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In the Appeal of ST Corporation, Inc.; OPA-PA-20-008

Claire Pollard <cpollard@rwtguam.com>

Mon, Jan 25, 2021 at 4:58 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>, mwolff@oagguam.org

Dear Mr. Hernandez:

Please see attached documents to be filed in the above-referenced matter. Please feel free to contact our if you have any questions. Thank you.

--

Best,

*Claire Pollard***RAZZANO WALSH & TORRES, P.C.**

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3 attachments**Witness List.pdf**

42K

**Exhibit List.pdf**

3724K

**Hearing Brief.pdf**

456K

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*Attorneys for Appellant
ST Corporation*

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

ST Corporation,

Appellant.

DOCKET NO. OPA-PA-20-008

EXHIBIT LIST

Appellant, ST Corporation, submits its Exhibit List for the trial scheduled for February 1, 2021:

EX.	DATE	DESCRIPTION
1	DEC. 3, 2020	Procurement Record for GSA-047-20
2	DEC. 11, 2020	Agency Report for GSA-047-20
3	OCT. 2014	U.S. Government Accountability Office Report entitled Market Research Better Documentation Needed to Inform Future Procurements at Selected Agencies
4	JAN. 25, 2021	Gain Laundry Detergent Powder, 120 Loads

5	JAN. 25, 2021	Gain Laundry Detergent Powder, 80 Loads
6	JAN. 25, 2021	Gain Laundry Detergent Powder, 40 Loads
7	JAN. 25, 2021	Tide Laundry Detergent Powder, 102 Loads
8	JAN. 25, 2021	Tide Laundry Detergent Powder, 80 Loads
9	JAN. 25, 2021	Glade Air Freshener, Crisp Waters Scent, 8oz
10	JAN. 25, 2021	Febreze Air Freshener, Linen & Sky Scent, 8.8oz

Appellant reserves the right to introduce and use any exhibit identified in the exhibit list submitted by the General Services Agency.

Respectfully submitted this 25th day of January, 2021.

RAZZANO WALSH & TORRES, P.C.


By: 
JOSHUA D. WALSH
EDWIN J. TORRES
Attorneys for Appellant
ST Corporation

EXHIBIT 1

PROCUREMENT APPEAL
OPA-PA-20-008

PROCUREMENT RECORD

Table of Contents:

- 1. Copy of Protest**
- 2. Protest Response**
- 3. Original Bid Solicitation**
- 4. Bid Abstract / Bid Register /
Bid Acknowledgement Forms**
- 5. Previous Invitation for Bid (GSA-118-16 / P186X00012)**
- 6. Amendments 1 and 2**
- 7. Questions and Response**
- 8. Copy of Requisition**
- 9. Copy of Advertisement**
- 10. Copy of Other Correspondence**

EXHIBIT 2

PROCUREMENT APPEAL
OPA-PA-20-008

AGENCY REPORT

Table of Contents:

- 1. Agency Report**
- 2. Copy of Protest**
- 3. Protest Response**
- 4. Original Bid Solicitation**
- 5. Bid Abstract / Bid Register /
Bid Acknowledgement Forms**
- 6. Previous Invitation for Bid (GSA-118-16 / P186X00012)**
- 7. Amendments 1 and 2**
- 8. Questions and Response**
- 9. Copy of Requisition**
- 10. Copy of Advertisement**
- 11. Copy of Other Correspondence**

EXHIBIT 3



Report to the Subcommittee on
Financial and Contracting Oversight,
Committee on Homeland Security and
Governmental Affairs, U.S. Senate

October 2014

MARKET RESEARCH

Better Documentation Needed to Inform Future Procurements at Selected Agencies

GAO Highlights

Highlights of GAO-15-8, a report to the Subcommittee on Financial and Contracting Oversight, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The federal government spends hundreds of billions of dollars annually to acquire goods and services from the private sector to support agency missions. Market research—the process used to collect and analyze data about capabilities in the market that satisfy agency needs—is critical to inform decisions about how best to acquire these goods and services.

GAO was asked to examine how federal agencies conduct and use market research. This report assesses (1) selected agencies' market research guidance and policy and (2) how selected agencies conducted market research on selected procurements. GAO reviewed federal regulations and market research policy and guidance at DOD, DHS, and DOT—three agencies GAO selected based on fiscal year 2012 contract obligations and the mix of products and services procured. GAO also reviewed policies and guidance issued by the FAA, which is not subject to the Federal Acquisition Regulation. To assess how market research was conducted on individual contracts, GAO reviewed a nongeneralizable sample of 28 contracts selected based on dollar value and analyzed contract files.

What GAO Recommends

To inform future acquisitions, GAO recommends that the Secretary of Transportation update its market research guidance and the Secretaries of Defense and Homeland Security take action to ensure their acquisition personnel clearly document the basic elements of the market research that was conducted. The agencies concurred with these recommendations.

View GAO-15-8. For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapoli@gao.gov.

October 2014

MARKET RESEARCH

Better Documentation Needed to Inform Future Procurements at Selected Agencies

What GAO Found

Market research guidance at the Departments of Defense (DOD), Homeland Security (DHS), and Transportation (DOT) and the Federal Aviation Administration (FAA) is consistent with federal regulations in terms of market research objectives and builds on the techniques for communicating with industry outlined in federal regulations. All four agencies require that market research be clearly documented and note that documentation can inform current and future procurements. GAO found, however, that the agencies' guidance varied on the specificity of market research documentation. For example, DOD, DHS, and FAA guidance identify specific market research elements to be documented. Based on analysis of these market research elements, GAO identified four elements which, if recorded, would provide an understanding of the research completed. These elements include the market research methods used, when it was conducted, an analysis of vendor capabilities, and a conclusion. DOT's market research guidance did not require specific elements to be documented, which increases the risk that it would not be available to inform future procurements.

All 28 contracts GAO reviewed included some evidence of the market research conducted. The market research conducted on the 12 higher dollar contracts GAO reviewed tended to be more robust and include more techniques that involved outreach to vendors—such as issuing requests for information to industry—which appeared to help promote competition. Agencies did not take advantage of many available market research techniques on the 16 lower dollar contracts GAO reviewed and as a result may have missed opportunities to promote competition (see figure).

Figure: Market research techniques for 28 contracts GAO reviewed
Higher dollar contracts (above \$10 million)



Lower dollar contracts (between \$500,000 and \$10 million)



Degree of competition achieved

Multiple offers received
 One offer received
 Not competed

Market research techniques

Included communication with industry

Source: GAO analysis of DOD, DHS, DOT, and FAA documentation. | GAO-15-8

GAO also identified limitations in the market research for seven DOD and DHS lower dollar contracts that appeared to be incomplete or outdated. For example, DHS relied on incomplete information regarding potential vendors' ability to meet its requirement for parking services. Further, in 14 of the 28 contracts, the four agencies did not document one or more of four basic elements that GAO's review of agency guidance identified as important to the ability to understand the research. GAO identified this shortfall most often on lower dollar contracts reviewed at DOD and DHS. Internal control standards state that significant events need to be clearly documented so as to ensure management directives are carried out. Not documenting basic elements of the market research potentially limits the ability of agency acquisition personnel to use market research to inform future procurements, a goal identified in agency guidance.

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DOD	Department of Defense
DOT	Department of Transportation
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration
FPDS-NG	Federal Procurement Database System – Next Generation
OMB	Office of Management and Budget
OPO	Office of Procurement Operations

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October 9, 2014

The Honorable Claire McCaskill
Chairman
The Honorable Ron Johnson
Ranking Member
Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate

The federal government spends hundreds of billions of dollars each year to acquire goods and services through the commercial marketplace to enable agencies to fulfill their missions. These needs range from simple goods readily available in the marketplace, such as office supplies, to services such as janitorial services, to complex goods and services such as information technology systems. Market research—the process used to collect and analyze data about capabilities in the market that could satisfy an agency’s needs—is a critical step in the acquisition process, informing key decisions about how best to acquire goods and services. For example, effective market research can help agencies determine the availability of vendors to satisfy requirements; knowledge of marketplace suppliers and prices can be critical to the government’s ability to negotiate a good deal and foster competition. On the other hand, poor market research techniques could lessen the government’s ability to achieve competition and negotiate fair and reasonable prices.

You asked us to assess how federal agencies are conducting and using market research. This report assesses (1) selected agencies’ guidance and policy on market research and (2) how selected agencies conducted market research on selected procurements. To assess agency guidance and policy on market research, we reviewed and identified criteria for the conduct and use of market research in government-wide regulations and policy, such as the Federal Acquisition Regulation (FAR), including FAR Subpart 7.1—Acquisition Plans and FAR Part 10—Market Research, and Office of Management and Budget (OMB) memorandums related to

market research.¹ To assess specific agency guidance and policy and to illustrate how market research is performed at agencies of various sizes and that procure a range of products and services, we selected three departments for the review—the Department of Defense (DOD), the Department of Homeland Security (DHS) and the Department of Transportation (DOT). We selected these departments based on fiscal year 2012 contract obligations—the most recent fiscal year of information available when we started our review—and to get a good mix of products and services procured. Within each department, we selected two components for further review—DOD’s Department of the Army and Defense Logistics Agency (DLA); DHS’s Office of Procurement Operations (OPO)² and U.S. Customs and Border Protection (CBP); and DOT’s Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA)—based primarily on their fiscal year 2012 obligations. For each department and component, we reviewed guidance and policy related to market research, including agency supplements to the FAR, market research guides and templates, and policy memorandums that reference market research, such as DOD’s Better Buying Power policy memorandums. Key agency guidance reviewed included DOD’s Defense Standardization Program, Market Research: Gathering Information about Commercial Products and Services, SD-5; DHS’s Market Research Guide; DOT’s Market Research Guide, Acquisition Policy DOT Dash 2010-11; and FAA’s Procurement Guidance T3.2.1.2—Market Analysis.³ Since the FAR and DOT acquisition regulation do not apply to FAA acquisitions, we analyzed FAA policy and

¹Office of Management and Budget, Office of Federal Procurement Policy, *“Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry During the Acquisition Process*, Memorandum for Chief Acquisition Officers, Senior Procurement Representatives, Chief Information Officers (Washington, D.C.: Feb. 2, 2011) and Office of Management and Budget, Office of Federal Procurement Policy, *“Myth-Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process*, Memorandum for Chief Acquisition Officers, Senior Procurement Representatives, Chief Information Officers (Washington, D.C.: May 7, 2012).

²For the purposes of this report, we considered DHS’s Office of Procurement Operations to be a component.

