



September 2019

FEDERAL CONTRACTING

Information on Agencies' Use of the Lowest Price Technically Acceptable Process

Accessible Version

GAO Highlights

Highlights of [GAO-19-691](#), a report to congressional committees

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Why GAO Did This Study

When awarding a contract competitively, agencies can evaluate proposals using a best value, LPTA process that assesses which firm offered the lowest priced technically acceptable proposal. Section 813 of the NDAA for Fiscal Year 2017, as amended, included limitations on DOD's use of the LPTA process and required DOD to revise its acquisition regulation to reflect new criteria for use of the LPTA process. Section 880 of the NDAA for Fiscal Year 2019 required the FAR to be updated with similar requirements for civilian agencies.

Sections 813 and 880 also included provisions for GAO to report on the number of instances where the LPTA process was used for contracts exceeding \$5 million. This report describes (1) the status of regulatory changes governing the use of the LPTA process; and (2) the extent to which DOD and selected civilian agencies used the LPTA process to competitively award contracts and orders valued over \$5 million in fiscal year 2018.

GAO interviewed DOD and civilian agency officials involved in revising the DFARS and the FAR. GAO used data from the Federal Procurement Data System-Next Generation to select the top four DOD components and the top five civilian agencies based on the total number of contracts and orders valued at \$5 million or more and competitively awarded in fiscal year 2018. Using this data, GAO developed generalizable samples to estimate these components' and agencies' use of the LPTA process in fiscal year 2018.

What GAO Found

Defense and civilian agencies are in the process of revising acquisition regulations to include criteria and limitations for using the lowest price technically acceptable (LPTA) process, as established under the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2019. While the Acts required revised regulations to be in place within 120 days of enactment, officials involved in revising the regulations stated that this process typically takes at least a year. The Department of Defense (DOD) issued a proposed Defense Federal Acquisition Regulation Supplement (DFARS) rule in December 2018 and expects the rule to be finalized by the end of fiscal year 2019. Officials responsible for revising the Federal Acquisition Regulation (FAR) have drafted a proposed FAR rule. The proposed FAR rule is scheduled to be published in the Federal Register in September 2019. See the figure below for the time frames and actions taken to update the DFARS and the FAR.

Time Frames for Updating Department of Defense (DOD) and Civilian Acquisition Regulations for Using the Lowest Price Technically Acceptable Process



DFARS = Defense Federal Acquisition Regulation Supplement
FAR = Federal Acquisition Regulation

Source: National Defense Authorization Act for Fiscal Year 2017, National Defense Authorization Act for Fiscal Year 2018, John S. McCain National Defense Authorization Act for Fiscal Year 2019, and agency documentation. | GAO-19-691

Based on the results of GAO's generalizable samples, DOD used the LPTA process more frequently than selected civilian agencies in fiscal year 2018 for competitive contracts and orders valued at \$5 million or more (see table).

Estimated Department of Defense (DOD) and Selected Civilian Agency Use of the Lowest Price Technically Acceptable (LPTA) Process in Fiscal Year 2018

Defense Components and Civilian Agencies	Estimated percentage using the LPTA process ^a
DOD Army, Navy, Air Force, Defense Logistics Agency	25
Civilian General Services Administration; Departments of Veterans Affairs, Health and Human Services, Homeland Security, and Agriculture	7

Source: GAO analysis of sample data from the Federal Procurement Data System-Next Generation and data provided by selected agencies. | GAO-19-691

^aThe margin of error is +/-10 percent for the DOD sample and +/-7 percent for the civilian agency sample.

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Abbreviations

CAA Council	Civilian Agency Acquisition Council
DAR Council	Defense Acquisition Regulations Council
DFARS	Defense Federal Acquisition Regulation Supplement
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
FSS	Federal Supply Schedule
GSA	General Services Administration
HHS	Department of Health and Human Services
LPTA	Lowest Price Technically Acceptable
NDAA	National Defense Authorization Act
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
USDA	United States Department of Agriculture
VA	Department of Veterans Affairs

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September 26, 2019

Congressional Committees

In fiscal year 2018, federal agencies obligated more than \$550 billion to acquire products and services such as military aircraft, information technology software, and maintenance services. Of this amount, about \$350 billion—or 63 percent—was obligated under competitively awarded contracts. When awarding a contract competitively, agencies have a number of source selection processes they can use to evaluate firms’ proposals. One process is a best value, lowest price technically acceptable (LPTA) process. In the LPTA process, an agency awards the contract to the firm presenting the lowest evaluated price that is technically acceptable, and no trade-offs are permitted. Alternatively, an agency can use a best value trade-off 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, the agency may award a contract to a firm offering other than the lowest priced proposal if it determines that this is in the best interest of the government.

