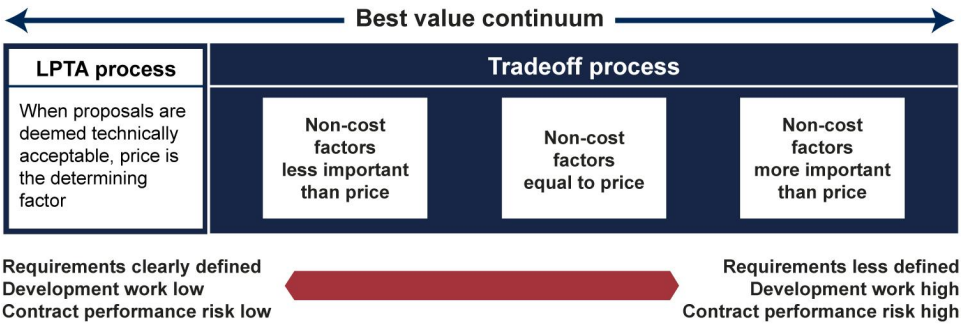
FAR Part 15 describes the use of several competitive source selection processes to meet agency needs, which include the LPTA process and tradeoff process on a best value continuum (see fig. 1).⁸

⁶Section 813 requires the use of the LPTA process to be avoided to the maximum extent practicable in procurements for the following: Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services; personal protective equipment, such as body armor; and knowledge-based training or logistics services in contingency or other operations outside the United States.

⁷Department of Defense, *Source Selection Procedures* (Mar. 31, 2016).

⁸Another source selection method is sealed bidding. In sealed bidding, an award is made to the responsible bidder whose bid conforms to the invitation for bid and is the most advantageous for the government considering only price and price-related factors included in the invitation.

Figure 1: Best Value Source Selection Processes



Source: GAO analysis of Federal Acquisition Regulation § 15.101. | GAO-19-54

The FAR states that when using the LPTA process, tradeoffs are not permitted. DOD may elect to use the LPTA process where the requirement is clearly defined and the risk of unsuccessful contract performance is minimal. In such cases, DOD can determine that cost or price should play a dominant role in the source selection. When using the LPTA process, DOD specifies its minimum requirements in the solicitation. Firms submit their proposals and DOD determines which of the proposals meet those requirements. No tradeoffs between cost or price and non-cost factors (for example, technical capabilities or past performance) are permitted. Non-cost factors are rated on an acceptable or unacceptable basis. The award is made based on the lowest priced, technically acceptable proposal submitted to the government. With either the LPTA or the tradeoff process, contracting officials may establish a competitive range and conduct discussions with offerors before selecting an offer for award.

By contrast, DOD may elect to use the tradeoff process in acquisitions where the requirement is less definitive, more development work is required, or the acquisition has a greater performance risk. In these instances, non-cost factors may play a dominant role in the source selection process. Tradeoffs between price and non-cost factors allow DOD to accept other than the lowest priced proposal. The FAR requires DOD to state in the solicitation whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

Contracting officials have broad discretion in the selection of the evaluation criteria that will be used in an acquisition. A written acquisition plan generally should include a description of the acquisition's source selection process and the relationship of the evaluation factors to the acquisition objectives, but the FAR does not explicitly require contracting officials to document the reasons why the specific source selection procedures or evaluation factors were chosen.⁹

DOD's March 2016 Source Selection Procedures offer additional guidance regarding the use of the LPTA source selection process. The procedures are mandatory for acquisitions conducted as part of a major system acquisition program and all competitively negotiated FAR part 15 acquisitions with an estimated value over \$10 million. The March 2016

⁹See FAR § 7.105(b)(4).

guide states that the LPTA source selection process may be used in situations where there would not be any value on a product or service exceeding the required technical or performance requirements. The guide also states that such situations may include acquisitions

- for well-defined, commercial, or non-complex products or services;
- where risk of unsuccessful contract performance is minimal; and
- where DOD has determined there would be no need or value to pay more for higher performance.

Section 813, as amended, requires that DOD revise the DFARS to require that the LPTA process only be used in situations when the following eight criteria are met.

1. DOD can clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.
2. DOD would realize no, or little, value from a proposal exceeding the solicitation's minimum technical requirements.
3. The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.
4. There is a high degree of certainty that a review of technical proposals other than that of the lowest-price offeror would not identify factors that could provide other benefits to the government.
5. The contracting officer has included a justification for the use of the LPTA process in the contract file.
6. The lowest price reflects full life-cycle costs, including for operations and support.
7. DOD would realize little or no additional innovation or future technological advantage by using a different methodology.
8. For the acquisition of goods, the goods being purchased are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life.