³While this review focused on guidance applicable across each department and separately for FAA, FHWA noted its Acquisition Customer Service Guide contains additional information on market research techniques.

guidance separately from DOT.⁴ We interviewed senior acquisition officials at each department to develop a better understanding of agency policies and component guidance related to market research and to identify agency initiatives related to market research.

To examine how agencies conducted market research on selected procurements, we used the Federal Procurement Data System-Next Generation (FPDS-NG) to select a nongeneralizable sample of 30 contracts awarded in fiscal year 2012 with contract dollar values of at least \$500,000 from the six components within DOD, DHS, and DOT. We selected this threshold as the contracts above this threshold represented more than 92 percent of contract dollars awarded in fiscal year 2012 at each component reviewed. Within each selected agency component, we created randomized lists of fiscal year 2012 contracts within two strata—(1) contracts valued at more than \$10 million and (2) contracts valued between \$500,000 and \$10 million. The higher dollar stratum represented the greatest portion of contract dollars awarded in fiscal year 2012 within each component—ranging between 79 percent and 98 percent of dollars, while the lower dollar stratum represented a larger portion of contract actions awarded in fiscal year 2012. Within each stratum, we selected a nongeneralizable sample of contracts to obtain, to the extent possible, a mix of products and services and a mix of competed and noncompeted contracts within each component. We selected two contracts from the first stratum and three from the second stratum (five per component) from the randomized lists for each component. Overall, we selected 30 contracts for a more in-depth review. We excluded 2 of the 30 selected contracts from our final analysis—1 from FHWA and one from FAA—because, as of July 31, 2014, we were unable to assess the market research for those contracts due to missing market research documentation and staff changes since the award of the contracts.⁵ As a result, our analysis in this report is based on 28 selected contracts. For each contract, we reviewed

⁴For the purposes of this report, we use the term agency policy and guidance to refer to that issued by DOD, DHS, DOT, as well as FAA. The FAR does not apply to FAA acquisitions pursuant to the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-50 § 348 (1995).

⁵At the conclusion of our review in August 2014, FHWA officials reported they had located the preaward documents for the contract. For the FAA contract, contracting staff were unable to locate the market research for the contract. In both instances the staff responsible for conducting, documenting, or accepting the market research were no longer with the organization.

contract documents related to market research, including market research reports, acquisition plans, justifications and approvals for sole-source awards, price negotiation memorandums and independent government cost estimates, and interviewed or obtained information from cognizant contracting and program officials. The findings from our selected contracts are not generalizable to the population of all contracts within the selected agencies or components.

To assess the reliability of the FPDS-NG data used to select the contracts for review, we compared key data elements from FPDS-NG to the contract documentation, including the contract number, agency name, and whether or not the contract had been competed using full and open competition. Where we found discrepancies relevant to our methodology, we made adjustments to maintain the integrity of our selection criteria. For example, we excluded 7 contracts because the contracts were miscoded in FPDS-NG and therefore should have been excluded from our sample. Specifically, we excluded 5 contracts because they were small business set asides, 1 contract because the total dollar value fell below the \$500,000 threshold for inclusion in the review, and 1 contract because it was a research and development contract. Because we had randomized lists of contracts for each of the components, we replaced the miscoded contracts with another contract. Once we corrected for these errors, we concluded the data obtained was sufficiently reliable for the purposes of this report.

Market research serves several purposes, including identifying sources capable of meeting the government's need, promoting competition, identifying whether commercial items can meet the government's needs, and identifying whether small businesses are capable of meeting the requirement. For the purposes of our review, we focused our work on how market research informed the competition strategy and the contracting officer's analysis of price reasonableness. We did not assess how market research informed the small business determination or how it informed the decision to use a commercial item given GAO has prior work that

focuses on these issues.⁶ Appendix I provides additional details on our scope and methodology.

We conducted this performance audit from August 2013 to October 2014 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

Market research has been a statutory requirement since the passage of the Competition in Contracting Act of 1984, which required the use of market research and acquisition planning, and solicitation of proposals, to obtain competition.⁷ The FAR defines market research as the process used to collect and analyze data about capabilities in the market that could satisfy an agency's procurement needs. The FAR provides general policies and procedures for conducting market research with the goal of arriving at the most suitable approach to acquiring, distributing, and supporting supplies and services.⁸

Market research is conducted throughout various phases of an acquisition, and involves the program office and the contracting office. The program office typically starts the market research in the acquisition planning phase once a need is identified. The program office may then contact its contracting office to coordinate the development of key acquisition documents. The program office is primarily responsible for conducting market research in the early phases of an acquisition and submitting a formal request for contract to the contracting office. Responsibility for market research shifts from the program office to the

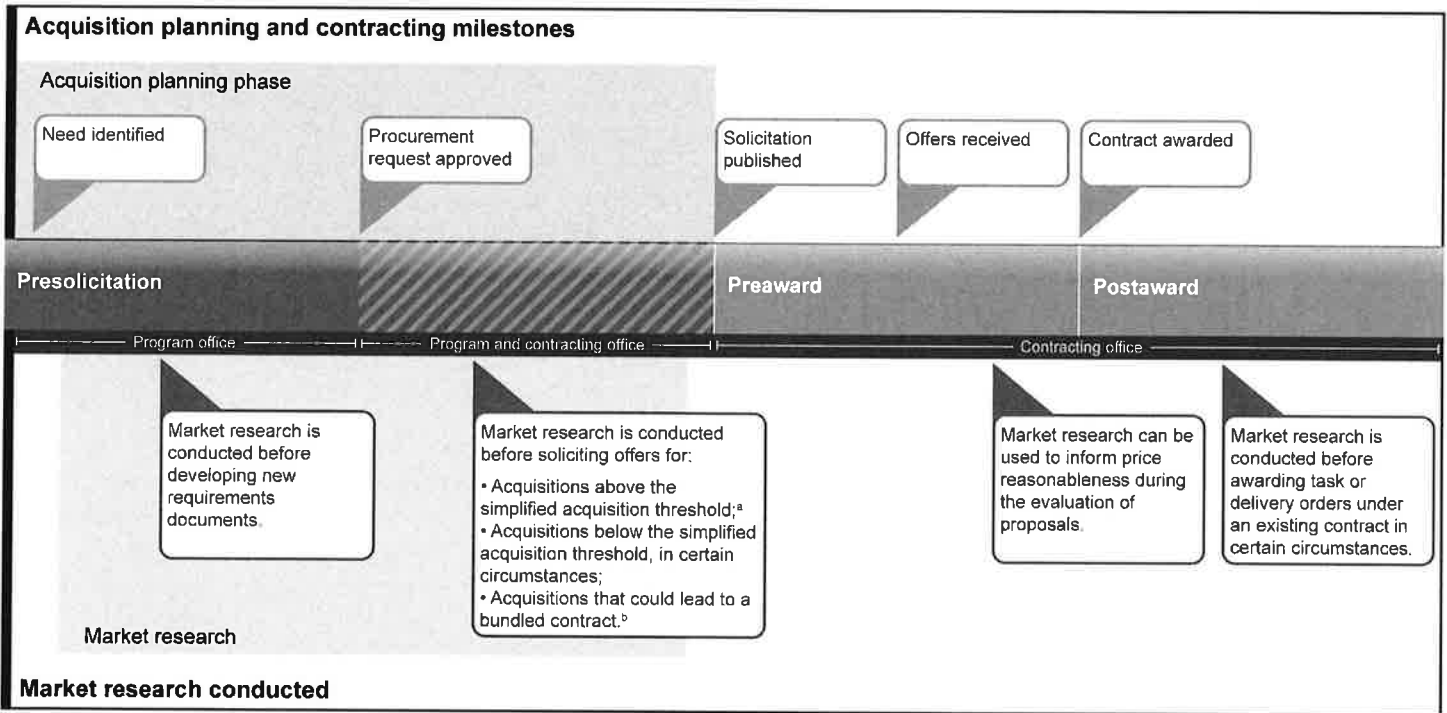
⁶For GAO's recent work on commercial item determinations, see GAO, *Federal Contracting: Commercial Item Test Program Beneficial, but Actions Needed to Mitigate Potential Risks*, GAO-14-178 (Washington D.C.: Feb. 4, 2014). For GAO's recent work on small business contracting, see GAO, *Small Business Contracting: Updated Guidance and Reporting Needed for Consolidated Contracts*, GAO-14-36 (Washington D.C.: Nov. 26, 2013).

⁷Pub. L. No. 98-369, Div. B, tit. VII, § 2711.

⁸FAR § 10.000.

contracting office as the acquisition process progresses (see figure 1). Further, the FAR requires that market research be conducted, appropriate to the circumstances, before developing new requirements documents. In addition, the FAR identifies a number of other points in the acquisition process when market research must be conducted, including prior to soliciting offers for contracts above the simplified acquisition threshold and below this threshold if adequate information is not available and circumstances justify its cost.⁹

Figure 1: Market Research and the Acquisition Process



Source: GAO analysis of federal regulations and agency guidance. | GAO-15-8

^aThe simplified acquisition threshold is generally \$150,000.

^bBundling refers to the consolidating of two or more requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern.

⁹FAR § 10.001(a)(2). The simplified acquisition threshold is generally \$150,000.

Federal regulations provide some flexibility in terms of how and to what extent market research should be conducted, considering the nature of the procurement. Specifically, the FAR provides that the extent of market research depends on a number of factors, such as urgency, estimated dollar value, complexity, and past experience.¹⁰ The FAR also states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition, but does not prescribe any particular format or specific elements for documentation.

We have issued a number of reports with implications for market research. In our 2011 report on acquisition planning, we note that market research is a part of the acquisition planning process, a process that is responsible for successful acquisition outcomes.¹¹ In addition, we issued several reports related to the market research objective of promoting competition. For example, in a January 2012 report reviewing DOD's use of the national security exception (which allows agencies to limit competition for a contract in instances when disclosure of an agency's needs would compromise national security), as well as in a March 2013 report reviewing DOD's use of competitive procedures, we found few details about the market research findings that helped justify the decision to pursue a noncompetitive or limited competition award for some contracts reviewed.¹² In contrast, our best practices work has shown how market research can be used to enhance competition. Specifically, in an April 2013 report identifying leading commercial company practices for acquiring services, we reported that one company sometimes chose to execute a short term contract to buy time if market research showed a more competitive deal could be obtained at a later date.¹³

¹⁰FAR § 10.002(b)(1).

¹¹GAO, *Acquisition Planning: Opportunities to Build Strong Foundations for Better Services Contracts*, GAO-11-672 (Washington, D.C.: Aug. 9, 2011).

¹²GAO, *Defense Contracting: Improved Policies and Tools Could Help Increase Competition on DOD's National Security Exception Procurements*, GAO-12-263 (Washington, D.C.: Jan. 13, 2012); GAO, *Defense Contracting: Actions Needed to Increase Competition*, GAO-13-325 (Washington, D.C.: Mar. 28, 2013).