Section 813 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017, as amended, required the Department of Defense (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 defense contracting officials must determine that little or no value would be gained from a proposal exceeding the solicitation’s minimum technical requirements. Subsequently, Section 880 of the NDAA for Fiscal Year 2019 required the Federal Acquisition Regulation (FAR) to be revised to allow civilian agency use of the LPTA process only when six similar criteria are met.² For the purposes of this report, we refer to Section 813 of the NDAA for Fiscal Year 2017, as amended, as “the defense provisions” and Section 880 of the NDAA for Fiscal Year 2019 as “the civilian provisions.” Both

¹Section 813 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 originally required DOD to revise the DFARS to include six criteria to be met before DOD may use the LPTA process. Section 822 of the NDAA for Fiscal Year 2018 amended Section 813 by adding two additional criteria for inclusion in the DFARS. See NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 813 (2016) (codified at 10 U.S.C. § 2305 note); NDAA for Fiscal Year 2018, Pub. L. No. 115-91, § 822 (2017).

²John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 880(b), (e)(1) (2018) (codified at 41 U.S.C. § 3701 note).

provisions also placed limitations on the use of the LPTA process in procurements for certain categories of products and services, such as personal protective equipment and information technology services, by requiring agencies to avoid use of the LPTA process in these procurements to the maximum extent practicable. The specific criteria and limitations stemming from these defense and civilian provisions for using the LPTA process are discussed in the background section of this report.

Section 813 of the NDAA, as amended, also included a provision that we report on the number of instances where DOD used the LPTA process for contracts exceeding \$5 million, as well as provide an explanation of how acquisition officials considered the new criteria in making a determination to use the LPTA process.³ We have previously issued two reports in response to this provision.⁴ Subsequently, Section 880 of the NDAA for fiscal year 2019 included a provision that we report on the number of instances where civilian agencies used the LPTA process for contracts exceeding \$5 million, as well as provide an explanation of how acquisition officials considered the six criteria in making a determination to use the LPTA process. This report, which addresses both provisions, describes (1) the status of regulatory changes required by the defense and civilian provisions for using the LPTA process; and (2) the extent to which DOD and selected civilian agencies used the LPTA process to competitively award contracts and orders valued at \$5 million or more in fiscal year 2018, and what they bought using this process.

To address both objectives and select the DOD components and civilian agencies included in our scope, we used data from the Federal Procurement Data System-Next Generation (FPDS-NG) to identify the DOD components and civilian agencies that awarded the highest number

³Section 813 of the NDAA for fiscal year 2017 as originally enacted had a \$10 million threshold for GAO's reporting requirement. Section 822 of the NDAA for fiscal year 2018 amended Section 813 by lowering the dollar threshold for GAO's reporting to contracts exceeding \$5 million.

⁴GAO, *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); and *Defense Contracting: DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process*, [GAO-19-54](#) (Washington, D.C.: Nov. 13, 2018).

of contracts and orders in fiscal year 2018 that were reported as competitively awarded and valued at \$5 million or more.⁵

- For DOD, we focused our review on the top four DOD components—Army, Navy, Air Force, and Defense Logistics Agency (DLA)—which accounted for about 5,400—or about 88 percent—of all DOD contracts and orders valued at \$5 million or more that were reported as competitively awarded in fiscal year 2018.
- For civilian agencies, we focused our review on the top five agencies—the Departments of Veterans Affairs (VA), Health and Human Services (HHS), Homeland Security (DHS), and Agriculture (USDA) and the General Services Administration (GSA)—which accounted for about 3,000—or about 66 percent—of all civilian agency contracts and orders valued at \$5 million or more that were reported as competitively awarded in fiscal year 2018.

To describe the status of regulatory changes required by the defense and civilian provisions for using the LPTA process, we obtained information on agency officials' efforts to amend the DFARS and the FAR. We also interviewed officials from DOD and the Office of Federal Procurement Policy. We analyzed agency guidance and interviewed acquisition and contracting policy officials at DOD and each of the selected civilian agencies to determine whether the agencies had existing guidance that already addressed the defense and civilian provisions, in whole or in part, and the extent to which they were developing such guidance.

According to officials, DOD and the selected civilian agencies do not maintain centralized data on whether the LPTA process is used to award contracts and orders. Consequently, to describe the extent to which the DOD components and the civilian agencies within our scope used the LPTA process in fiscal year 2018, we used data from FPDS-NG to select two generalizable samples of competitively awarded contracts and orders

⁵FPDS-NG is the government's central repository for contracting data. Competitive contracts are those reported as awarded using full and open competition or full and open competition after exclusions. These data also include obligations for task and delivery orders issued under indefinite-delivery, indefinite-quantity contracts, which provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Competitive orders are those issued under multiple award, indefinite-delivery, indefinite-quantity contracts, and reported as involving fair opportunity for all contract holders to compete or as competitive small business set-asides.

valued at \$5 million or more.⁶ For each contract and order in our sample, we requested that the selected agencies identify whether the LPTA process was used. We independently verified agency responses by reviewing the solicitations for each of the contracts and orders within our two samples. From these samples, we also summarized the products and services that were purchased using the LPTA process.

We determined that all the data we used were sufficiently reliable for the purposes of our reporting objectives. For example, we verified FPDS-NG data on estimated value and competition using agency-provided documentation for the contracts and orders we reviewed. Appendix I contains a detailed description of our scope and methodology.

We conducted this performance audit from February 2019 to September 2019 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.