Section 813 required DOD to revise the DFARS within 120 days of enactment of the National Defense Authorization Act for Fiscal Year 2017. The NDAA was enacted December 23, 2016, but, as of November 2018, the DFARS had not been revised. A Defense Pricing and

Contracting (DPC)¹⁰ official stated the revisions are in process but were delayed due to a number of reasons, including the need for the revisions to reflect

- two additional criteria that were added to Section 813 (shown as criteria (7) and (8) in the list above) through subsequent provisions in Section 822 of the National Defense Authorization Act for Fiscal Year 2018, and
- compliance with Executive Order 13771, which calls for the reduction and control of regulatory costs.¹¹

The DPC official stated that until the DFARS is updated, DOD contracting officials are not required to consider the Section 813 criteria.

Use of the LPTA Process for Task and Delivery Orders

The FAR describes a wide selection of contract types that may be used in acquisitions. One of those types is an IDIQ contract, which provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period of time.¹² The FAR implements a statutory preference for multiple-award IDIQ contracts, which are awarded to two or more contractors under a single solicitation. These contracts allow agencies to establish a group of prequalified contractors to compete for future orders under streamlined ordering process once agencies determine their specific needs. These contracts can be awarded using a source selection process that is on the best value continuum, such as LPTA or tradeoff.

When a concrete need arises, a contracting officer will issue a task order for services or delivery order for products. DOD frequently issues orders under IDIQ contracts to address its needs. DOD obligated approximately \$133 billion—40 percent of its total fiscal year 2017 contract obligations—through such orders. With certain exceptions, the FAR requires that when a contracting officer places an order under a multiple-award IDIQ contract, the contracting officer must provide all of the IDIQ contract holders a “fair opportunity” to be considered for the order. Generally, a

¹⁰DPC was previously known as Defense Procurement and Acquisition Policy/Defense Pricing.

¹¹Exec. Order No. 13,771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9,339 (Feb. 3, 2017).

¹²FAR § 16.504(a).

contracting officer placing an order exceeding the simplified acquisition threshold must provide a “fair notice” that includes the basis upon which the selection will be made to all contractors offering the required products or services under the multiple-award contract.

We have previously found that DOD has awarded IDIQ contracts using the tradeoff process but then issued orders off of those IDIQ contracts using either the LPTA process or a tradeoff process.¹³ In other words, DOD employs both the LPTA and tradeoff processes for competitive orders issued against the same IDIQ contract, depending upon the requirement.

Past GAO Reports on DOD Source Selection Process

Since 2010, we have issued three reports on DOD’s use of source selection processes. In October 2010, we found that, for 60 of the 88 contracts we reviewed, DOD used a tradeoff process and weighted non-cost factors as more important than price.¹⁴ In these cases, DOD was willing to pay more when a firm demonstrated it understood complex technical issues more thoroughly, could provide a needed product or service to meet deadlines, or had a proven track record in successfully delivering products or services of a similar nature. In addition, we determined that when making tradeoff decisions, DOD selected a lower priced proposal nearly as often as it selected a higher technically rated, but more costly, proposal. In so doing, DOD chose not to pay more than \$800 million in proposed costs by selecting a lower priced offer over a higher technically rated offer in 18 of the contracts we reviewed. The majority of solicitations where non-cost factors were equal to or less important than cost were for less complex requirements. We also found that DOD faced several challenges when using the best value tradeoff process, including

- difficulties in developing meaningful evaluation factors,
- the additional time investment needed to conduct best value tradeoff procurements, and

¹³GAO, *Defense Contracting: Enhanced Training Could Strengthen DOD’s Best Value Tradeoff Decisions*, [GAO-11-8](#) (Washington, D.C.: Oct. 28, 2010).

¹⁴[GAO-11-8](#).

- a greater level of business judgment required of acquisition staff when compared to other acquisition approaches.

To help DOD effectively employ the best value tradeoff process, we recommended that DOD develop training elements such as case studies that focus on reaching tradeoff decisions. DOD concurred and implemented the recommendation in August 2012.