¹³GAO, *Strategic Sourcing: Leading Commercial Practices Can Help Federal Agencies Increase Savings When Acquiring Services*, GAO-13-417 (Washington, D.C.: Apr. 15, 2013).

While market research is one factor that may affect competition, there are a number of other factors as well, such as whether the government owns the rights to the technical data on a contract and the relationship between a program office and a contracting office. For example, in a May 2014 report reviewing DOD's noncompetitive and one-offer awards, we found that the justifications for half of the noncompetitive contracts and task orders stated that the awards could not be competed due to a lack of technical data.¹⁴ Similarly, in a March 2014 report reviewing the use of the unusual and compelling urgency exception to full and open competition at three federal agencies, we found that for 10 DOD contracts reviewed, the government was unable to compete requirements in part because of a lack of access to technical data packages or proprietary data.¹⁵ In terms of the relationship between the contracting and program offices, in July 2010 we reported that several agencies recognized that program offices place pressure on the contracting process to award new contracts to a specific vendor without competition. Further, we reported that many contracting officials we spoke with recognized that program staff sometimes prefer a specific vendor—often an incumbent—in some cases because a relationship has developed between the program office and the contractor, who understands the program requirements.¹⁶ We also found that a strong incumbent, sometimes coupled with overly restrictive government requirements, are factors that may contribute to receiving only one offer on a competitive procurement.

¹⁴GAO, *Defense Contracting: Early Attention in the Acquisition Process Needed to Enhance Competition*, GAO-14-395 (Washington, D.C., May 5, 2014).

¹⁵GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, GAO-14-304 (Washington, D.C.: Mar. 26, 2014).

¹⁶GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer is Received*, GAO-10-833 (Washington, D.C.: Jul. 26, 2010).

Selected Agencies' Market Research Guidance Is Generally Consistent with Federal Regulations, but Documentation Requirements Vary at Some Agencies

We found that agencies' market research guidance at DOD, DHS, DOT, and FAA is consistent with federal regulations in terms of market research objectives, techniques, and documentation, but agencies' guidance varies from one another on the specificity of documentation required. For example, DHS guidance requires that specific elements of market research be documented and DOD and FAA make recommendations on the types of elements to be documented. In contrast, DOT provides acquisition staff limited instruction, stating that the level of detail might vary based on factors such as whether the market research is for a one-time or recurring requirement but its market research guidance does not require any specific elements to be documented. Based on our review of agencies' market research guidance, we identified four basic market research elements, which, if recorded, would allow those not connected with the research to understand how the acquisition team collected and analyzed information about capabilities within the market to satisfy agency needs. These four market research elements include (1) the methods used, (2) the timeframes when staff used them, (3) an analysis of the capabilities of potential sources, and (4) a conclusion based on this analysis.

Selected Agencies' Guidance Is Consistent with FAR Objectives for Market Research and Provides Additional Techniques for Communicating with the Industry

Our analysis found that, consistent with the FAR, selected agencies' guidance indicates that market research may be used to inform two key decisions. The first decision—deciding whether or not to conduct a full and open competition—is made as part of the acquisition planning process and one of the purposes of market research is to promote competition to the maximum extent practicable.¹⁷ Federal regulations require agencies to perform acquisition planning activities for all acquisitions to ensure that the government meets its needs in the most effective, economical, and timely manner possible.¹⁸ The second decision—deciding whether the prices to be paid for the goods or services is reasonable—is made prior to the award of a contract. This decision is commonly referred to as the “price reasonableness” decision. While not required, the FAR identifies market research as a method for this purpose.¹⁹ More specific information about the FAR provisions and how agency guidance reinforces them follows:

¹⁷FAR § 7.102(a).

¹⁸FAR § 7.102(a) and (b).

¹⁹FAR § 15.404-1(b)(2)(vi).

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- **Competition:** The FAR requires, among other things, that market research and acquisition planning be used to promote and provide for full and open competition or, if not required, to obtain competition to the maximum extent practicable.²⁰ Agencies' guidance reinforces the goal of providing for competition in several ways, for example, by instructing acquisition staff to identify and analyze the capabilities of potential sources prior to making the competition decision, which would include determining whether the requirement should be set aside for small business concerns, open to full and open competition, or sole-sourced to a specific vendor.²¹ DOD and DOT guidance explains that market research helps the acquisition team become informed consumers, enabling the team to develop the optimal procurement strategy. DHS guidance notes that market research should be used to refine requirements to maximize the benefit of competitive market forces, as needed, and to consider if modifying a requirement may allow a commercial, rather than a noncommercial, item to be acquired.
 - **Price Reasonableness:** The FAR identifies the comparison of proposed prices on a contract with prices obtained through market research for the same or similar items as one of several methods for determining price reasonableness.²² Agencies' guidance confirms the usefulness of market research in informing what price would be reasonable for the government to pay for a procurement. For example, FAA guidance states that market research and analysis can help ensure that the government's needs are met in a cost effective manner based on understanding prices in the commercial marketplace. DOD guidance similarly explains that knowledge of market pricing information is necessary for planning for contract obligations and determining price reasonableness.

Agencies' guidance builds upon the market research techniques identified in the FAR by identifying a greater variety of ways of communicating with industry and emphasizing the importance of doing so.²³ The market

²⁰FAR § 7.102(a)(2). The FAR also directs that the results of market research are to be used to determine if sources capable of satisfying the agency's requirements exist. FAR § 10.001(a)(3)(i).

²¹Subpart 6.3 of the FAR specifies the conditions under which an agency may award a contract to a single source without providing for full and open competition. The award of such a contract can be referred to as a sole-source award.

²²FAR § 15.404-1(b)(2)(vi).

²³Section 10.002(b)(2) of the FAR lists techniques for conducting market research.

research techniques described in the FAR, as well as those in agencies' guidance, can be broadly categorized as those used by acquisition staff to (1) obtain information from internal sources, such as reviewing the results of recent market research undertaken to meet similar or identical requirements, or (2) communicate directly with external sources, particularly industry sources (see table 1).

Table 1: Market Research Techniques Identified Under Part 10 of the Federal Acquisition Regulation (FAR) and in Agency Guidance

	FAR	DOD	DHS	DOT	FAA
Internal Information					
Reviewing the results of recent market research undertaken to meet similar or identical requirements	✓	✓	✓	✓	✓
Contacting knowledgeable government officials on market capabilities to meet requirements, including obtaining source lists of similar items from other contracting activities or agencies	✓	✓	✓	✓	✓
Querying the government-wide database of contracts and other procurement instruments intended for use by multiple agencies available at www.contractdirectory.gov/contractdirectory/ and other government and commercial databases	✓	✓	✓	✓	✓
Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line	✓	✓	✓	✓	✓
Reviewing prior acquisition history			✓		
External Information					
Contacting knowledgeable industry officials on market capabilities to meet requirements or obtaining source lists of similar items from trade associations or other sources	✓	✓	✓	✓	✓
Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process	✓	✓	✓	✓	✓
Publishing formal requests for information in appropriate technical or scientific journals or business publications	✓	✓	✓		✓
Participating in interactive, on-line communication among industry, acquisition personnel, and customers	✓		✓		✓
Holding one-on-one meetings with industry		✓	✓	✓	✓
Publishing requests for information or sources sought notices at www.FedBizOpps.gov ^a		✓	✓	✓	
Attending trade fairs and conferences		✓	✓	✓	
Performing site visits (program staff visiting vendors or vendors visiting the agency)		✓	✓	✓	
Preparing a formal survey or questionnaire and sending it to multiple suppliers		✓	✓		✓
Sponsoring industry conferences or industry days		✓	✓		

Source: GAO analysis of part 10 of the FAR and of agency guidance. | GAO-15-8

^aFederal Business Opportunities, commonly referred to as FedBizOpps, is a web-based government portal which allows all potential vendors to consider federal procurement opportunities.

Agencies' guidance generally mirrors the FAR in terms of potential internal techniques that could be used to conduct market research and provides additional means to communicate with industry that are not specified in the FAR. For example, while the FAR suggests that acquisition staff place a request for information in technical or scientific journals or business publications, DOD, DHS, and DOT guidance expands upon this suggestion by indicating that requests for information could be posted on FedBizOpps. A contracting officer could use such a posting to solicit industry response to a questionnaire or obtain industry comment on a draft statement of work on behalf of an acquisition team. Further, a contracting officer can post a sources sought notice—a notice requesting that vendors interested in providing a particular product or service identify themselves—on FedBizOpps. DHS guidance notes that vendors who respond to the notice usually describe their capabilities or similar projects they have conducted, among other things. While DOD guidance also recommends these techniques, it also suggests that acquisition staff take additional measures to reach vendors that have not previously bid on government contracts, such as advertising in business publications. In addition, DOD guidance recommends attending trade shows and conferences as a good source of general information about an industry and DHS guidance identifies these events as places to meet industry leaders and vendors.

To promote industry outreach, each agency in our review has developed guidance, known as vendor communication plans, designed to facilitate interaction between acquisition staff and vendors. Agencies' actions were consistent with an OMB initiative intended to encourage acquisition staff to have productive interactions with industry partners during the acquisition process.²⁴ In a February 2, 2011 memorandum, OMB stated that such outreach is important so that the government has a clear understanding of the marketplace and can award a contract for an effective solution at a reasonable price.²⁵ The memorandum further states that acquisition staff were not taking full advantage of flexibilities offered in the FAR because of their concern that vendors could misinterpret the discussions as obligating the government to conduct business with them and that agencies must remove unnecessary barriers to reasonable

²⁴FAA published its vendor communication plan in July 2009, prior to the OMB initiative.

²⁵See OMB, "Myth-Busting" Memorandum (Washington, D.C.: Feb. 2, 2011) and OMB, "Myth-Busting 2" Memorandum (Washington, D.C.: May 7, 2012).

communication with industry. DOD and DHS guidance cite the importance of clear and frequent communication between government and industry because of benefits for improved acquisition outcomes, including opening the door for more small business participation.

While agencies' guidance identifies a broad array of market research techniques, the guidance also notes that the extent or type of market research will vary, depending on factors including urgency, estimated dollar value, complexity, and past experience. For example, DHS guidance notes that several methods of obtaining information from industry, such as sponsoring presolicitation conferences to discuss industry comments on proposed solicitations, are conducted more typically for complex requirements. DOD guidance recognizes the importance of market research on lower dollar procurements, noting that DOD awards a multitude of lower-dollar contracts for new products or services and that the goals of market research to understand the commercial market remain the same for these procurements. DOD and DOT guidance suggests that acquisition staff weigh the administrative cost of conducting market research to the potential benefits. Similarly, DHS guidance suggests that the acquisition team solicit the contracting officer's advice to avoid requesting more than the minimum information necessary from potential sources when conducting market research. FAA guidance suggests that market research may range from a telephone call to formal market surveys or solicitations requesting information.