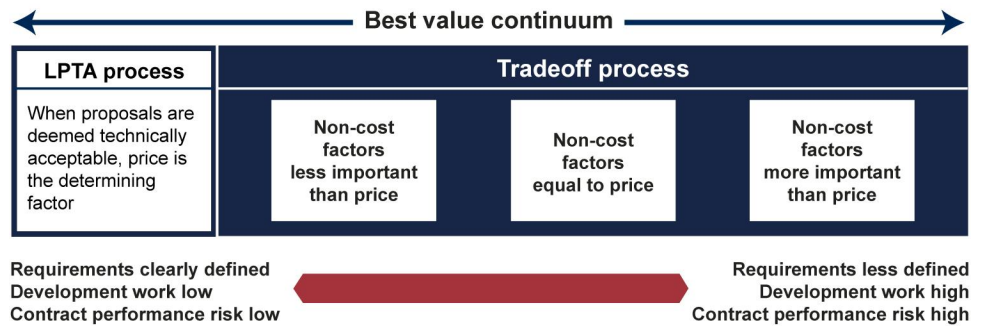
Background

FAR Part 15 describes negotiated contracting, which includes the use of several competitive source selection processes.⁷ The processes are associated with the best value continuum, which includes the LPTA process on one end and the trade-off process on the other (see figure 1).

⁶We 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 that could have been drawn would contain the true percentage of competed contracts and orders valued \$5 million or more.

⁷Another contracting 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. See FAR Part 14.

Figure 1: Best Value Source Selection Processes



Source: GAO analysis of Federal Acquisition Regulation § 15.101. | GAO-19-691

Federal agencies 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, agencies can determine that cost or price should play a dominant role in the source selection. When using the LPTA process, the agency specifies the evaluation factors that establish the requirements of acceptability in the solicitation. Firms submit their proposals and the agency determines which of the proposals meet those requirements. No trade-offs 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.

In contrast, agencies may elect to use the trade-off 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. Trade-offs between price and non-cost factors allow agencies to accept other than the lowest priced proposal. The FAR requires the solicitation to state 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. When one is required, 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. The FAR does not explicitly require contracting officials to document the reasons why the specific source selection process was chosen.

The defense and civilian provisions required the DFARS and FAR, respectively, be revised to require that the LPTA process only be used if certain criteria are met, as described in table 1.

Table 1: Department of Defense (DOD) and Civilian Agency Acquisition Regulations Require Revision to Reflect Criteria for Using the Lowest Price Technically Acceptable (LPTA) Process

Criteria for using LPTA	DOD ^a	Civilian agencies ^b
1. The agency can clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.	yes	yes
2. The agency would realize no, or little, value from a proposal exceeding the solicitation's minimum technical requirements.	yes	yes
3. The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.	yes	yes
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.	yes	yes
5. The contracting officer has included a justification for the use of the LPTA process in the contract file.	yes	yes
6. The lowest price reflects full life cycle costs, including for operations and support.	yes	yes
7. DOD would realize little or no additional innovation or future technological advantage by using a different methodology.	yes	no
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.	yes	No

Legend

Yes-- Indicates that this criterion applies to DOD or the civilian agencies.

No-- Indicates that this criterion does not apply to civilian agencies.

Source: GAO analysis of defense and civilian provisions for using LPTA. | GAO-19-691

^aDOD criteria: National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 813(b) (2016) (codified as amended at 10 U.S.C. § 2305 note)

^bCivilian criteria: John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 880(b) (2018) (codified at 41 U.S.C. § 3701 note).

The defense and civilian provisions also required that the use of the LPTA process be avoided, to the maximum extent practicable, in procurements that are predominantly for the products and services identified in table 2.

Table 2: Products and Services for Which the Department of Defense (DOD) and Civilian Agencies Are to Avoid Using the Lowest Price Technically Acceptable (LPTA) Process to the Maximum Extent Practicable

Products and services with LPTA limitations	DOD ^a	Civilian agencies ^b
Information technology services	yes	yes
Cybersecurity services	yes	yes
Systems engineering and technical assistance services	yes	yes

Products and services with LPTA limitations	DOD ^a	Civilian agencies ^b
Advanced electronic testing	yes	yes
Audit or audit readiness services	yes	yes
Other knowledge-based professional services	yes	yes
Personal protective equipment ^c	yes	yes
Knowledge-based training or logistics services in contingency operations or other operations outside the US including Afghanistan or Iraq	yes	yes
Health care services and records	No	yes
Telecommunications devices and services	no	yes

Legend

Yes-- Indicates that these products and services are included in section 813(c) of the National Defense Authorization Act for Fiscal Year 2017 or section 880(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

No-- Indicates that these services are not included in section 813(c) of the National Defense Authorization Act for Fiscal Year 2017

Source: GAO analysis of defense and civilian provisions for using LPTA. | GAO-19-691

^aDOD criteria: National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 813(c) (2016) (codified as amended at 10 U.S.C. § 2305 note).

^bCivilian criteria: John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 880(c) (2018) (codified at 41 U.S.C. § 3701 note).

