

# GAO Highlights

Highlights of [GAO-24-106403](#), a report to congressional committees

## Why GAO Did This Study

Recently, DOD has experienced challenges indemnifying—or providing financial protection to—contractors working on certain weapon systems. A congressional report expressed concern that DOD’s application of indemnification laws and an increase in programs with unusually hazardous risks could affect DOD’s ability to field advanced weapon systems.

The report included a provision for GAO to report on DOD’s indemnification of contractors against unusually hazardous risk. GAO’s report examines (1) how DOD has indemnified risk related to contracts over the past 15 years and how it makes those decisions, (2) how defense contractors obtain insurance and the risk factors that influence insurance coverage decisions, and (3) what indemnification challenges, if any, DOD and contractors have experienced and may experience in the future.

GAO analyzed available indemnification data from six selected DOD components—including the military departments, Missile Defense Agency, and Defense Logistics Agency—from 2008 through 2022; reviewed government-wide and DOD indemnification policies and regulations; and interviewed officials at DOD, five selected defense contractors, and four selected insurers.

## What GAO Recommends

GAO is recommending that DOD encourage contracting officials to consider using existing expertise within DCMA to improve the indemnification request review process. DOD agreed with GAO’s recommendation.

View [GAO-24-106403](#). For more information, contact Shelby S. Oakley at (202) 512-4841 or [oakleys@gao.gov](mailto:oakleys@gao.gov).

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# DEFENSE CONTRACTING

## DOD Should Encourage Greater Use of Existing Expertise to Review Indemnification Requests

## What GAO Found

When a contract involves unusually hazardous or nuclear risk, which insurers may decline to cover, the government may indemnify defense contractors. This indemnification financially protects contractors from liability arising from a catastrophic incident. Contractors report that it also incentivizes them to complete work that would otherwise be financially untenable, as an incident could exceed the limit of a contractor’s commercial insurance policy.

### Financial Protection Provided by Commercial Insurance and Government Indemnification

Type of financial protection	Coverage provided
Commercial insurance	<ul style="list-style-type: none"><li>Coverage provided for claims involving covered contractor products, subject to the limit of the insurance policy</li></ul>
Government indemnification	<ul style="list-style-type: none"><li>Coverage provided for claims, losses, or damages that arise out of or result from a risk that the contract defines as unusually hazardous or nuclear, and is not compensated for by insurance or other means<sup>a</sup></li></ul>

Source: GAO analysis of aviation insurance industry and defense contractor information. | [GAO-24-106403](#)

<sup>a</sup>Indemnification coverage is limited in some circumstances. For example, contractors will not be indemnified against government claims against the contractor or for losses or damages affecting the contractor’s property, if the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of certain contractor officials.

Indemnification requests are infrequent and generally approved. The Department of Defense (DOD) components that GAO reviewed reported receiving only about 350 indemnification requests over the past 15 years. Components’ processes for evaluating indemnification requests varied. GAO found that contracting officials at some components were unaware of or did not use a specialized insurance review team within the Defense Contract Management Agency (DCMA) to assist in their evaluations. Components that did use this team found the reviews helpful. Lack of knowledge and use of this expertise means components may be missing an opportunity to facilitate the review process.

Defense contractors generally obtain coverage for their work from multiple multinational insurers. Insurers develop a comprehensive risk profile on contractors to determine what coverage they will provide. According to industry representatives, world events and market volatility in recent years shrunk the insurance market and reduced coverage available to contractors. Insurer representatives that GAO interviewed stated that as a result, government indemnification is an increasingly important factor they consider when providing coverage to defense contractors.

DOD experienced challenges negotiating indemnification requests related to weapons carried on *Virginia* class submarines. Those challenges were resolved, but officials could not estimate the impact of these negotiations due to pre-existing program delays. Additionally, while contractors have expressed concern about not defining unusually hazardous risk in regulation, DOD officials noted the importance of maintaining the flexibility to consider indemnification requests based on each component’s unique mission profile.