Selected Agencies Require Market Research Be Documented, but Vary in the Amount of Specific Information Required

All four agencies require that market research be clearly documented since it can inform current and future procurements, but the guidance varies in terms of the elements that are to be included in the documentation. The FAR requires that for more complex and higher dollar procurements, acquisition personnel prepare written acquisition plans that include a description of prospective sources and address the extent and results of market research and the impact of these findings on various elements of the plan.²⁶ Consistent with the FAR, all of the agencies in our review have guidance regarding acquisition planning for procurements designated as more complex or higher value. At DOD, DHS, and DOT, written acquisition plans are typically required for higher valued

²⁶FAR § 7.105(b)(1). FAR § 7.103(e) directs that agency heads determine criteria and thresholds under which increasingly greater detail and formality in the planning process is required.

acquisitions. For example, at DHS, these plans are typically required for acquisitions of \$10 million and above and, at DOT, written acquisition plans are generally required for procurements greater than \$20 million. FAA has similar requirements for acquisition plans for most procurements greater than \$25,000. In addition, in most cases where a product or service is to be acquired on a sole-source basis, the FAR requires that contracting officers prepare a written justification, also known as a justification for other than full and open competition, which is to include a description of the market research conducted or the reason that market research was not conducted as a part of justifying that a contract be sole-sourced.²⁷ The agencies in our review all have guidance regarding justifications for sole-source contracts, and DHS and FAA's guidance specifically address the requirement to describe the market research in support of the sole-source award.

Beyond the market research information required as part of acquisition plans for more complex, higher dollar value procurements, or as part of the justification and approval for sole-source procurements, we found that the specific type of market research information that must be documented for all procurements, including contracts of lower value, varies considerably by agency. Only DHS required, as of January 2014, that specific elements—such as who conducted the market research, the methods used, and the outcome and impact of the market research—be documented. In contrast, DOD, DOT, and FAA do not require that specific elements be recorded consistently, although DOD and FAA guidance contain recommendations on elements that could be recorded (see figure 2).

²⁷FAR § 6.303-2(b)(8). The FAR outlines similar requirements for orders and blanket purchase agreements above the simplified acquisition threshold established under the federal supply schedules without using competitive procedures. See FAR § 8.405-6(c)(2)(vi).

Figure 2: Required and Recommended Market Research Elements as of July 2014

Agency	Specific elements are required by policy	Specific elements are recommended in guidance or template
Department of Defense		☑
Department of Homeland Security	☑	☑
Department of Transportation		
Federal Aviation Administration		☑

Required Elements at DHS
 Department of Homeland Security Acquisition Manual:
 A market research report is required for contract actions awarded above the simplified acquisition threshold and shall provide, at a minimum, the following information:^a

1. Participants in the market research effort and responsibilities of team members;
2. Market research methods used; and
3. Outcome of the market research identifying potential sources and findings that impact the procurement.

Source: GAO analysis of DOD, DHS, DOT, and FAA guidance. | GAO-15-8

^aThe simplified acquisition threshold is generally \$150,000.

DOD and FAA market research guidance recommends, but does not require, documenting elements similar to the ones DHS requires be documented. In addition, DOD guidance recommends documenting the timeframes during which the market research was conducted, a description of commercial business practices, and related cost and price factors. DOD, DHS, and FAA provide templates or sample memorandums for the contract file that contain placeholders for recommended information.²⁸ DOT market research guidance does not specify elements to be documented, and notes that the type and amount of information to be kept should be based on how it may be used in the future and whether the documentation is for a one-time, unique, or recurring requirement.

DOD, DHS, and FAA have taken steps to enhance the documentation of market research information over the past few years. For example:

²⁸DOD's template applies specifically to services acquisitions.

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- In April 2012, DOD officials issued a template, including recommended information, for preparing market research reports for services acquisitions. The template was prepared by a working group that identified best practices for conducting and documenting market research to allow for more effective collection and sharing of market research across DOD. The first part of the template is for recording basic information, such as a description of vendor capabilities and small business opportunities. The second part of the template is targeted toward more complex high-dollar value procurements and requires more detailed information about the commercial market, such as a description of the demand for the service and an assessment of fair and reasonable prices. DOD officials reported to us that they are considering whether use of the template should be mandatory.
 - In October 2012, FAA issued its sample Market Research Memorandum to the File with recommended elements to record, and in April 2013, FAA first required the use of written acquisition plans. The acquisition plan template for acquisitions above the simplified acquisition threshold instructs that the results of market research be recorded, as well as the size and status of each source, and a competition determination—for example, whether the work should be set aside for small businesses.
 - DHS had previously included in guidance that minimum elements be documented. In January 2014 DHS incorporated these required elements into the Department of Homeland Security Acquisition Manual. According to DHS officials, by doing so, the agency elevated the importance of including these elements in market research reports.

Based on our analysis of market research elements identified in DOD, DHS, and FAA policy, guidance, or templates, we identified and discussed with agencies' officials four basic market research elements, which, if recorded, would allow those not connected with the research to understand how the acquisition team collected and analyzed information about capabilities within the market to satisfy agency needs. These four market research elements include (1) the methods used, (2) the timeframes when staff used them, (3) an analysis of the capabilities of potential sources, and (4) a conclusion based on this analysis. DOD, DHS, and FAA market research policies, guidance, or templates included at least three of the four basic elements. For example, at DHS, three of these elements were included in the Department of Homeland Security Acquisition Manual and the fourth element, timeframes, was included in DHS's market research template. However, DOT's market research guidance did not include any specific elements. Internal control standards state that control activities, such as policies and procedures, help ensure

that management directives are carried out and actions are taken to address risks.²⁹ Requiring that specific market research elements be documented in contract files would help ensure that documentation is readily available to inform current and future procurements.

Selected Agencies May Have Missed Opportunities to Promote Competition and Inform Future Procurements on Lower Dollar Contracts

We found that all 28 contracts we reviewed included some evidence of market research, but the market research on higher dollar value contracts—those valued at \$10 million or more—tended to be more robust and appeared to help promote competition. Agencies did not take advantage of many available market research techniques on lower dollar value contracts, and as a result may have missed opportunities to promote competition. In 10 of the 12 higher dollar contracts we reviewed, agency officials conducted outreach to vendors through issuance of requests for information, draft requests for proposals, or other techniques. In some cases, this approach resulted in the agency modifying or clarifying its requirements to encourage competition, and all but one of the higher dollar contracts that conducted some type of formal outreach to industry received more than one offer. In contrast, in only 4 of the 16 lower dollar contracts did DOD, DHS, and DOT officials conduct formal outreach to industry, instead often relying on issuance of a notice that the agency intended to award a contract on a sole-source basis or on a review of the government's acquisition history. In several cases, DOD and DHS officials relied on market research that appeared to be incomplete or outdated. Overall, we identified limitations in the market research supporting seven lower dollar value contracts, all of which were sole-sourced or received only one offer. Similarly, while all 28 contracts we reviewed contained evidence of market research, agency officials often did not document one or more of the four basic market research elements which we identified based on our review of agencies' guidance, potentially limiting the ability to use this market research to inform future procurements. We also found that agencies' officials used market research to inform price reasonableness determinations in most of the contracts we reviewed, though other techniques were also frequently used to inform pricing determinations.

²⁹GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November, 1999).

Market Research on Higher Dollar Value Contracts Involved More Communication with Industry and Contributed to Competition

We found that agencies' market research on the higher dollar value contracts generally involved more communication with industry and these contracts were more often awarded on a competitive basis than were the lower dollar value contracts we reviewed (see figure 3).

Figure 3: Market Research Techniques and Competition Results on 28 Contracts GAO Reviewed

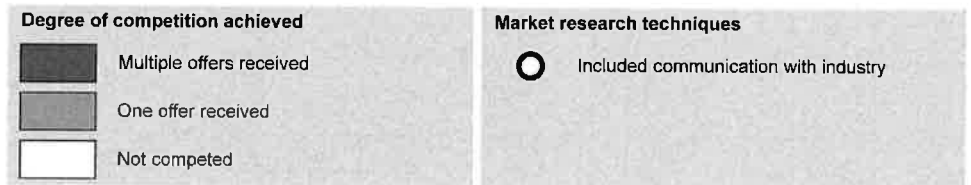
Higher dollar (above \$10 million)

12 contracts reviewed



Lower dollar (between \$500,000 and \$10 million)

16 contracts reviewed



Source: GAO analysis of DOD, DHS, DOT, and FAA documentation. | GAO-15-8

Note: For the purposes of this analysis, we defined communication with industry to include attending industry trade shows or conducting site visits, contacting multiple potential vendors and using their feedback to update or clarify the requirement, or publishing formal requests for information, sources sought notices, or draft solicitations in FedBizOpps.

In particular, we found that for higher dollar contracts, agencies' officials made more extensive use of techniques involving communication with industry, such as issuing requests for information and draft requests for proposals, and holding conferences with vendors—using these types of techniques on 10 of the 12 higher dollar value contracts we reviewed. These methods allowed agencies' officials to gather vendor feedback and collect information that could be used to refine requirements and inform competition determinations. The lower dollar contracts we reviewed relied more extensively on internal sources of information, such as the knowledge of program officials, examinations of acquisition history, or on the issuance of notices of intent to sole-source as the main sources of

market research, rather than on formal outreach to industry.³⁰ Specifically, while market research on 4 of the 16 lower dollar contracts we reviewed involved outreach to industry, there was no outreach to industry on the other 12 contracts reviewed. The FAR states that agencies are encouraged to promote early exchanges of information about future acquisitions to, among other things, improve the understanding of the government's requirement and industry capabilities.