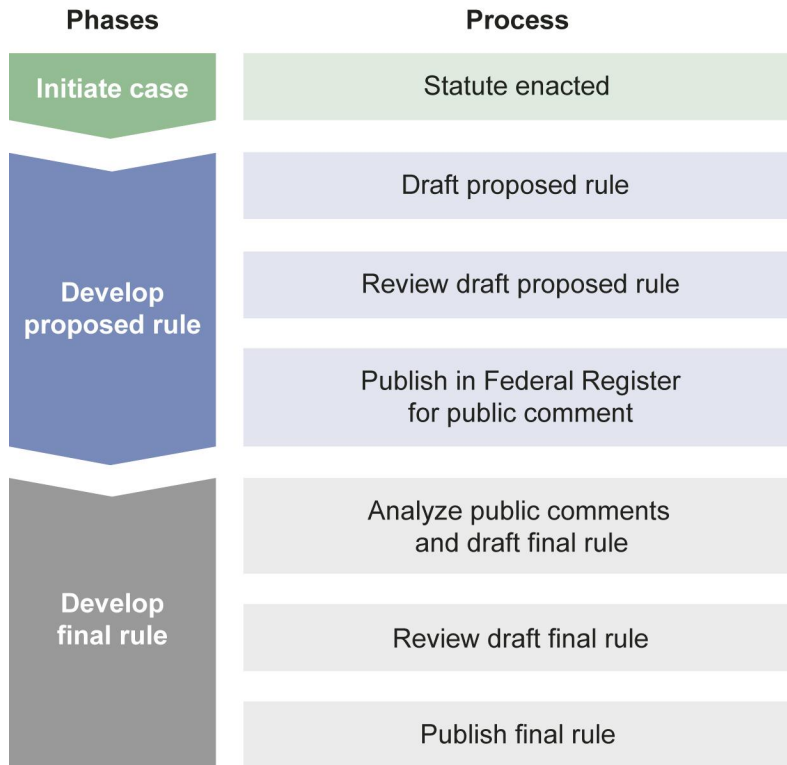
^cUse of the LPTA process for purchase of Personal Protective Equipment (PPE) was also addressed in section 814 of the NDAA for Fiscal Year 2017. Section 814 required DOD to revise the DFARS to prohibit use of the LPTA process for PPE purchases as well as aviation critical safety items if the level of quality or failure of the equipment or item could result in combat casualties.

The FAR and DFARS Rulemaking Process

The process for revising the FAR and DFARS is governed by statute, which generally requires agencies to issue a proposed rule in the Federal Register. Agencies are also required to provide at least a 30-day public comment period following publication of the proposed rule.⁸ Figure 2 illustrates the basic process that is generally used to revise the FAR and the DFARS.

⁸41 U.S.C. § 1707; see also FAR subpart 1.5. The requirement for publication of a proposed rule may be waived if “urgent and compelling” circumstances make it impracticable. In these instances, an agency may issue an interim rule instead of a proposed rule. The interim rule is effective on a temporary basis if the agency provides at least a 30-day public comment period after publishing the interim rule in the Federal Register. The agency then may issue a final rule after considering any comments received.

Figure 2: Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement Rulemaking Process



Source: GAO analysis of FAR Council documentation. | GAO-19-691

Recent Reports on DOD’s Use of the LPTA Process

We have issued two reports in response to the defense provisions requiring us to review DOD’s use of the LPTA process. In November 2017, we found that the Army, Navy, and Air Force used the LPTA process for information technology and other services in 9 out of 133 instances when awarding contracts valued at \$10 million or more in the first half of fiscal year 2017.⁹ Contracting officials stated that the LPTA process was used in these instances, in part, because the requirements

⁹GAO-18-139. This report used a \$10 million threshold based on the threshold for GAO’s reporting established in Section 813 of the NDAA for fiscal year 2017 as originally enacted. Section 822 of the NDAA for fiscal year 2018 amended Section 813 by lowering the dollar threshold for GAO’s reporting to contracts exceeding \$5 million.

were well-defined, noncomplex, or recurring. We also found that contracting officials' use of the LPTA process was generally consistent with the criteria listed in the defense provisions.

In November 2018, we estimated that about 26 percent of DOD's contracts and orders valued at \$5 million or more in fiscal year 2017 were competitively awarded using the LPTA process.¹⁰ We found that DOD used the LPTA process to buy equipment, fuel, information technology services, and construction services, among other things. We also found that contracting officials used the LPTA process for reasons consistent with the criteria in the defense provisions. Specifically, contracting officials associated with the 14 contracts and orders we selected used the LPTA process, in part, because they determined there was no trade-off available or determined that DOD would not derive any benefit from paying a premium for offers that exceeded the minimum capabilities. Finally, we found that some contracting officials were confused about how to apply two of the criteria included in the defense provisions. Specifically, contracting officials were confused regarding how to assess life cycle costs associated with their procurements (shown as criterion 6 in table 1) or whether the products and services they were acquiring would be considered expendable in nature (criterion 8). Absent clarification on how to consider these two criteria, we found there was potential for increased risk that DOD contracting officials would not consistently apply the criteria of the defense provisions. Accordingly, we recommended that DOD address how contracting officials should apply these two criteria when using the LPTA process. DOD concurred with our recommendations, and plans to address them by issuing guidance concurrent with publication of the final rule at the end of fiscal year 2019.