In 2014, we found that DOD had increased its use of the LPTA process for new contracts with obligations over \$25 million, using the LPTA source selection process to award an estimated 36 percent of new fiscal year 2013 contracts compared to 26 percent in fiscal year 2009. We found that contracting officials' decisions on which source selection process would be used was generally rooted in knowledge about the requirements and contractors.¹⁵ For contracts with obligations over \$25 million, DOD used the LPTA source selection process primarily to acquire commercial products such as fuel, and we identified relatively few uses of the LPTA process to acquire higher dollar services. For contracts with obligations over \$1 million and under \$25 million, DOD used the LPTA process an estimated 45 percent of the time for a mix of products and services, including fuel, aircraft parts, computer equipment, construction-related services, engineering support services, and ship maintenance and repairs. We did not make recommendations to DOD in this report.

In 2017, we reviewed contracts that DOD awarded using the LPTA process for service categories for which Section 813 established the LPTA process is to be avoided to the maximum extent practicable, such as those for information technology, knowledge based services, cybersecurity, and other professional support services.¹⁶ We found that the Army, Navy, and Air Force rarely used the LPTA source selection process for information technology and selected support services contracts valued at \$10 million or more that were awarded in the first half

¹⁵GAO, *Defense Contracting: Factors DOD Considers When Choosing Best Value Processes Are Consistent with Guidance for Selected Acquisitions*, [GAO-14-584](#) (Washington, D.C.: July 30, 2014). This report used a \$25 million threshold based on a DFARS requirement that contracts for products or services with \$25 million or more in estimated total costs for any fiscal year have written acquisition plans. Such plans would generally contain information on the anticipated source selection process.

¹⁶[GAO-18-139](#). This report used a \$10 million threshold based on the threshold for GAO's reporting established in Section 813 of the National Defense Authorization Act for Fiscal Year 2017 as originally enacted. As noted above, Section 822 of the National Defense Authorization Act for Fiscal Year 2018 amended Section 813 by lowering the dollar threshold for GAO's reporting to contracts exceeding \$5 million.

of fiscal year 2017. Our analysis found that the three military departments awarded 781 new contracts valued at \$10 million or more during this time frame. Of these 781 contracts, 133 contracts were awarded for information technology and support services. However, only 9 of the 133 contracts used the LPTA source selection process. In addition, we found that contracting officials' reasons for using the LPTA process were generally consistent with the criteria listed in Section 813. We did not make recommendations to DOD in this report.

About One-Quarter of Fiscal Year 2017 DOD Contracts and Orders Valued \$5 Million and Above Used the LPTA Process

Based upon the results of our generalizable sample, we estimate that about 26 percent of contracts and orders competitively awarded by the Army, Navy, Air Force, and DLA valued at \$5 million and above in fiscal year 2017 used the LPTA process.¹⁷ Table 1 shows the number and percentage of contracts and orders in our sample that we estimate to have used the LPTA process.

Table 1: Estimated Percentage of DOD Competed Contracts and Orders \$5 Million and Above That Used the Lowest Price Technically Acceptable (LPTA) Process in Fiscal Year 2017

Contract method	Total number in GAO sample	Number using the LPTA process ^a	Estimated percentage using the LPTA process ^b
Contracts	89	22	25
Orders	83	24	29

Source: GAO analysis of Federal Procurement Data System – Next Generation data. | GAO-19-54

^aOf the contracts and orders in our sample that did not use the LPTA process, the majority were awarded using a tradeoff process. Several others were awarded using sealed bidding procedures under FAR part 14. Four contracts and orders were awarded under FAR part 15 and subpart 16.5, respectively, using a “price only” selection process. DOD officials told us that under this process, price is the sole determining factor for award and technical requirements are not evaluated.

