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March 28, 2022

Congressional Committees

DOD SMALL BUSINESS CONTRACTING: Use of Sole-Source 8(a) Contracts over \$22 Million Has Increased

In fiscal year 2021, the Department of Defense (DOD) obligated about \$10.9 billion to contracts awarded through the Small Business Administration’s 8(a) Business Development program. This program is one of the federal government’s primary means for developing small businesses owned by socially and economically disadvantaged individuals. Contract awards under this program may be competed among eligible 8(a) firms or awarded on a sole-source basis in certain instances. For example, 8(a) firms owned by Alaska Native Corporations, Indian Tribes, or Native Hawaiian Organizations (for DOD only) can receive sole-source contracts for any dollar amount, while other 8(a) firms generally must compete for contracts valued above certain thresholds.¹

In March 2011, the Federal Acquisition Regulation (FAR) was amended to implement section 811 in the National Defense Authorization Act for Fiscal Year 2010. That provision included a new requirement for a written justification and approval for sole-source 8(a) awards over \$20 million, where previously none was required.² On October 1, 2015, the threshold for contracts requiring this justification and approval was raised to over \$22 million.³ A provision in the National Defense Authorization Act for Fiscal Year 2020 raised the threshold for DOD sole-source 8(a) contracts to over \$100 million, which DOD implemented on March 17, 2020.⁴ And finally, on October 1, 2020, the threshold for sole-source 8(a) awards requiring a justification and approval for civilian agencies was raised to those over \$25 million.⁵

¹Federal Acquisition Regulation (FAR) § 19.805-1(a) delineates thresholds for when competition is required for other 8(a) firms for procurements above \$4.5 million and \$7.5 million, respectively, depending on what is being procured. This competitive threshold does not apply to 8(a) firms owned by Alaska Native Corporations and Indian Tribes, FAR §19.805-1(b) (2), or (for DOD only) to 8(a) firms owned by Native Hawaiian Organizations, Defense Acquisition Regulation Supplement (DFARS) § 219.805-1.

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

³See 80 Fed. Reg. 38293, Final rule, July 2, 2015 for notice updating relevant thresholds at FAR §§ 6.303-1(b), 19.808-1(a), effective October 1, 2015.

⁴A DOD class deviation on March 17, 2020 implemented the increased threshold in section 823(a) of the National Defense Authorization Act for Fiscal Year 2020. Pub. L. No. 116-92, § 823(a). Office of the Under Secretary of Defense, Acquisition and Sustainment, Class Deviation—Justification and Approval Threshold for 8(a) Contracts, March 17, 2020. This class deviation was incorporated in the DFARS on June 5, 2020. 85 Fed. Reg. 34528, Final rule, June 5, 2020 (effective June 5, 2020); DFARS §§ 206.303, 219.808.

⁵85 Fed. Reg. 62485, Final rule, Oct. 2, 2020 (effective Oct. 1, 2020).

Since 2013, we have reported on trends in sole-source 8(a) contracts.⁶ In our last report in 2016, we reported that the number of DOD sole-source 8(a) contracts requiring a justification steadily declined between 2011 and 2015, while the number of competitive 8(a) contracts generally increased over this time. The National Defense Authorization Act for Fiscal Year 2020 includes a provision for us to report on DOD's use of the authority requiring a justification and approval for sole-source 8(a) contracts.⁷ This report describes the trends in DOD's use of sole-source and competitive 8(a) contracts above \$22 million, from fiscal years 2016 through 2021, including sole-source 8(a) contracts valued at over \$100 million since implementation of the increased threshold.

To identify trends in the number and value of sole-source and competitive DOD 8(a) contracts over \$22 million, we obtained and analyzed data from the Federal Procurement Data System (FPDS) from fiscal years 2016 through 2021. We used the total contract value to identify applicable contracts.⁸ Further, when determining the value of the competed 8(a) contracts, we identified and grouped multiple award indefinite-delivery indefinite-quantity contracts stemming from the same solicitation together to avoid double counting contract values for contracts for the same requirement—that is, the goods or services being procured. To identify what DOD procured with 8(a) contracts over the stated threshold, we used the North American Industry Classification System codes.⁹

We took several steps to assess data reliability, including reviewing the data for outliers or potential data entry errors. For example, we reviewed sole-source 8(a) contracts awarded to firms that were not tribal entities and worked with DOD to correct errors where needed. We determined that the federal procurement data were sufficiently reliable to identify 8(a) contracts that exceeded the \$22 million threshold over the timeframe of our review. We chose October 1, 2015 as our start date because our prior work assessed trends in DOD's 8(a) contract awards through September 30, 2015. We used September 30, 2021, as our end date because it encompassed the most recent complete fiscal year data available at the time of our review.

We conducted this performance audit from November 2021 to March 2022 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.

⁶GAO, *DOD Small Business Contracting: Use of Sole-Source 8(a) Contracts over \$20 Million Continues to Decline*, [GAO-16-557](#) (Washington, D.C.: June 8, 2016); *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).

⁷National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 823(c)(2). This subsection requires our report to include certain details as described in the law.

⁸We used the *Base and All Options Value* data element in FPDS, which is defined as the total contract value agreed upon by the government and the firm performing the contract, including the value of any contract options.

⁹This system 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.