Status of Revisions to Regulations Addressing Use of the LPTA Process

Defense and Civilian Agencies' Revisions to the DFARS and the FAR

In December 2018, DOD issued a proposed DFARS rule for public comment to address the defense provisions for using the LPTA process.

¹⁰[GAO-19-54](#).

The December 2018 proposed rule reflected the criteria and limitations for using the LPTA process set forth in the defense provisions, and provided further clarification that these provisions were applicable to both contracts and orders.¹¹ The public comment period ended on February 4, 2019, during which time the Defense Acquisition Regulations Council received 15 comments. In commenting on the proposed rule, industry representatives generally indicated their support for the proposed rule. On June 19, 2019, the Council agreed to move forward with the process for issuing a final rule revising the DFARS. Defense Pricing and Contracting officials stated that DOD expects to finalize the rule by the end of fiscal year 2019.

The time required to develop and finalize the revisions to the DFARS has been longer than provided for under the NDAA for fiscal year 2017, which required the DFARS be revised within 120 days after enactment, which would have been in April 2017. In July 2019, we found that it can take a year or longer to issue a final DFARS rule.¹² For this DFARS case, a Defense Pricing and Contracting official cited several reasons why the revisions have been delayed, including the need to address LPTA-related provisions in two separate NDAs and the need to resolve a backlog of DFARS changes.

In addition to ongoing efforts to update DFARS regulations, DOD officials plan to update the DFARS Procedures, Guidance and Information to provide defense contracting officers with supplemental guidance on applying the new criteria for using the LPTA process. A Defense Pricing and Contracting official stated that this update would be finalized by the end of fiscal year 2019 to coincide with the issuance of the final DFARS rule.

¹¹In November 2018 we found differing opinions among DOD officials regarding whether the criteria in Section 813 would apply to the issuance of competitive orders under multiple-award indefinite-delivery, indefinite-quantity contracts. See [GAO-19-54](#).

¹²GAO, *Defense Acquisitions: DOD Needs to Improve How It Communicates the Status of Regulation Changes*, [GAO-19-489](#) (Washington, D.C.: July 11, 2019).

The FAR Council has also initiated efforts to incorporate the civilian provisions for using the LPTA process into the FAR.¹³ The NDAA for Fiscal Year 2019 required that the FAR be revised to incorporate the civilian provisions within 120 days after enactment, which would have been in December 2018. Officials from the Office of Federal Procurement Policy told us, however, that it generally takes much longer than 120 days to revise the FAR. According to an analysis provided by DOD, it takes 483 days on average to issue a FAR rule. The FAR case to implement the civilian LPTA provisions was initiated in August 2018—the same month the NDAA for Fiscal Year 2019 was enacted. Office of Federal Procurement Policy officials stated that a proposed FAR rule is scheduled to be published in the Federal Register in September 2019. The public comment period for the proposed rule is scheduled to end in November 2019.

Figure 3 shows when the defense and civilian provisions were enacted, when the rules were required to be implemented, and some of the efforts associated with revising both the DFARS and the FAR.

¹³The FAR Council consists of the Secretary of Defense and the Administrators of the Office of Federal Procurement Policy, the National Aeronautics and Space Administration, and the General Services Administration, or their designees. Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). See Appendix I for additional details on council membership.

Figure 3: Time Frames Associated with Efforts to Revise the Defense Federal Acquisition Regulation Supplement (DFARS) and Federal Acquisition Regulation (FAR)



DFARS = Defense Federal Acquisition Regulation Supplement
 FAR = Federal Acquisition Regulation

Source: GAO analysis of defense and civilian provisions for using LPTA and agency documentation. | GAO-19-691

Note: DOD provisions: National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 813(b) (2016) (codified as amended at 10 U.S.C. § 2305 note); National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 822(b)(1) (2017) (codified at 10 U.S.C. § 2305 note); civilian agency provisions: John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 880(b) (2018) (codified at 41 U.S.C. § 3701 note).

Current Agency Guidance for Using LPTA

Of the six agencies we reviewed, we found that DOD and DHS had existing source selection guidance that already reflected some of the criteria for using the LPTA process identified in the defense and civilian provisions. The other four civilian agencies did not have source selection guidance specific to using the LPTA process. Table 3 shows the status of selected agencies' existing guidance related to the LPTA process.