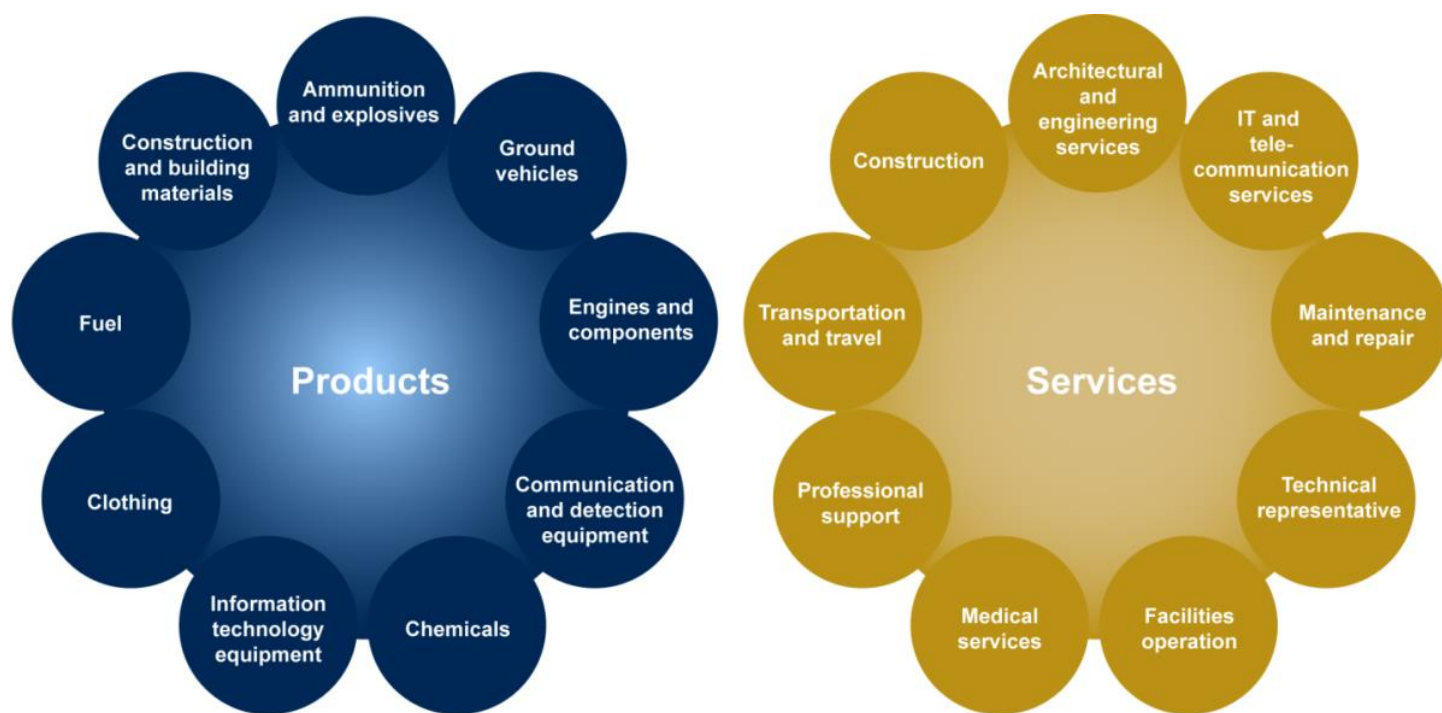
^bThe margin of error for contracts is +/- 10.3 percent and +/- 11.0 percent for orders.

We reviewed the 46 contracts and orders for which the Army, Navy, Air Force and DLA used the LPTA process and found that 20 were for

¹⁷The margin of error is +/- 6.7 percent.

products and 26 for services. Within this sample, the Army, Navy, Air Force, and DLA bought a variety of products and services (see figure 2).

Figure 2: Products and Services DOD Purchased in Fiscal Year 2017 Using The Lowest Price Technically Acceptable Process for the 46 Contracts and Orders GAO Reviewed



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-19-54

Contracting Officials Used the LPTA Process for Reasons Consistent with Current Requirements

Contracting officials associated with the 14 contracts and orders we selected used the LPTA process, in part, because they determined there was no tradeoff available or determined that DOD would not derive any benefit from paying a premium for offers that exceeded the minimum capabilities. As previously mentioned, DOD's March 2016 Source Selection Procedures currently states that the LPTA process may be used when there would not be additional value to a product or service

exceeding the required technical or performance requirements.¹⁸ Therefore, these determinations are consistent with the DOD’s current guidance. The following examples illustrate contracting officials’ rationale for using the LPTA process.

- A DLA contracting official awarded a contract for natural gas with a ceiling value of approximately \$14.8 million over a 2-year ordering period. The contracting official stated that no tradeoffs were available because the requirement was specifically for natural gas that would be used in government owned facilities across multiple states and an alternative fuel source was not required. Therefore, offerors were evaluated, from a technical acceptability perspective, on whether they were able to deliver the amount of natural gas required by the specified time frames.
- Similarly, the Marine Corps purchased over 15,400 general-purpose laptops with an estimated value of approximately \$14.1 million. To meet a DOD initiative of upgrading general use laptops to Windows 10, Marine Corps officials determined that a commercially available laptop would meet their requirements. Marine Corps contracting officials stated that through their market research they noted there were laptops with additional capabilities available; however, they determined it was not beneficial to pay for higher capabilities.