The following examples highlight some market research techniques used by agencies' officials on higher dollar value contracts, conclusions reached based on the market research, and competition outcomes:

- The FAA awarded a \$2 billion contract for data communication integrated services after conducting 14 formal requests for information and other outreach to potential vendors over a 4-year period. The contracting staff used the information gathered from industry to help develop the final requirement. FAA received offers from three vendors it had identified as likely to make offers based on its market research efforts.
- Similarly, on an \$87 million DHS contract for guard services, the contracting specialist identified thousands of potential contractors through a database, narrowed this number to 172 potential vendors by cross referencing the vendor information with online information about vendors with existing government-wide contracts, issued a sources sought notice, evaluated 26 responses to the notice, and ultimately concluded that there were enough sources capable of meeting the need to allow for full and open competition. Eighteen vendors made offers on the contract.
- In a \$72 million DHS acquisition for program management and logistics support, a total of 31 contractors responded to either a request for information posted in 2009 and/or a subsequent one posted in 2011. The feedback obtained through the requests for information led to the conclusion that the acquisition strategy should be revised to address industry questions, comments, and concerns, including issues with funding and performance related to the contract structure. Agency officials therefore issued a sole-source bridge contract, in part so that they could revise the requirement. Additionally, the market research report for this contract stated that

³⁰FAR Part 5.2 generally requires agencies to publish notice on FedBizOpps of proposed contract actions.

while all 31 contractors responding to the requests for information might not make offers or be capable of fulfilling the requirement, the information gathered from the responses gave the agency insight into the capabilities of the marketplace, and led to the conclusion that there would be ample qualified vendors in the market to meet the requirements of a subsequent contract. According to an agency official, the award of the follow-on contract is now in process—being competed among certain small business set aside vendors—and the agency has received multiple offers. The offers are currently being evaluated, and DHS officials anticipate awarding the contract around the close of fiscal year 2014.

Overall, our work found the market research, and in particular, industry outreach efforts, appeared to contribute to the degree of competition achieved on the higher dollar contracts we reviewed. For example, 9 of the 12 higher dollar contracts we reviewed received more than one offer; and in all but one of these cases, agencies' officials conducted some type of formal outreach efforts to industry.

While the higher dollar value contracts tended to be competed and most involved outreach with industry, we found additional market research actions could have potentially promoted competition on a 3-year, \$210 million DLA contract for tax-free fuel in Italy awarded in 2011. In this case, DLA enables U.S. military personnel to purchase fuel on a tax-free basis while stationed there. To do so, DLA issued a solicitation that required potential offerors, among other things, to (1) have at least 1,000 service stations in Italy and (2) be able to accept printed coupons that allowed military personnel to buy the fuel on a tax-free basis. The market research performed by program officials consisted of a list of all of the fuel companies operating in Italy; however, contracting officials confirmed that only two of the nine companies on the list were likely to be able to meet the requirement of 1,000 gas stations included in the solicitation. Both of these companies were incumbents on the prior contract. However, contracting officials stated that one of the two companies, which was an incumbent, did not submit an offer because the continued use of printed coupons was too cumbersome for them. After receiving a single offer, the contracting officer asked the program office whether it was feasible to use a credit card program or a combination of printed coupons and credit cards to meet the need, as agency officials stated that DLA has done in other countries, but the requirement was left unchanged and the contract was awarded to the single vendor that submitted an offer. Contracting officials told us that as of May 2014, they were considering developing a business case analysis to assess the costs and benefits of switching to a

credit card program. DLA officials told us that formally analyzing alternative approaches and changing from a coupon to a credit card program would need to be coordinated through the Italian government since tax-free privileges are a benefit provided by the Italian government.

Market Research on Lower Dollar Value Contracts Was Often Limited and May Have Missed Opportunities to Promote Competition

Lower dollar value contracts we selected were less likely to be competed than higher dollar value contracts—while 6 of the 16 lower dollar value contracts were competed, 3 of those received only one offer, and the other 10 contracts were sole-sourced. As noted previously, market research is to be used to promote and provide for full and open competition or, when not required, to obtain competition to the maximum extent practicable. Even in situations when agency officials anticipate awarding a sole-source contract, the contracting officer is generally required to identify actions, if any, the agency may take to remove or overcome any barriers to competition for future acquisitions of the supplies or services required. Overall, we identified limitations in the market research supporting seven lower dollar value contracts awarded by DOD and DHS, all of which were sole-sourced or received only one offer. As a result, DOD and DHS officials may have missed opportunities to promote competition. In several cases, agency officials relied on market research that appeared to be incomplete or outdated. Examples of these cases are highlighted below:

- Market research on a \$1.6 million DHS contract to rent parking spaces near a DHS building located in Arlington, Virginia, cited multiple potential vendors through a review of prior acquisition history, a government database, and a DHS source list, but the market research did not include any formal outreach to industry. The market research, conducted by a program official, identified three potential parking facilities within one block of the DHS building but did not assess whether potential vendors could provide direct elevator access to the building, a key requirement specifically included in the solicitation. The agency received only one offer from a parking facility adjacent to the building. Subsequently, an agency attorney who reviewed the scope of work wrote that the requirements seemed unusually narrow and that only one vendor would likely be able to provide a parking garage with an elevator that connected to the office building. We found no evidence that DHS used market research to reassess whether DHS's requirement could be modified, and as a result, the agency may have missed opportunities to receive more than one offer.

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- In a \$2 million Army contract for flight simulator training services receiving only one offer, the primary market research was a sources sought notice posted for 10 days on FedBizOpps for which a response was only received from the incumbent vendor. Further, over a 10-year procurement history for these services, market research consisted of two sources sought notices—the one already discussed and one issued in 2006. While the contracting officer doubted whether any other vendors had the capability to fulfill this particular requirement, the contracting officer acknowledged more market research could have been done to ensure this conclusion was accurate, such as outreach to other potential vendors who provide flight simulator services.
 - Despite predating the formation of DHS and agency officials' acknowledgement of technological advances, the market research for a \$627,000 DHS contract for satellite airtime needed to receive global positioning data from tracking devices included in CBP aircraft had not been updated since 1999. According to agency officials, the satellite airtime was tied to the use of those particular tracking devices. Agency officials indicated they reviewed the procurement's acquisition history and issued a notice of intent to sole-source, though the notice was issued after the agency had already awarded the contract. Since the government was required to use the same vendor for both the airtime and the tracking devices, contracting officials deemed a vendor who responded to the notice ineligible. Contracting officials we spoke with acknowledged that the market research was limited and more needed to be done to assess whether there were viable alternatives to the tracking devices and its proprietary satellite airtime.

In two cases, while a lack of technical data rights may have contributed, in part, to challenges competing a contract, we nevertheless found limitations in the market research conducted to inform the acquisition approach.³¹ For example:

³¹With regards to the issue of a lack of technical data rights, DLA officials noted that DLA is responsible for sustainment of weapons systems and does not have data rights for many items they procure. DLA officials stated that if potential alternate sources are not found during market research prior to issuing a solicitation, then DLA Directive clause 52.217-9002 "Conditions for Evaluation of Offers for Part Numbered Items" may be included in the solicitation. This clause may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the name of the approved source, a part number, and a brief description, and the clause provides, among other things, that vendors can offer an alternate product, which could increase competition. DLA Directive § 17.7501(b)(3)(i); 52.217-9002.

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- In a \$589,000, sole-source DLA contract for actuators, the market research consisted of a presolicitation notice that was issued 2 months before the contract was signed, an examination of prior acquisition history with the incumbent, and a market survey, which was sent only to the incumbent, who did not fill it out. Although contracting officials told us that the solicitation was published on DLA's site for contracting opportunities, they also stated that there were few options for conducting market research because the product was designed to adhere to specific government requirements. In addition, officials stated that they typically rely on a program office to provide information about whether a vendor is an approved source, especially in cases where the government does not own the data rights. Contracting officials also told us that this vendor had a history of non-responsiveness and they had not expected to gather any information from the market survey.
 - In a \$694,000 DLA contract for controller monitors, which are one part in a piece of equipment used to provide oxygen to crew members in an aircraft, DLA faced a similar challenge because it did not own the data rights. Our contract review revealed that contracting officials had identified two sources but determined that one of the two sources was not viable because it was a reseller that would obtain the item from the manufacturer; contracting officials told us that they did not pursue this source because they thought that the vendor would likely charge a higher price after obtaining it from the manufacturer. The other main source of market research cited in the contract's justification to sole-source was issuance of a notice of intent to sole-source, where no other vendors responded.

While market research on the lower dollar value contracts we reviewed was often limited, this was not always the case, even in situations where the contract was not competed. For example, our work found that the market research on two lower dollar value, sole-source contracts included in-depth analysis of potential sources found in the market, identification of reasons why the vendor was uniquely qualified to meet the need, and the tradeoffs that would need to be considered to compete the requirement. In one procurement involving a \$1.1 million Army contract for armored windows used on mine clearance vehicles, the market research assessed three vendors and analyzed tradeoffs and costs given that the government did not own the data rights for the windows currently used. Specifically, the market research explained how the contracting officer used Internet searches to identify specific vendors, listed the vendors and websites accessed, and used this information to analyze tradeoffs associated with these potential sources. The market research also referenced attempts to gauge industry interest by issuing a sources

sought notice over 6 months prior to issuing an intent to sole-source notice. The analysis quantified the time and cost associated with reverse engineering the product to produce a set of government-owned data rights, which could be used to qualify new potential sources. The justification and approval also noted that an additional vendor had expressed interest in becoming a qualified source but the agency concluded that the vendor was unsuitable for the current procurement due to the significant amount of time needed to develop a data package.

Basic Market Research Elements Were Not Consistently Documented, Limiting Use for Future Procurements

Our review found that all 28 contracts included some evidence of market research, but acquisition staff did not consistently document four basic elements in the contract file—the methods used, including the timeframes when staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis—which GAO determined would allow those not connected with the research to understand the market research conducted.³² Overall, 14 of the 28 contracts we reviewed included all of these elements in the market research documentation in the contract files. However, while agency guidance describes market research documentation as useful for current and future acquisition decision making, we could not find one or more of the basic elements for 14 of the 28 contract files we reviewed, with 10 of the 14 contracts being ones we categorized as lower value. Nine of these 10 contracts were awarded by DOD and DHS (see figure 4).

³²In the absence of guidance from DOT, we compared the contents of DOD, DHS, and FAA guidance to identify the minimum elements which, if recorded in the contract file, would allow others, such as reviewers or those procuring similar items in the future, to understand the nature of the market research conducted, potential sources, and how it was used.

Figure 4: Number of Contracts Whose Documentation Includes or Excludes Basic Elements

Agency	Documentation included all elements	Documentation excluded at least one element
Department of Defense		
Department of Homeland Security		
Department of Transportation Federal Aviation Administration		
Department of Transportation Federal Highway Administration		
	Total: 14 contracts	Total: 14 contracts

Higher value contract (above \$10 million)
 Lower value contract (between \$500,000 and \$10 million)

Source: GAO analysis of DOD, DHS, DOT, and FAA contract documentation. | GAO-15-8

Overall, 8 of the 12 higher dollar contracts we reviewed contained each of the basic elements, including information on potential vendors and analyses of their capabilities, information more typically missing from the lower dollar value contracts.³³ This was true whether the information was contained in an acquisition plan, the justification for other than full and open competition, or the market research report. For example, for the Army's \$28.5 million contract for the procurement of advisory and assistance services, the written acquisition plan included the names of potential small business vendors who responded to the survey and an assessment of their capabilities. In another example, for an FAA procurement of a \$126.6 million engine generator set program, the market research memo recorded the names of each vendor who responded to a market survey and an evaluation of their capabilities, including whether the vendor had the capacity to meet the requirement with in-house resources.