Table 3: GAO Assessment of Whether Selected Agencies' Existing Guidance Generally Reflected Statutory Criteria Related to the Lowest Price Technically Acceptable (LPTA) Process

Criteria for using LPTA	Generally reflected in existing agency guidance					
	DOD	DHS	HHS	VA	GSA	USDA
1. Clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.	yes	yes	no	no	no	no

Criteria for using LPTA	Generally reflected in existing agency guidance					
	DOD	DHS	HHS	VA	GSA	USDA
2. Agency would realize no, or little, value from a proposal exceeding the solicitation's minimum technical requirements.	yes	yes	no	no	no	no
3. The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.	yes	yes	no	no	no	no
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.	yes	yes	no	no	no	no
5. The contracting officer has included a justification for the use of the LPTA process in the contract file.	no	no	no	no	no	no
6. The lowest price reflects full life cycle costs, including for operations and support.	no	no	no	no	no	no
7. DOD would realize little or no additional innovation or future technological advantage by using a different methodology.	yes	N/A	N/A	N/A	N/A	N/A
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.	no	N/A	N/A	N/A	N/A	N/A

Legend

DOD = Department of Defense
 DHS = Department of Homeland Security
 HHS = Department of Health and Human Services
 VA = Department of Veterans Affairs
 GSA = General Services Administration
 USDA = United States Department of Agriculture
 yes= Criteria is generally reflected in existing agency guidance
 no = Criteria is not reflected in existing agency guidance
 N/A= Not Applicable

Source: GAO analysis of DOD and selected civilian agencies' regulations and guidance | GAO-19-691

Note: DOD provisions: National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 813(b) (2016) (codified as amended at 10 U.S.C. § 2305 note); civilian agency provisions: John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 880(b) (2018) (codified at 41 U.S.C. § 3701 note).

We found the following:

- DOD's March 2016 Source Selection Procedures generally includes five of the eight criteria for using the LPTA process. A Defense Pricing and Contracting official stated that this guidance could be updated after the DFARS rule is implemented and the Procedures, Guidance, and Information resource is updated.
- The DHS September 2013 Source Selection Guide generally includes the first four of the six criteria for using the LPTA process. DHS officials stated that they plan to update their guidance after the FAR is amended to reflect the criteria and limitations for using LPTA.

- Acquisition policy officials from VA, GSA, USDA, and HHS stated that they do not have agency-specific guidance for using the LPTA process beyond what is currently provided for under the FAR. These officials stated that they were waiting for regulations to be finalized before determining if there is a need to develop any new guidance.

DOD Used the LPTA Process More Frequently Than Selected Civilian Agencies in Fiscal Year 2018

Based on the results of our generalizable samples, we estimate that the selected DOD components used the LPTA process for about 25 percent of competitive contracts and orders valued at \$5 million or more in fiscal year 2018, compared to about 7 percent of such contracts and orders at selected civilian agencies, as shown in Table 4.¹⁴

Table 4: Estimated DOD and Civilian Agencies' Use of the Lowest Price Technically Acceptable (LPTA) Process in Fiscal Year 2018 for Competitive Contracts and Orders Valued at \$5 Million or More

DOD and civilian agencies	Total number of contracts and orders reviewed	Number using the LPTA process	Estimated percentage using the LPTA process
Department of Defense (DOD) ^a	97	24	25 ^b
Civilian agencies ^c	97	7	7 ^d

Source: GAO analysis of sample data from the Federal Procurement Data System-Next Generation and data provided by selected agencies. | GAO-19-691

^aThe selected DOD contracts and orders were awarded by the Army, Navy, Air Force, and Defense Logistics Agency.

^bThe margin of error is +/-10 percent for the DOD sample.

^cThe selected civilian agencies contracts and orders were awarded by the General Services Administration and the Departments of Veterans Affairs, Health and Human Services, Homeland Security, and Agriculture.

^dThe margin of error is +/-7 percent for the civilian agency sample.

Our findings regarding how often DOD uses the LPTA process are consistent with what we found in our prior work. In November 2018, for

¹⁴The margin of error is +/-10 percent for the DOD sample and +/-7 percent for the civilian agency sample.

example, we reported that Army, Navy, Air Force, and DLA awarded about 26 percent of contracts and orders using the LPTA process in fiscal year 2017.¹⁵ In November 2017, we reported that officials told us the LPTA process was used in instances where the requirements were well-defined, noncomplex, or recurring.¹⁶

This is the first year we were required to evaluate civilian agencies' use of the LPTA process. Civilian agency officials we interviewed provided various perspectives on the extent to which their agency used the LPTA process.

- HHS officials told us that their acquisitions are generally complex, so the LPTA process is not often deemed the appropriate mechanism for determining best value.
- USDA officials told us that they have few acquisitions valued at more than \$5 million, and that those acquisitions are likely to have more complex requirements. In such cases, the officials told us, technical and performance considerations generally would be more important than price factors. In analyzing FPDS-NG data, we found that 1 percent of USDA's fiscal year 2018 contracts and orders were valued at more than \$5 million.
- GSA officials told us their agency often procures services where it is beneficial for industry to propose solutions to a stated need, rather than GSA dictating the solution, such as professional services or information technology systems for a secure network solution. In these cases, officials said they would not have the technical specifications that an LPTA process would require.
- Officials from DHS and VA stated that they do not centrally track the source selection method used and they do not have sufficient information to say why their agencies use LPTA less frequently than other source selection methods.

Within the sample of contracts we reviewed, we found DOD and the five selected civilian agencies bought a variety of products and services using the LPTA process in fiscal year 2018 (see table 5).