Overall, for the 14 contracts and orders we reviewed, contracting officials identified several reasons for using the LPTA process (see table 2). In many cases, contracting officials cited more than one reason.

Table 2: Reasons Contracting Officials Cited for Using the Lowest Price Technically Acceptable (LPTA) Process for the 14 Contracts and Orders GAO Reviewed	
Reason for using the LPTA process	Number of contracts and orders
No advantageous trade-off available	14
Well-defined requirement for products and services	8
Low risk of contractor failure	7
Non-complex requirement for products and services	5
Commercial item	5

¹⁸Department of Defense, *Source Selection Procedures* (Mar. 31, 2016).

Source: GAO analysis of contracting official interviews. | GAO-19-54.

Note: Contracting officials sometimes cited more than one reason for choosing the LPTA process for their contract or order.

The following examples illustrate reasons contracting officials identified for the use of the LPTA process.

- The Air Force awarded a foreign military sales IDIQ contract, with a maximum ordering value of \$65 million, to provide planned maintenance and supply support services for F-16 aircraft owned by Taiwan. The contract had a one-month mobilization period, a 5-year base ordering period, and two 1-year option ordering periods. According to Air Force officials, the contract's requirements were well-defined because the standard tasks and processes, such as engine maintenance, corrosion prevention, and aircraft washing, are strictly defined by an Air Force instruction. Contracting officials determined there was a low risk of contractor failure because (1) the pool of qualified firms interested in performing this type of contract is limited, and (2) the incumbent workforce had to be offered the chance to continue working under any new contract, regardless of the management company that won the award.
- The Navy issued an order under a multiple-award IDIQ contract, with a value of \$6.1 million, to renovate office space in two buildings at a naval air station. The Navy determined that the risk of contractor failure on this order was low because the contractor was pre-qualified as part of the initial contract award. Additionally, contracting officials stated the requirement was well-defined, as the contractor was required to renovate the space according to the plans provided by the Navy.
- The Navy awarded a multiple award IDIQ contract with an estimated maximum value of \$502.6 million, over a one-year base period and four 1-year options, for repair and maintenance of non-nuclear surface ships harbored in San Diego. Navy officials considered the requirements non-complex due to the nature of the work to be performed. In this case, the tasks included welding, marine pipefitting, sheet metal forming, and electrical/electronic repairs, among others, which were to adhere to established standards that would be specified in the orders. The contracting officials stated that for more complex repairs they would use a different contract.
- DLA awarded a contract with an estimated value of \$5.7 million, over a 2-year ordering period, for a commercial jet fuel system icing inhibitor to be delivered to Middle Eastern destinations, such as Qatar. Given that the additive was a commercial product, DLA determined that awarding the contract to the offeror that could deliver the required

quantity within specific time frames at the lowest price was in the government's best interests.

Of the 14 contracts and orders we reviewed, 4 orders were for services that Section 813 identified as those that DOD should, to the maximum extent practicable, avoid using the LPTA process. These four orders were for cybersecurity services, information technology services, and knowledge-based professional services. DOD contracting officials' rationale for using the LPTA process for these four orders were also consistent with guidance in DOD's March 2016 Source Selection Procedures, as illustrated below:

- The Air Force issued an order with an estimated value of \$11.6 million, with a 1-year base period and four 1-year options, for healthcare information technology system support services at several European military installations. These services included help desk support and network administration services, such as maintenance, administration, and troubleshooting services for the local computer servers. Air Force contracting officials stated the requirements were well-defined, as the services have been provided by a contractor for a long time and were well understood. Further, the officials stated they confirmed that the requiring office was not willing to pay for additional services beyond the minimum requirements. Contracting officials also determined there was a low risk of contractor failure because they were placing an order under a multiple-award IDIQ contract and all contract holders were pre-qualified to perform the work.
- The Air Force issued an order with a reported value of \$21.6 million, with a 1-year base period and four 1-year options, for information technology services, which included cybersecurity services, network management administration, requirements analysis, and communications planning at a European military installation. Air Force contracting officials stated the requirements for this contract were well-understood, as the Air Force had been contracting for these services for more than 15 years. Further, contracting officials stated the contractor was required to use an existing government software program to identify any information technology threats. Finally, contracting officials determined there was a low risk of contractor failure because they were issuing an order under a multiple-award IDIQ contract for which all contract holders were pre-qualified to perform the work.
- The Army issued an order with an estimated value of \$10.7 million, with a 1-year base period and two 1-year options, for professional support services at the United States Army Sergeants Major Academy