³³In response to GAO's finding that one of FHWA's higher dollar contracts did not include documentation of all four elements, FHWA officials told us that they considered the market research conducted on the \$20 million contract for legal advisory services to be extensive, noting that as a part of market research the agency reached out to dozens of potential sources. The officials acknowledged, however, that better documentation of the analysis of the capabilities of these sources would have strengthened the overall market research.

The market research documentation on the lower dollar contracts was more likely to be missing at least one element, particularly at DOD and DHS, where only 3 of the 12 lower dollar contracts we reviewed included documentation of all four elements. In particular, lower dollar value contracts were less likely to include information on potential vendors and an assessment of their capabilities. For example, the justification for other than full and open competition on CBP's \$609,000 sole-source procurement for portable receiver devices awarded in September 2012 lacked information describing the capabilities of other possible vendors and the dates on which any market research was conducted. The contract specialist explained that the release of funding late in the fiscal year sometimes prevents staff from drawing up more complete market research documentation. In another example, the acquisition plan for a \$2.3 million DLA contract for the lease of office copy machines lacked information about the capabilities of specific vendors. While the acquisition plan concluded that "at least five vendors could supply the equipment and associated services," it did so without identifying the market research techniques used or the names of the potential vendors. In response to our questions, the contracting office was aware of the names of the five vendors, explaining that prior information and expertise were relied upon due to the non-complexity of the requirement.

Not fully documenting basic elements of market research limits the information and insights that can be carried forward for use with subsequent contracts, especially given the potential for staff turnover in the acquisition workforce and the possibility that the need for the requirements will recur. For example, contracting and/or program staff for 5 of the 20 selected contracts we reviewed at DOD and DHS advised us that the original program or contracting staff were no longer available to respond to questions, and in two of these cases current staff could not fully respond to our questions. As we previously concluded, documenting information is particularly important given the frequent turnover in the acquisition workforce.³⁴ Further, according to agency officials, over three-quarters of the 20 contracts we selected at DOD and DHS provide for requirements that are likely to recur in the future, and therefore, adequately documented market research could prove useful in the future. As we noted earlier, requiring that these basic elements be documented in contract files would be consistent with internal control standards that

³⁴GAO-11-672.

transactions and other significant events need to be clearly documented and the documentation should be readily available for examination so as to ensure that management directives are carried out.³⁵

Market Research Helped Inform Price Reasonableness Determinations in Most of the Contracts Reviewed

The FAR identifies several techniques that can be used to help determine that a price is fair and reasonable, including a comparison between proposed prices received in response to a solicitation or a comparison between proposed prices and the independent government cost estimate.³⁶ While not required by the FAR or agency guidance, agencies' guidance recognizes the usefulness of market research in assessing what price would be reasonable for the government to pay for a procurement. In addition, OMB has stated that outreach to vendors is important so that the government has a clear understanding of the market place and can award a contract for an effective solution at a reasonable price.³⁷ Contracting officers cited one or more market research techniques as contributing to their determination of a fair and reasonable price in 21 of the 28 contracts we reviewed. The market research for 5 of these contracts involved communication with industry.

We identified the use of a variety of market research techniques in determining price reasonableness such as a review of published price lists, reviewing historical prices, and techniques involving communication with industry. While using market research to help inform the price reasonableness determination tended not to involve communication with industry, 5 contracts we reviewed did cite market research techniques that involved communication with industry. The techniques involving communication with industry included obtaining prices through requests for information posted on FedBizOpps, vendor quotes, and government requests. Two of the five were higher dollar contracts—one was competed and received multiple offers and the other was sole-sourced—where the contracting officer used pricing information received from industry in response to government requests for information to determine price reasonableness. For two of the three lower dollar contracts, the market research technique used was to obtain quotes from other vendors

³⁵GAO/AIMD-00-21.3.1.

³⁶The contracting officer may use an independent government cost estimate to help establish the reasonableness of contractors' costs or prices.

³⁷See OMB, "Myth-Busting" Memorandum (Washington, D.C.: Feb. 2, 2011).

to compare to the proposal received—both of these were competed contracts where only one offer was received.

In 5 of the 21 cases where contracting officers cited ways that market research helped in the determination of fair and reasonable prices, contracting officers also cited how this pricing information helped the government to negotiate a price lower than what was originally proposed by the vendor. For example, in the \$210 million DLA contract to provide fuel in Italy, based on our review of contract documentation, the contracting officer reviewed pricing information from the country's marketplace through published pricelists and prior contract prices, and used this information to set pricing goals for negotiations with the vendor. According to the contract file documentation, the government was able to negotiate a lower price for certain types of fuel than what the contractor had originally proposed even though only one offer was received. As we noted previously, however, DLA did not assess whether its requirement to use a printed coupon system could be modified to consider the use of a credit card system, which may have enabled DLA to obtain the benefits of market forces to help negotiate even lower prices.

In contrast, in one case in which the contracting officer cited market research as supporting a fair and reasonable price determination, we found that opportunities to use additional market research or other price reasonableness techniques may have been missed. For a 3-year, \$1.5 million sole-source contract awarded by DHS for membership services to an organization that oversees the creation and use of business guidelines, agency officials were unable to provide documentation based on market research or other techniques to fully support their price reasonableness decision. The justification and approval stated that the contracting officer had determined the anticipated prices to be fair and reasonable based on price comparisons to the prior contract, and by comparing a published price list against the government's independent government cost estimate. However, DHS officials admitted that the scope of work for the previous contract was different from the scope of work for the current contract and that the contracts could not be fully compared. In addition, we found that the price of annual membership services under the current contract and as cited in its independent government cost estimate was more than 10 times higher than the price

for full membership services as listed on the published price list.³⁸ Subsequently, a program official provided us with a high level breakdown of the costs that had been provided to the program office by the vendor prior to contract award but advised us that they had no additional documentation to support the price reasonableness determination within the program office.

For the 7 contracts that did not use market research techniques to determine price reasonableness, the contracting officers indicated that they used techniques such as comparing proposed prices to the independent government cost estimate and comparing prices among proposals received. For example, most of the competitive contracts we reviewed that received multiple offers cited the comparison of offers received as contributing to their determination of a fair and reasonable price. In addition, a contracting officer is required to obtain certified cost or pricing data from the contractor in certain instances, including for negotiated contracts above \$700,000, unless an exception applies, such as obtaining adequate price competition or acquisitions of a commercial item.³⁹ Nearly all of the noncompeted contracts we reviewed were either below the \$700,000 threshold for which certified cost or pricing data may be required, or were for commercial items, and therefore did not obtain certified cost and pricing data. In the two cases in which contracting officers were required to obtain certified cost and pricing data, we found acquisition officials did so.

Conclusions

Federal regulations and the agency guidance we reviewed highlighted the need to conduct and document market research commensurate with the proposed acquisitions' dollar value and complexity. We found evidence of market research in all 28 contracts we reviewed. Similarly, we often found that acquisition officials conducted more robust market research on higher dollar value contracts in particular by communicating with industry about their requirements and needs, such as through the use of requests

³⁸A program official told us that the published price list reflected a basic membership price and the total contract price included the price for additional membership services outlined in the statement of work, such as access to international standards, workshops convened by a panel focused on the development and adoption of standards critical to homeland security, and a database. However, there was no documentation to support the price reasonableness of these additional services included in the contract file.

³⁹FAR §15.403-4.

for information. In turn, this market research appeared to contribute to higher degrees of competition for higher value contracts. Our findings also suggest, however, that agencies may be missing opportunities to promote competition and inform future acquisitions for lower dollar acquisitions. In this regard, we found DOD and DHS acquisition officials often relied on internal sources of information or simply notified potential vendors that they intended to award contracts on a sole-source basis rather than gauging whether the marketplace could offer an alternative, competitive solution. Even in situations where the government anticipates a sole-source award, market research is a tool that is required to be used to promote competition to the maximum extent practicable, and agencies generally must identify actions, if any, they may take to remove or overcome barriers to competition for future acquisitions of the supplies or services required. We also found instances in which the market research appeared to be incomplete or outdated.

Further, we found that acquisition officials omitted one or more of four basic elements of market research which GAO identified as necessary to enable others to understand the research—the methods used, the timeframes when it was conducted, an analysis of vendor capabilities, and a conclusion based on this analysis—in 14 of the 28 contracts we reviewed. These documentation shortfalls were more often, though not exclusively, found in lower value contracts. Despite DOD and DHS having guidance that either requires or recommends that specific elements be documented, contracts from these agencies accounted for all but one of the 10 lower value contracts missing one or more of the elements. While DOT documented these four elements in most of the contract files we reviewed, DOT's market research guidance does not address whether these four basic elements should be documented. As a result, DOT is at increased risk that it will not document the basic information needed to help inform current and future procurements. Federal internal control standards state that transactions and other significant events need to be clearly documented and the documentation should be readily available for examination, so as to ensure management directives are carried out. Moreover, given the recurring nature of the government's requirements covered in the contracts we reviewed and the staff turnover we observed during the course of our work, not clearly documenting such fundamental information hinders the use of market research to inform future acquisitions.

Recommendations for Executive Action

To help ensure that key market research information is available for current and future use, we recommend that the Secretary of Transportation update its market research guidance to specify, at a minimum, that four basic elements—the market research methods used, the timeframes when staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis—be documented.

To help promote competition, inform future acquisitions, and encourage the use of timely and complete market research, we recommend that the Secretaries of Defense and Homeland Security take action to ensure their acquisition personnel clearly document the basic elements of the market research that was conducted. More specifically, documentation should, at a minimum, include the market research methods used, the timeframes when staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD, DHS, and DOT for comment. All three agencies concurred with our recommendations. The agencies' comments are summarized below. Written comments from DOD, DHS, and DOT are reproduced in appendixes II, III, and IV respectively. DHS and DOT provided technical comments which we incorporated into the report as appropriate.

DOD agreed with the recommendation that it take action to ensure its acquisition personnel clearly document the basic elements of market research conducted, but did not identify specific actions it intends to take. DOD noted that it recently issued a memorandum highlighting the need for effective market research to increase competition.⁴⁰ For example, the memorandum notes that contracting officers will be required to use requests for information or sources sought notices for certain procurements where a non-competitive contract is contemplated.