¹⁵In our November 2018 report, the margin of error for the DOD sample was +/-7 percent. See [GAO-19-54](#).

¹⁶See [GAO-18-139](#).

Table 5: Products and Services Procured Using the Lowest Price Technically Acceptable (LPTA) Process in Fiscal Year 2018 Contracts and Orders that GAO Reviewed

Products	Number of selected fiscal year 2018 contracts and orders using the LPTA process	
	Department of Defense (DOD) ^a	Civilian agencies ^b
Communication equipment	1	0
Food	1	0
Fuels, lubricants, oils, and waxes	1	0
Furnishings and appliances	1	0
Information technology equipment	1	2
Medical equipment and supplies	1	1
Prefabricated structures	1	0
Weapons	1	0

Services	Number of selected fiscal year 2018 contracts and orders using the LPTA process	
	DOD	Civilian agencies
Construction of structures and facilities	2	0
<i>Information technology and telecommunication services^c</i>	2	1
Installation of equipment	0	1
Maintenance and repair of equipment	2	0
Maintenance and repair of facilities	3	0
<i>Professional support services^c</i>	2	0
Research and development—defense systems	3	0
Social services	0	1
Transportation, travel, or relocation services	1	1
Utilities and housekeeping services	1	0
Total contracts and orders using the LPTA process	24	7

Source: GAO analysis of data from the Federal Procurement Data System-Next Generation and data provided by selected agencies. | GAO-19-691

Note: The numbers reported are not generalizable.

^aThe selected DOD contracts and orders were awarded by the Army, Navy, Air Force, and Defense Logistics Agency.

^bThe selected civilian agency contracts and orders were awarded by the General Services Administration and the Departments of Veterans Affairs, Health and Human Services, Homeland Security, and Agriculture.

^cInformation technology and telecommunication services and professional support services could be considered within the categories for which Section 813 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 or Section 880 of the NDAA for Fiscal Year 2019 require agencies to avoid use of the LPTA process to the maximum extent practicable.

We found that four of these DOD contracts and orders and one civilian agency order were for services that could be considered within the categories for which the defense and civilian provisions place limitations on, but do not prohibit, use of the LPTA process. In November 2018, we found that DOD contracting officers generally justified the use of the LPTA process for products and services in these categories.¹⁷ As described earlier in this report, the DFARS and FAR are in the process of being revised and do not currently address the limitations on the use of LPTA for these products and services.

Agency Comments

We provided a draft of this report to OFPP, DOD, VA, HHS, GSA, DHS, and USDA for review and comment. OFPP, DOD, GSA, DHS and HHS provided technical comments, which we incorporated as appropriate. VA and USDA told us that they had no comments on the draft report. We are sending copies of this report to the appropriate congressional committees, the Director of the Office of Management and Budget, the Secretary of Defense, the Administrator of General Services, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Secretary of Agriculture, and the Secretary of Health and Human Services. 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

¹⁷See [GAO-19-54](#).

List of Committees

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Chairman

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Ron Johnson
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The Honorable Gary Peters
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The Honorable Pete Visclosky
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The Honorable Ken Calvert
Ranking Member
Subcommittee on Defense

Letter

Committee on Appropriations
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Section 813 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017, as amended, included a provision that we report on the number of instances where Department of Defense (DOD) used the lowest price technically acceptable (LPTA) process for contracts exceeding \$5 million, as well as provide an explanation of how acquisition officials considered the new criteria in making a determination to use the LPTA process. We have previously issued two reports in response to this provision. Subsequently, Section 880 of the NDAA for Fiscal Year 2019 included a provision that we report on the number of instances where civilian agencies used the LPTA process for contracts exceeding \$5 million, as well as provide an explanation of how acquisition officials considered the six criteria in making a determination to use the LPTA process. This report, which addresses both provisions, describes (1) the status of regulatory changes required by the defense and civilian provisions for using the LPTA process and (2) the extent to which DOD and selected civilian agencies used the LPTA process to competitively award contracts and orders valued at \$5 million or more in fiscal year 2018, and what they bought using this process.

To address both objectives and select the DOD components and civilian agencies included in our scope, we used data from the Federal Procurement Data System-Next Generation (FPDS-NG) to identify the population of DOD and civilian agency contracts and orders that were reported as competitively awarded and valued at \$5 million or more in fiscal year 2018. For DOD, we focused our review on the top four DOD components—Army, Navy, Air Force, and Defense Logistics Agency (DLA)—because they accounted for about 5,400—or about 88 percent—of all DOD contracts and orders valued at \$5 million or more that were reported as competitively awarded in fiscal year 2018. Similarly, we focused our analysis on the top five civilian agencies—the Departments of Veterans Affairs (VA), Health and Human Services (HHS), Homeland Security (DHS), and Agriculture (USDA) and the General Services Administration (GSA)—which accounted for about 3,000—or about 66 percent—of all civilian agency contracts and orders valued at \$5 million or more that were reported as competitively awarded in fiscal year 2018.