at Biggs Army Airfield, El Paso, Texas. Under this order, the contractor was to provide instructors to teach a pre-existing curriculum to Sergeants Major and Master Sergeants in strategic operations, preparing them to take positions throughout the DOD. The order provided that the instructors should be former Army sergeants and hold a Master's degree, with a preference for a Master's degree in adult education. In addition, the instructors had to have or had to obtain specific Army contractor instruction certifications. Therefore, the contracting official stated there was no benefit in having instructors that exceeded these recommended qualifications.

- The Navy issued an order with a value of approximately \$10 million and a period of performance of approximately four years and five months for installation of furniture/equipment onboard the USS George Washington aircraft carrier. Tasks included removing furniture, installing new, furniture in the same place, and painting, among others, to maintain ship habitability. Contracting officials determined there was no value in performing a tradeoff because the tasks were for routine work and all of the IDIQ contract holders previously were found to have the technical capability to perform the work.

DOD Contracting Officials Considered Most of the Section 813 Criteria before Using the LPTA Process, but Were Confused by Some Aspects

Contracting officials stated that they generally considered five of the eight criteria in Section 813 when awarding the 14 contracts and orders we reviewed. This was done, in part, because according to contracting officials, those criteria are inherently considered by contracting officials when determining which source selection process should be used. Further, based on our analysis, these five criteria are generally reflected in DOD's March 2016 Source Selection Procedures. Table 3 illustrates whether contracting officials considered the Section 813 criteria when they decided to use the LPTA process for the 14 contracts and orders we reviewed. As previously discussed, DOD has not yet updated regulations to put the Section 813 criteria into effect. A DPC official stated that until DOD regulations are updated, DOD contracting officials are not required to consider the Section 813 criteria.

Table 3: Comparison of Department of Defense Procedures to Section 813 Criteria and the Extent those Criteria Were Considered by Contracting Officials for 14 Selected Contracts and Orders

Criterion Identified In Section 813 of the National Defense Authorization Act for Fiscal Year 2017 ^a	Instances Section 813 criterion was considered	Generally reflected in DOD's March 2016 source selection procedures
DOD can clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.	14	Yes
DOD would realize no, or little, value from a proposal exceeding the solicitation's minimum technical requirements.	14	Yes
DOD would realize little or no additional innovation or future technological advantage by using a different methodology.	14	Yes
The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.	12	Yes
There is a high degree of certainty that a review of technical proposals other than that of the lowest-price offeror would not identify factors that could provide other benefits to the government.	10	Yes
A written justification for the use of the lowest price technically acceptable process is in the contract file.	3 ^b	No
For procurement of goods, the goods being purchased are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life.	2 ^c	No
The lowest price reflects full life-cycle costs, including for operations and support.	1	No

Source: GAO Analysis of contract file documents and interviews with contracting officials. | GAO-19-54

^a DOD regulations have not been updated to reflect Section 813 of the Fiscal Year 2017 National Defense Authorization Act (Pub. Law No. 114-328), as amended by section 822 of the Fiscal Year 2018 National Defense Authorization Act (Pub. Law No. 115-91). A Defense Pricing and Contracting official stated that until DOD regulations are updated, DOD contracting officials are not required to consider the Section 813 criteria.

^b The Federal Acquisition Regulation and DOD's March 2016 Source Selection Procedures do not explicitly require contracting officials document the reasons for selecting the lowest price technically acceptable process.

^c Only four of the 14 contracts and orders we reviewed were for the purchase of products.

Most of the contract files we reviewed did not include a written justification for the use of the LPTA process. A DPC official stated when the DFARS is updated to implement Section 813, DOD intends to include a requirement for contracting officials to prepare a written justification for the use of the LPTA process.

Some contracting officials were uncertain how to address the other two criteria that were generally not considered. For example, 4 of the 14 contracts and orders that we reviewed were for products. As stated above, one of the Section 813 criteria will require contracting officers who are purchasing goods to determine that the goods are predominantly expendable in nature, nontechnical, or have a short life expectancy or

shelf life. Two of the four contracting officials for the products we reviewed stated they made this determination for these purchases. However, the other two stated that they would not have known how to consider this criterion for their procurements. Specifically, a Marine Corps contracting official who purchased general use computers stated it was unclear if a computer that will be replaced every 5 years would be considered to have a short shelf life. Additionally, an Air Force contracting official who purchased Blackberry licenses stated that it was unclear if this criterion would apply to such licenses, and if it did, whether a 1-year license would be considered a short-shelf life. As a result, this contracting official stated he would not know how to consider this criterion in similar acquisitions.