DHS also agreed with the recommendation that it take action to ensure its acquisition personnel clearly document the basic elements of market research conducted. DHS stated that its Office of the Chief Procurement

⁴⁰DOD, Office of the Under Secretary for Acquisition, Technology, and Logistics, *Actions to Improve Department of Defense Competition* (Washington, D.C.: Aug. 21, 2014).

Officer will update procedures in the Homeland Security Acquisition Manual and its market research guide to clarify that market research reports should include, at a minimum, the four basic elements. Given that we found that several DHS contract files we reviewed did not include documentation of elements already required by DHS, it will be important for DHS to ensure its contracting personnel follow its guidance.

DOT agreed with our recommendation that it update its market research guidance to identify documentation of the four basic elements, but did not elaborate on specific actions it intends to take. DOT stated that it recognizes the important role market research plays in developing sound acquisition strategies, promoting competition, and informing price reasonableness. DOT noted that its market research guidance is consistent with the requirements of the FAR, and noted that the agency continues to seek opportunities and incorporate best practices to further strengthen departmental guidance. Given the importance of written guidance in helping to ensure that management directives are implemented, we continue to encourage DOT to update its guidance to require documentation of the four basic elements on a timely basis.

We are sending copies of this report to the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Transportation, appropriate congressional committees, and other interested parties. This report will also be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841 or by e-mail at dinapolit@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.



Timothy J. DiNapoli
Director
Acquisition and Sourcing Management

Appendix I: Objectives, Scope, and Methodology

Our objectives were to assess (1) selected agencies' guidance and policy on market research and (2) how selected agencies conducted market research on selected procurements. Market research serves several purposes, including identifying sources capable of meeting the need, promoting competition, identifying whether commercial items can meet the government's needs, and identifying whether small businesses are capable of meeting the requirement. For the purposes of our review, we focused our work on how market research informed the competition strategy and the contracting officer's analysis of price reasonableness. We did not assess how market research informed the small business determination or how it informed the commerciality decision given GAO has a prior body of work that focuses on these issues.¹

To assess agency guidance and policy on market research, we reviewed government-wide regulations and policy, such as the Federal Acquisition Regulation (FAR), including FAR Subpart 7.1—Acquisition Plans and FAR Part 10—Market Research, and Office of Management and Budget (OMB) memorandums related to market research, such as OMB's Office of Federal Procurement Policy's memorandum entitled, "Myth-Busting": Addressing Misconceptions to Improve Communication with Industry During the Acquisition Process. To assess specific agency guidance and policy and to illustrate how market research is performed at agencies of various sizes and that procure a range of products and services, we selected three departments for our review—the Departments of Defense (DOD), Homeland Security (DHS) and Transportation (DOT). We selected these departments based on their level of fiscal year 2012 contract obligations—the most recent fiscal year of information available when we started our review—and on the mix of products and services procured. Within each department, we selected two components for further review—DOD's Department of the Army and Defense Logistics Agency (DLA); DHS's Office of Procurement Operations (OPO)² and U.S. Customs and Border Protection (CBP); and DOT's Federal Aviation

¹For GAO's recent work on commercial item determinations, see GAO, *Federal Contracting: Commercial Item Test Program Beneficial, but Actions Needed to Mitigate Potential Risks*, GAO-14-178 (Washington D.C.: Feb. 4, 2014). For GAO's recent work on small business contracting, see GAO, *Small Business Contracting: Updated Guidance and Reporting Needed for Consolidated Contracts*, GAO-14-36 (Washington D.C.: Nov. 26, 2013).

²For the purposes of this report, we considered DHS's Office of Procurement Operations to be a component.

Administration (FAA) and Federal Highway Administration (FHWA). In general, we selected the components with the largest fiscal year 2012 obligations based on the Federal Procurement Data System—Next Generation (FPDS-NG). For each department and component, as applicable, we reviewed guidance and policy related to market research, including agency supplements to the FAR, market research guides and templates, acquisition handbooks, and policy memorandums that reference market research, such as DOD’s Better Buying Power policy memorandums. Key agency guidance reviewed included DOD’s Defense Standardization Program, Market Research: Gathering Information about Commercial Products and Services, SD-5; DHS’s Market Research Guide; DOT’s Market Research Guide, Acquisition Policy DOT Dash 2010-11; and FAA’s Procurement Guidance T3.2.1.2 - Market Analysis.³ The FAR and DOT acquisition regulation do not apply to FAA acquisitions so we analyzed FAA’s policy and guidance separately from DOT.⁴ We did not include agency training materials as guidance for the purposes of our analyses. Further, we interviewed senior acquisition officials at each department to develop a better understanding of agency policies, guidance, and initiatives related to market research.

To assess how agencies conducted market research on selected procurements, we selected and reviewed a nongeneralizable sample of 28 contracts. For each contract, we reviewed contract documents related to market research, including market research reports, acquisition plans, justifications and approvals for sole-source awards, price negotiation memorandums and independent government cost estimates. We analyzed these documents to identify market research methods, analysis, and results used to inform the competition strategy and to inform the price reasonableness determination. To identify information that may not have been included or been self-explanatory based on our review of the contract files, we obtained additional information from agency officials. Our inquiries largely focused on identifying market research techniques that agency officials may have used but were not reflected in the contract

³While this review focused on guidance applicable across each department and separately for FAA, FHWA noted its Acquisition Customer Service Guide contains additional information on market research techniques.

⁴For the purposes of this report, we use the term agency policy and guidance to refer to that issued by DOD, DHS, DOT, as well as FAA. The FAR does not apply to FAA acquisitions pursuant to the Department of Transportation and Related Agencies Appropriations Act, 1996. Pub. L. No. 104-50, § 348 (1995).

file, as well as obtaining further explanations of any analyses they may have performed. We also analyzed contract documentation to determine whether these documents included four basic elements we identified based on our review of agency policy and guidance, which, if recorded, would allow those not connected with the market research to obtain at least a basic understanding of how the acquisition team collected and analyzed information about market capabilities. We also identified these elements because they focused on collection and analysis of information, consistent with the FAR's definition of market research.⁵ The four elements included the market research methods used, including the timeframes when acquisition staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis.

To identify contracts for our review, we used FPDS-NG to select a nongeneralizable sample of 30 contracts awarded in fiscal year 2012 from the six components within DOD, DHS, and DOT. As our review did not focus on how market research informed the small business set-aside determination or the commercial item determination, we excluded contracts set aside for small businesses and contracts for research, development, test, and evaluation. To increase the comparability of contracts across agencies, we excluded weapons systems contracts, as they are unique to DOD. We also excluded contracts with no fiscal year 2012 obligations and contracts valued at less than \$500,000, selecting this threshold as the contracts above this threshold represented more than 92 percent of contract dollars awarded in fiscal year 2012 at each component reviewed.

Within each selected agency component, we created randomized lists of the remaining fiscal year 2012 contracts within two strata—(1) contracts valued at more than \$10 million and (2) contracts valued between \$500,000 and \$10 million. We selected two contracts from the first stratum and three from the second stratum (five per component) from the randomized lists for each component. Whereas the higher dollar stratum represented the greatest portion of contract dollars awarded in fiscal year 2012 within each component—ranging between 79 percent and 98 percent of dollars—the lower dollar stratum represented a larger portion of contract actions awarded that year. Within each stratum, we selected

⁵FAR § 2.101 defines market research as the process used to collect and analyze data about capabilities in the market that could satisfy an agency's procurement needs.

the contracts starting from the top of the randomized lists but applying criteria to ensure, to the extent possible, that our selected contracts within each component included at least one contract for products and one for services, at least one competed and one noncompeted contract, at least one competed contract receiving one offer and one competed contract receiving multiple offers, among other factors.

To assess the reliability of the FPDS-NG data used to select the contracts for review, we compared key data elements from FPDS-NG to the contract documentation, including contract number, agency name, and whether or not the contract had been competed using full and open competition. Where we found discrepancies relevant to our methodology, we made adjustments to maintain the integrity of our selection criteria. For example, we excluded 7 contracts because the contracts were miscoded in FPDS-NG and therefore should have been excluded from our sample. Specifically, we excluded 5 contracts because they were small business set asides, one contract because the total dollar value fell below the \$500,000 threshold for inclusion in the review, and one contract because it was a research and development contract. Because we had randomized lists of contracts for each of the components, we replaced the miscoded contracts with another contract. Once we corrected for these errors, we concluded the data obtained from the FPDS-NG was sufficiently reliable for the purposes of this review.

We excluded 2 of the 30 selected contracts from our final analysis—one from FHWA and one from FAA—because, as of July 31, 2014, we were unable to assess the market research for those contracts due to missing market research documentation and staff changes since the award of the contracts.⁶ As a result, our analysis in this report is based on 28 selected contracts (see table 2). The findings from our selected contracts are not generalizable to the population of all contracts within the selected agencies or components.

⁶At the conclusion of our review in August 2014, FHWA officials reported they had located the preaward documents for the contract. For the FAA contract, contracting staff were unable to locate the market research for the contract. In both instances the staff responsible for conducting, documenting, or accepting the market research were no longer with the organization.

Table 2: Description of 28 Selected Contracts Reviewed by GAO

Contract description	Agency/Component	Competition	Contract dollar value
Higher Dollar Contracts (above \$10 million)			
Data communication integrated services	DOT/FAA	Competed, multiple offers received	\$2,208,000,000
Tax-free fuel	DOD/DLA	Competed, one offer received	\$210,384,000
Jet fuel with additives	DOD/DLA	Competed, multiple offers received	\$157,272,000
Engine generator set program	DOT/FAA	Competed, one offer received	\$126,587,000
Protective service officer services	DHS/OPO	Competed, multiple offers received	\$86,993,000
Protective service officer services	DHS/OPO	Competed, multiple offers received	\$76,975,000
Equipment maintenance program support and training support (bridge contract)	DHS/CBP	Noncompeted	\$72,419,000
Coastal interceptor vessel	DHS/CBP	Competed, multiple offers received	\$45,719,000
Advisory and assistance services	DOD/Army	Competed, multiple offers received	\$28,500,000
Construction services	DOT/FHWA	Competed, multiple offers received	\$23,360,000
Legal advisory services	DOT/FHWA	Competed, multiple offers received	\$20,234,000
Construction services for foreign aid projects	DOD/Army	Competed, multiple offers received	\$15,000,000
Lower Dollar Contracts (between \$500,000 and \$10 million)			
Technical and program support	DOT/FHWA	Competed, multiple offers received	\$9,642,000
Transportation standards development support	DOT/FHWA	Noncompeted	\$7,479,000
Construction of utilities infrastructure	DOD/Army	Noncompeted	\$4,047,000
Lease of copiers, multifunction devices	DOD/DLA	Competed, multiple offers received	\$2,259,000
Flight simulator training	DOD/Army	Competed, one offer received	\$2,067,000
Relocation of Doppler navigation system	DOT/FAA	Competed, multiple offers received	\$1,631,000
Parking	DHS/OPO	Competed, one offer received	\$1,585,000
Standards organization membership services	DHS/OPO	Noncompeted	\$1,500,000
Armor, transparent, vehicular window	DOD/Army	Noncompeted	\$1,132,000

Appendix I: Objectives, Scope, and Methodology

Contract description	Agency/Component	Competition	Contract dollar value
Recycle and store tubes of helium	DHS/OPO	Noncompeted	\$983,000
Jail space services	DHS/CBP	Competed, one offer received	\$846,000
Controller monitors	DOD/DLA	Noncompeted	\$694,000
Satellite airtime	DHS/CBP	Noncompeted	\$627,000
Portable receiver systems	DHS/CBP	Noncompeted	\$609,000
Actuators	DOD/DLA	Noncompeted	\$589,000
Furniture, workstations	DOT/FAA	Noncompeted	\$538,000

Source: GAO analysis of agency documentation. | GAO-15-8.