To describe the status of regulatory changes governing the use of the LPTA process, we obtained information on agency officials' efforts to amend the Defense Federal Acquisition Regulation Supplement (DFARS) and the Federal Acquisition Regulation (FAR).¹ To do this, we met with DOD and Office of Federal Procurement Policy officials responsible for overseeing the regulatory changes. We also reviewed DOD's December 2018 proposed rule to revise the DFARS and the 15 public comments DOD received on the proposed rule. Because revisions to the FAR and DFARS have not been finalized, regulations do not yet require or provide guidance to acquisition officials on how to consider the new criteria. Therefore, we also analyzed agency guidance and interviewed acquisition and contracting policy officials at DOD and each of the selected civilian agencies to determine whether agencies had existing guidance that addressed the defense and civilian provisions, in whole or in part. Specifically, we reviewed agency-specific source selection guidance from DOD, DHS, and VA. GSA, USDA, and HHS do not have source selection guidance that specifically addresses the LPTA process.

According to officials, DOD and the selected civilian agencies do not maintain centralized data on whether the LPTA process is used to award contracts and orders. Consequently, to describe the extent to which DOD and civilian agencies used the LPTA process in competitively awarded contracts and orders valued at \$5 million or more in fiscal year 2018, we used FPDS-NG to select two generalizable random samples of contracts and orders to estimate the use of LPTA by the DOD components and the

¹The FAR Council assists in the direction and coordination of government-wide procurement policy and regulatory activities. The FAR Council consists of the Secretary of Defense and the Administrators of the Office of Federal Procurement Policy, the National Aeronautics and Space Administration, and the General Services Administration, or their designees. Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). The DAR Council is responsible for developing and coordinating recommendations for revisions to the DFARS, which supplements the Federal Acquisition Regulation. The DAR Council consists of a chair, a deputy chair, and a representative from each of the following DOD components: Air Force, Army, Navy, Defense Contract Management Agency, and Defense Logistics Agency. The CAA Council assists the Administrator of the General Services Administration in developing and maintaining the FAR system by developing or reviewing proposed changes to the FAR. The CAA Council consists of a chairperson, who is a representative of the Administrator of the General Services Administration, and representatives from 19 other civilian agencies. See FAR § 1.201-1.

civilian agencies within our scope.² This resulted in samples of 102 contracts and orders for the four selected DOD components and 100 for the five selected civilian agencies.³

We removed five contracts and orders from our DOD sample: two contracts and one order because they were incorrectly reported by the agency in FPDS-NG as having been competitively awarded, and two contracts because they were classified.⁴ We removed three contracts and orders from our civilian agency sample: two orders because they were incorrectly reported by the agency in FPDS-NG as having been competitively awarded, and one contract because it was incorrectly reported as having an estimated value of more than \$5 million.

After removing these contracts and orders, our generalizable sample consisted of 97 DOD contracts and orders and 97 civilian agency contracts and orders. For each contract and order in our sample, we requested that the selected agencies identify whether the LPTA process was used. We independently verified agency responses by reviewing the solicitations for each of the contracts and orders within our two samples. We also verified relevant FPDS-NG data on estimated value and competition using agency-provided documentation for the contracts and orders we reviewed. Based on this, we determined these data were sufficiently reliable for us to estimate the percentage of contracts and orders valued at \$5 million or more that the four components within DOD and the five selected civilian agencies competitively awarded in fiscal year 2018 using the LPTA process.

²We 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 that could have been drawn would contain the true percentage of competed contracts and orders valued \$5 million or more.

³The civilian agency sample included contracts awarded under GSA's Federal Supply Schedule (FSS) program. By statute, FSS contracts qualify as competitive. See 41 U.S.C. § 152(3). As explained by GSA officials, however, the LPTA source selection process is not applicable to these contracts because they are awarded under open solicitations—i.e., standing solicitations that generally allow firms to submit offers at any time. GSA officials noted that agencies may use the LPTA process when placing orders under FSS contracts.

⁴This is consistent with the methodology we employed in our November 2018 report. See [GAO-19-54](#).

We also used FPDS-NG product and service codes to identify whether the LPTA contracts and orders in our sample could be considered to be within one of the categories that the defense and civilian provisions direct agencies to avoid use of the LPTA process to the maximum extent practicable.⁵ The regulatory changes required by the defense and civilian provisions are not yet in place, and the defense and civilian provisions do not explicitly prohibit use of the LPTA process to acquire these categories of products and services. Therefore, we did not evaluate the reasons why an agency may have used the LPTA process in these instances. The findings based on our review of the product and services codes for the LPTA contracts and orders in our sample are not generalizable.

We conducted this performance audit from February 2019 to September 2019 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.

⁵Product and service codes are used within FPDS-NG to identify what is purchased under a contract or order. In cases where a contract or order will include more than one product or service, agencies are to select the code for the predominant product or service being purchased.

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), Heather B. Miller (Analyst-in-Charge), Sarah Cantatore, Matthew T. Crosby, Lorraine Ettaro, Lori Fields, Stephanie Gustafson, Julia Kennon, Sarah Martin, Alyssa Weir, and Khristi Wilkins made key contributions to this report.

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