Additionally, 12 of the 14 contracting officials we interviewed raised a number of questions about how to consider full life-cycle costs, including operations and support, which is another criterion under Section 813. In this regard,

- Eight contracting officials did not think life-cycle costs applied to their acquisitions and therefore they did not understand what costs they would have considered. For example, an Army contracting official who purchased construction quality assurance and oversight services stated the concept of life-cycle costs generally applies to products, not services. Similarly, a DLA official who contracted for a de-icing agent stated that this particular product does not have life-cycle costs associated with it.
- Three contracting officials raised questions regarding who would be in the best position to determine life-cycle costs. For instance, an Air Force contracting official stated life-cycle costs are determined by the requiring office, not by the contracting office, so it was not clear what role the contracting office would have in evaluating life-cycle costs.
- One contracting official who awarded an IDIQ contract stated this criterion would not apply to such an award because specific requirements would be determined when issuing orders under the IDIQ contract. Therefore, the contracting officer believed that any life-cycle costs should be considered when issuing subsequent orders.

In the two remaining cases, one contracting official stated he was not confused by this criterion, but did not consider life-cycle costs when awarding the contract to provide instructors at the Army Sergeants Major Academy. In another case, the contracting official stated life-cycle costs for a \$14.8 million contract for natural gas had been considered, but the

official determined there were no life-cycle costs associated with the use of natural gas in this instance.

As previously discussed, DOD has not yet revised the DFARS to include the criteria specified in Section 813, nor has DOD's March 2016 source selection procedures been updated to address consideration of the new criteria. A DPC official stated that the DFARS is in the process of being updated and will reflect Section 813. For example, the official stated that the updated regulation will require written justifications for using the LPTA process. This official, however, could not comment on whether the revisions will provide clarification, beyond what was written in Section 813, on how to apply the two criteria that DOD contracting officials generally found confusing. Without further clarification, such confusion is likely to continue. As a result, contracting officials will be at risk of not consistently applying the criteria in Section 813.

Our work also found differing opinions on whether the criteria in Section 813 would apply to the issuance of competitive orders under multiple-award IDIQ contracts. Our prior work has found that such orders represent a significant portion of DOD's annual contract obligations.¹⁹ For example, 7 of the 14 contracting officials generally stated the criteria in Section 813 could apply at the order level depending on the nature of the requirement. They stated that requirements are determined when issuing orders and, as a result, it is possible that methods including the LPTA process or a tradeoff process could be used when issuing orders. Conversely, the remaining 7 contracting officials stated the criteria should not apply to the issuance of orders, in part, because these criteria would generally have been considered at the time the IDIQ contract was awarded. Military department policy officials we interviewed generally believed that the criteria in Section 813 should not be applicable to orders. When we raised this issue, a DPC official stated that DOD plans to address whether the Section 813 criteria are applicable to orders when DOD revises the DFARS.

¹⁹ GAO, *Contracting Data Analysis: Assessment of Government-wide Trends*, [GAO-17-244SP](#) (Washington, D.C.: Mar. 9, 2017).

Conclusions

As DOD prepares to revise the DFARS to implement the eight criteria in Section 813, as amended, it has an opportunity to address the issues we identified. DOD stated its intent to require a written justification for using LPTA and to address whether the Section 813 criteria are applicable to the issuance of task and delivery orders. It is equally important that, in revising the regulation, DOD also clarify how contracting officers are to determine if a good is expendable in nature, nontechnical or have a short life expectancy or shelf life, and how they are to consider if the lowest price reflects full life-cycle costs, including for operations and support for services as well as products. Absent additional direction, contracting officials across DOD may not understand how to consistently apply these criteria when using the LPTA process.