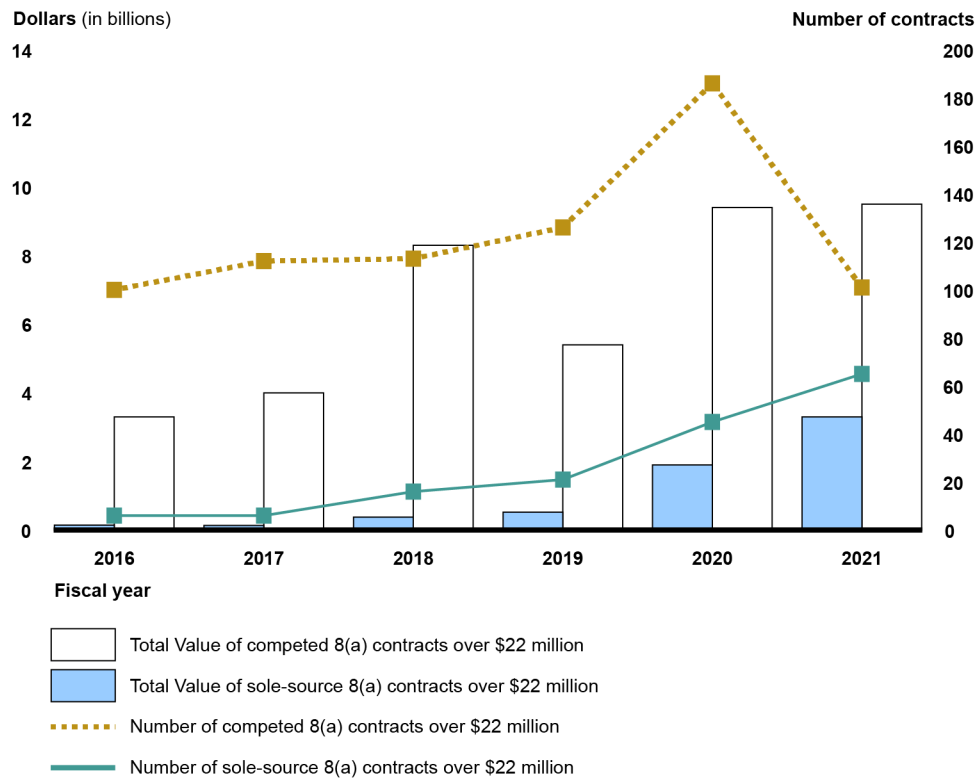
DOD Sole-Source 8(a) Contract Awards over \$22 Million Increased While Competitive Awards Fluctuated

We found that the number and value of DOD sole-source 8(a) contracts over \$22 million increased between fiscal years 2016 through 2021, and none were valued at over \$100 million either before or after implementation of the increased threshold.¹⁰ Specifically, the number of sole-source 8(a) contracts over \$22 million grew steadily from six in fiscal year 2016 to 65 in fiscal year 2021. The collective value of these sole-source 8(a) contracts increased from \$143.5 million in fiscal year 2016 to \$3.4 billion in fiscal year 2021. In total, DOD awarded 159 of these sole-source 8(a) contracts over the 6-year period.

During the same time period, DOD awarded 738 competed 8(a) contracts over \$22 million, of which 184 were valued over \$100 million. The trends for the number of competed 8(a) contracts fluctuated, from 100 in fiscal year 2016 to a high of 186 in fiscal year 2020, with a downturn in fiscal year 2021. Despite the downturn, the total value of the competed contracts increased from \$3.3 billion in fiscal year 2016 to \$9.5 billion in fiscal year 2021. Figure 1 depicts the trends from fiscal years 2016 through 2021.

¹⁰From fiscal years 2016 through 2021, DOD awarded no sole-source 8(a) contracts over \$100 million to any 8(a) firms, including those owned by Alaska Native Corporations, Indian Tribes, or Native Hawaiian Organizations. Since DOD made no sole-source 8(a) awards over \$100 million since the implementation of this increased threshold, we did not review DOD's use of the authority as modified by section 832(a)(2) of the statute requiring specified officials to approve the justifications.

Figure 1: Number and Total Contract Value of DOD Competitive and Sole-Source 8(a) Contracts over \$22 Million, Fiscal Years 2016 through 2021



Source: GAO analysis of Federal Procurement Data System. | GAO-22-105567

Note: Within this 6-year time period, the Department of Defense did not award any sole-source 8(a) contracts over \$100 million before or after the March 17, 2020 threshold change.

DOD awarded 105 sole-source 8(a) contracts on or after March 17, 2020—the date that the increased threshold was implemented—which reflected an increase over prior years. These contracts were all over \$22 million and up to \$100 million, and thus did not require the justification. Additionally:

- Half (50 percent) of the 105 sole-source 8(a) contracts were awarded to firms owned by Alaska Native Corporations; 32 percent were awarded to firms owned by Indian Tribes; and 18 percent to firms owned by Native Hawaiian Organizations.
- The top five products and services under contract were engineering services; other computer related services; commercial and institutional building construction; administrative management and general management consulting services; and computer system design services.

Agency Comments

We provided a draft of this report to DOD for review and comment. DOD had no comments on this report.

We are sending copies of this report to 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 sawyerj@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 contributed to this report include Tatiana Winger, Assistant Director; Sophia Payind, Analyst-in-Charge; Suellen Foth; Laura Greifner; Julia Kennon; Sylvia Schatz; and Robin Wilson.

A handwritten signature in black ink, appearing to read "John D. Sawyer". The signature is written in a cursive style with a large, stylized initial "J".

John D. Sawyer
Acting Director, Contracting and National Security Acquisitions

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