We conducted this performance audit from August 2013 to October 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000


SEP 30 2014

Mr. Timothy J. DiNapoli
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. DiNapoli:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-15-8, "MARKET RESEARCH: Better Documentation Needed to Inform Future Procurements at Selected Agencies," dated September 5, 2014 (GAO Code 121159). The detailed comments on the report recommendation are enclosed.

Sincerely,


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated

**GAO Draft Report Dated September 5, 2014
GAO-15-8 (GAO CODE 121159)**

**“MARKET RESEARCH: BETTER DOCUMENTATION NEEDED TO INFORM
FUTURE PROCUREMENTS AT SELECTED AGENCIES”**

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

RECOMMENDATION 1: The GAO recommends that the Secretary of Defense take action to ensure their acquisition personnel clearly document the basic elements of the market research that was conducted. More specifically, documentation should, at a minimum, include the market research methods used, the timeframes when staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis.

DoD RESPONSE: Concur. The Department of Defense (DoD) will continue to emphasize the importance of documenting market research efforts to include these four elements. The DoD recently highlighted the need for effective market research in an August 21, 2014, policy memorandum signed by the Under Secretary for Acquisition, Technology, and Logistics entitled, “Actions to Improve Department of Defense Competition.”

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 24, 2014

Timothy J. DiNapoli
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-15-8, "MARKET RESEARCH: Better Documentation Needed to Inform Future Procurements at Selected Agencies"

Dear Mr. DiNapoli:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS is pleased to note GAO's recognition that (1) the Department has market research guidance in place that is consistent with the federal regulation in terms of market objectives, techniques, and documentation, and (2) in some instances DHS guidance expands upon suggested federal acquisition regulation techniques. DHS understands that market research is a critical step in the acquisition process, informing key decisions about how best to acquire goods and services.

The draft report contained one recommendation for DHS, with which the Department concurs. Specifically, GAO recommended that the Secretary of Homeland Security:


Recommendation: Take action to ensure [that] acquisition personnel clearly document the basic elements of the market research that was conducted. More specifically, documentation should, at a minimum, include the market research methods used, the timeframes when staff used them, an analysis of the capabilities of potential sources, and a conclusion based on this analysis.

Response: Concur. While the Department's Market Research guide currently includes a template that identifies the four basic elements of market research, the procedures on documenting market research in the Homeland Security Acquisition Manual (HSAM) and the Market Research guide address three of the four elements. Therefore, the DHS Office of the Chief Procurement Officer will update its procedures in the HSAM and the Market Research guide to clarify that market research reports should include, at a minimum, the following four elements: market research methods used; the timeframes when staff used them; an analysis of the capabilities of potential sources; and a conclusion based on this analysis. Estimated Completion Date: December 31, 2014.

**Appendix III: Comments from the Department
of Homeland Security**

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix IV: Comments from the Department of Transportation



U.S. Department
of Transportation
Office of the Secretary
of Transportation

Assistant Secretary
for Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

OCT 02 2014

Timothy J. DiNapoli
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

The Department of Transportation (DOT) recognizes the important role market research plays in developing sound acquisition strategies, promoting competition, and informing price reasonableness. The Department's Market Research Guide is consistent with the requirements of the Federal Acquisition Regulation and we continue to seek opportunities and incorporate best practices to further strengthen departmental guidance.

Upon preliminary review, DOT concurs with GAO's recommendation. The Department will provide a detailed response to the recommendation within 60 days of the GAO report issuance.

We appreciate this opportunity to offer additional perspective on the GAO draft report. Please contact Martin Gertel, Director of Audit Relations, at (202) 366-5145 with any questions or if the GAO would like to obtain additional details about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brodi Fontenot', written over a faint circular stamp.

Brodi Fontenot
Assistant Secretary for Administration

Appendix V: 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, Penny Berrier, Assistant Director; Sonja Bensen, Jenny Chanley, Danielle Greene, Kristine Hassinger, Julia Kennon, Janet McKelvey, Guisseli Reyes-Turnell, Oziel Trevino, and Jocelyn Yin made key contributions to this report.

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EXHIBIT 4

1 scoop = 2 WEEKS of freshness.
AMAZING VALUE!
1 taza = 2 SEMANAS de frescura. ¡Una COMPRA EXCELENTE!



ULTRA

120
LOADS
LAVADAS

Gain[®]

+Aroma Boost™

original



DETERGENT/DETERGENTE

CAUTION: EYE IRRITANT. MAY BE HARMFUL IF SWALLOWED. SEE CAUTION ON SIDE PANEL.
PRECAUCIÓN: IRITA LOS OJOS. PUEDE SER NOCIVO SI SE INGIERE. LEA LA PRECAUCIÓN EN EL PANEL LATERAL.

137 OZ (8.56 LB) 3.9 kg

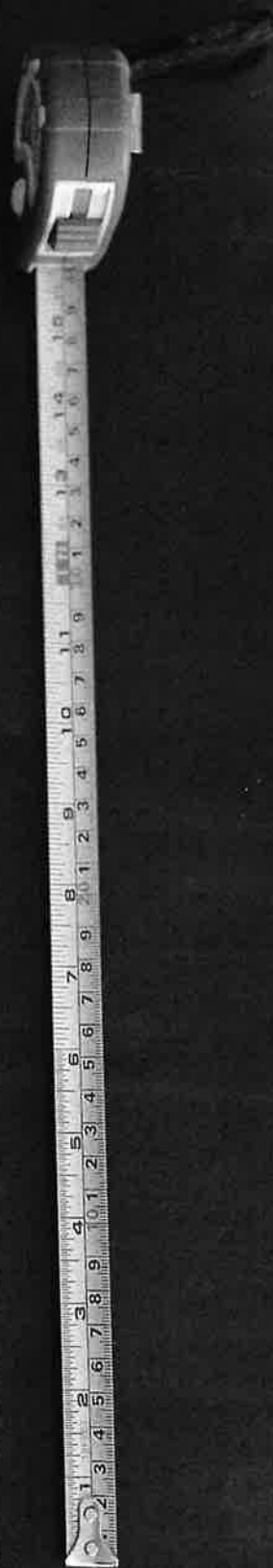


EXHIBIT 5

GET UP TO

\$10

WORTH OF COUPONS WITH PURCHASE OF THIS PRODUCT

1 scoop = 2 WEEKS of freshness. AMAZING VALUE!

1 scoop = 2 SEMANAS de frescura. ¡VALOR COMPRO EXCELENTE!

OBTEGA HASTA \$10 EN CUPONES CON LA COMPRA DE ESTE PRODUCTO



ULTRA

80 LOADS* LAVADAS*

Gain®

+ Aroma Boost™

Original



DETERGENT/DETERGENTE

CAUTION: EYE IRRITANT. MAY BE HARMFUL IF SWALLOWED. SEE CAUTION ON SIDE PANEL.
PRECAUCIÓN: IRRITA LOS OJOS. PUEDE SER NOCIVO SI SE INGIERE. LEA LA PRECAUCIÓN EN EL PANEL LATERAL.

91 OZ (5.68 LB) 2.6 kg



EXHIBIT 6

1 scoop = 2 WEEKS of freshness.
AMAZING VALUE!

1 taza = 2 SEMANAS de frescura.
¡Una COMPRA EXCELENTE!

Receive up to \$7 in laundry coupons.

Reciba hasta \$7 en cupones
para el lavado de ropa.

40
LOADS
LAVADAS

Gain[®]

+ Aroma Boost[™]

original



DETERGENT/DETERGENTE

CAUTION: EYE IRRITANT; MAY BE HARMFUL, IF SWALLOWED. SEE CAUTION ON SIDE PANEL.
PRECAUCIÓN: IRRITA LOS OJOS. PUEDE SER NOCIVO SI SE INGIERE. LEA LA PRECAUCIÓN EN EL PANEL LATERAL.

45 OZ (2.81 LB) 1.3 kg



EXHIBIT 7

**ATTACKS EVEN
7 DAY OLD STAINS!**
¡COMBATE MANCHAS DE HASTA HACE 7 DÍAS!



MOUNTAIN SPRING
AROMA DE MONTAÑA

ACTI-LIFT™
crystals/cristales



102 LOADS
CARGAS

DETERGENT/DETERGENTE

143 OZ (8.93 LB) 4.08 kg

CAUTION: EYE IRRITANT.
MAY BE HARMFUL IF SWALLOWED.
SEE CAUTION ON SIDE PANEL.

PRECAUCIÓN: IRRITA LOS OJOS.
PUEDE SER NOCIDO SI SE INGLIERE.
LEA LA PRECAUCIÓN EN EL PANEL LATERAL.



EXHIBIT 8

Tide Clean plus Downy Freshness
La limpieza de Tide más la frescura de Downy

Tide

+



APRIL FRESH
FRESCURA
PRIMAVERAL



80 LOADS*
LAVADAS*
DETERGENTE/DETERGENTE

ACTI-LIFT™
crystals/cristales

A Touch of • con un toque de

Downy

148 OZ (9.25 LB) 4.2 kg

CAUTION: EYE IRRITANT.
MAY BE HARMFUL IF SWALLOWED.
SEE CAUTION ON SIDE PANEL.

PRECAUCIÓN: IRITA LOS OJOS.
PUEDE SER NOCIVO SI SE INGERE. LEA LA
PRECAUCIÓN EN EL PANEL LATERAL.



EXHIBIT 9



EXHIBIT 10



Febreze

CAUTION
CONTENTS UNDER PRESSURE
Release both panels carefully

12.9 FL OZ (369 mL)