Recommendations for Executive Action

We are making the following two recommendations to DOD:

The Secretary of Defense should ensure that the Director, Defense Pricing and Contracting, addresses how contracting officials using the LPTA process should apply the Section 813 criterion regarding procurement for goods that are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life as revisions to the DFARS are considered. (Recommendation 1)

The Secretary of Defense should ensure that the Director, Defense Pricing and Contracting addresses how contracting officials using the LPTA process should apply the Section 813 criterion regarding full life-cycle costs, including for operations and support as revisions to the DFARS are considered. (Recommendation 2)

Agency Comments

We provided a draft of this report to DOD for review and comment. In its written comments, reproduced in Appendix I, DOD concurred with both of our recommendations. DOD stated that, in addition to its ongoing efforts to update its regulations, a new DFARS Procedures, Guidance and Information case was opened on October 25, 2018 to provide contracting officers with supplemental internal guidance on applying the new criteria for using LPTA. DOD anticipates that the revised regulations and the internal guidance will be published in the fourth quarter of fiscal year 2019.

DOD also provided technical comments, which were incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and the Director, Defense Pricing and Contracting. 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 dinapolit@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 II.



Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions

List of Committees

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

The Honorable Richard Shelby
Chairman
The Honorable Dick Durbin
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Mac Thornberry
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Kay Granger
Chairwoman
The Honorable Pete Visclosky
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Appendix I: Comments from the Department of Defense



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

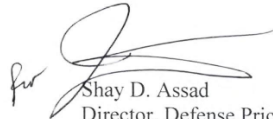
OCT 30 2018

Mr. Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Mr. DiNapoli:

This is the Department of Defense (DoD) response to the GAO Draft Report GAO-19-54, "DEFENSE CONTRACTING: DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process," dated September 28, 2018 (GAO Code 102541).

The Department's official written comments for inclusion in the report are enclosed.


Shay D. Assad
Director, Defense Pricing
and Contracting

Enclosure:
As stated

Enclosure

**GAO DRAFT REPORT DATED SEPTEMBER 28, 2018
GAO-19-54 (GAO CODE 102541)**

**“DEFENSE ACQUISITION WORKFORCE: DOD HAS OPPORTUNITIES TO
FURTHER ENHANCE USE AND MANAGEMENT OF DEVELOPMENT FUND”**

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

RECOMMENDATION 1: The GAO recommends that the Secretary of Defense should ensure that the Director, Defense Pricing and Contracting, addresses how contracting officials using the LPTA process should apply the Section 813 criterion regarding procurement for goods that are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life as revisions to the DFARS are considered.

DoD RESPONSE: DoD concurs. DFARS PGI case 2019-P001 was opened on October 25, 2018 to provide contracting officers with supplemental internal guidance on applying the criteria of sections 813 and 822. The DFARS PGI case will be published with the final DFARS rule that implements Sections 813 and 822. It is anticipated that the final rule will be published in the fourth quarter of FY 2019.

RECOMMENDATION 2: The GAO recommends that the Secretary of Defense should ensure that the Director, Defense Pricing and Contracting, addresses how contracting officials using the LPTA process should apply the Section 813 criterion regarding full life-cycle costs, including for operations and support as revisions to the DFARS are considered.

DoD RESPONSE: DoD concurs. DFARS PGI case 2019-P001 was opened on October 25, 2018 to provide contracting officers with supplemental internal guidance on applying the criteria of sections 813 and 822. The DFARS PGI case will be published with the final DFARS rule that implements Sections 813 and 822. It is anticipated that the final rule will be published in the fourth quarter of FY 2019.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Timothy J. DiNapoli, (202) 512-4841 or DiNapoliT@gao.gov

Staff Acknowledgments

In addition to the contact named above, Justin Jaynes (Assistant Director), Victoria Klepacz (Analyst in Charge), Jennifer Baker, Matthew Crosby, Lorraine Ettaro, Stephanie Gustafson, Julia Kennon, Roxanna Sun, Jay Still, Alyssa Weir, and Khristi Wilkins made key contributions to this report.

Appendix III: Accessible Data

Agency Comment Letter

Accessible Text for Appendix I Comments from the
Department of Defense

Page 1

Mr. Timothy J. DiNapoli

Director, Contracting and National Security Acquisitions

U.S. Government Accountability Office

441 G Street, NW

Washington DC 20548

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OCT 30 2018

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Shay D. Assad

Director, Defense Pricing and Contracting

Enclosure:

As stated

Page 2

GAO DRAFT REPORT DATED SEPTEMBER 28, 2018 GAO-19-54
(GAO CODE 102541)

"DEFENSE ACQUISITION WORKFORCE: DOD HAS OPPORTUNITIES
TO FURTHER ENHANCE USE AND MANAGEMENT OF
DEVELOPMENT FUND"

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RECOMMENDATION

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