



April 2022

FEDERAL CONTRACTING Implementation of Changes to Cost or Pricing Data Requirements

Accessible Version

GAO Highlight

Highlights of [GAO-22-105307](#), a report to congressional committees

Why GAO Did This Study

The federal government spends hundreds of billions of dollars each year on products and services. To help ensure that the government pays fair and reasonable prices, contracting officers generally rely on competition. When a contract is awarded without adequate price competition, contracting officers may rely on certified cost or pricing data from offerors to determine if the prices are reasonable. When these data are not required, contracting officers use data other than certified cost or pricing data, such as information from previous contracts, market research, or the contractor.

Congress included a provision in statute for GAO to report on the implementation and effect of section 811's changes to cost or pricing data submission requirements. This report describes (1) how DOD and NASA implemented the changes applicable to their agencies, and (2) the extent that DOD and NASA analyzed the effect of the changes on their ability to obtain cost or pricing data.

Using federal procurement data, GAO selected DOD and NASA, which had awards with the highest and fifth highest total contract values in fiscal year 2020, the last complete year of data available. GAO used federal procurement data to estimate the number of DOD and NASA awards in fiscal year 2020 that were potentially affected by the increased threshold. GAO also reviewed federal regulations, defense regulations, and agency policies; and interviewed DOD and NASA officials and contracting officers.

View [GAO-22-105307](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or DinapoliT@gao.gov.

April 2022

FEDERAL CONTRACTING

Implementation of Changes to Cost or Pricing Data Requirements

What GAO Found

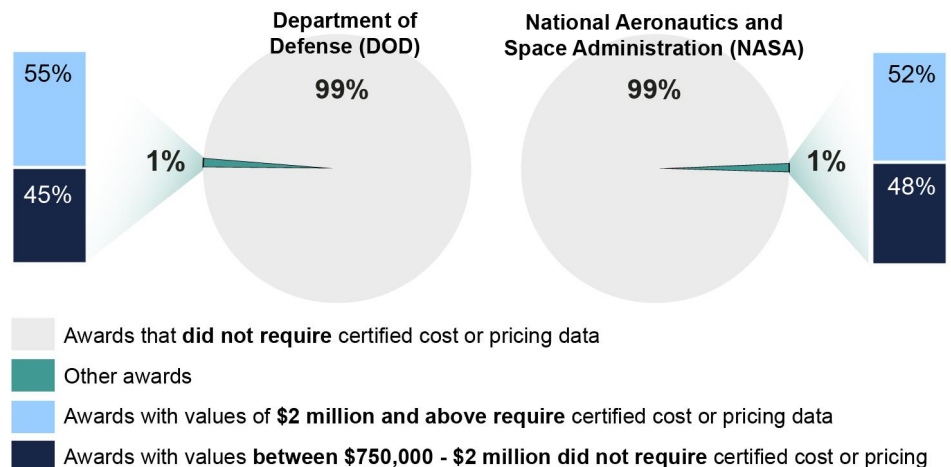
To help ensure the government pays fair and reasonable prices, agencies may require potential contractors (known as offerors) to provide data, such as the costs to produce goods or services or the prices others have paid. In some cases, offerors must certify that the data they provide are accurate, current, and complete. Section 811 of the National Defense Authorization Act for Fiscal Year 2018, among other things:

- increased the dollar threshold above which offerors must submit certified cost or pricing data from \$750,000 to \$2 million for certain awards, including subcontracts and modifications; and
- required Department of Defense (DOD) offerors, when certified cost or pricing data are not required, to submit data other than certified cost or pricing data if requested by the contracting officer to determine that prices are fair and reasonable.

Both DOD and the National Aeronautics and Space Administration (NASA) implemented the threshold increase for obtaining certified cost or pricing data by the statutorily effective date of July 1, 2018. They also, in conjunction with other federal agencies and the Office of Management and Budget, incorporated the statutory changes into the Federal Acquisition Regulation on July 2, 2020.

During this review, DOD and NASA officials told GAO they have not formally analyzed the effects of section 811. Using data from the Federal Procurement Data System, GAO estimated that less than 1 percent of DOD's and NASA's total number of awards may require submitting certified cost or pricing data depending on the dollar threshold applied. Of that 1 percent, nearly half of the awards are estimated not to require contractors to submit certified cost or pricing data due to the threshold change (see figure).

Estimated Percentage of DOD and NASA Awards in Fiscal Year 2020 That Did Not Require Certified Cost or Pricing Data Due to Threshold Change



Source: GAO analysis based on Federal Procurement Data System data. | GAO-22-105307

Accessible Data Table for Highlight Figure

| | Awards that did not require certified cost or pricing data (in percent) | Other awards (in percent) | Awards with values of \$2 million and above require certified cost or pricing data (in percent) | Awards with values between \$750,000 - \$2 million did not require certified cost or pricing data (in percent) |
|---|--|----------------------------------|--|---|
| Department of Defense | 99 | 1 | 55 | 45 |
| National Aeronautics and Space Administration | 99 | 1 | 52 | 48 |

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Abbreviations

| | |
|--------|---|
| DFARS | Defense Federal Acquisition Regulation Supplement |
| DOD | Department of Defense |
| FAR | Federal Acquisition Regulation |
| FPDS | Federal Procurement Data System |
| NASA | National Aeronautics and Space Administration |
| NDAA | National Defense Authorization Act |
| OMB | Office of Management and Budget |
| U.S.C. | United States Code |

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April 14, 2022

Congressional Committees

Each year, the federal government purchases hundreds of billions of dollars of products and services, such as aircraft, satellites, professional services, and facility and equipment maintenance. In fiscal year 2021, the federal government spent \$630.9 billion on contracts for products and services. Contracting officers use several techniques and types of data to determine that the prices paid for these products and services are fair and reasonable. Foremost, they generally rely on competition to ensure the government pays a reasonable price. Competition is a critical tool for achieving the best possible return on investment for taxpayers.

When a contract is awarded without adequate price competition, contracting officers take additional safeguards to ensure the government pays a fair and reasonable price. For example, contracting officers could examine cost data—such as the cost of materials, labor, and overhead—or pricing information—including invoices for the same or similar items sold to commercial customers. In certain circumstances, contracting officers can obtain certified cost or pricing data—information offerors and contractors certify as accurate, current, and complete.¹ When certified cost or pricing data are not required to determine if prices are reasonable, contracting officers rely on data other than certified cost or pricing data,

¹Certified cost or pricing data are required to be submitted in accordance with Federal Acquisition Regulation (FAR) § 15.403-4 and § 15.403-5 and are required to be certified, in accordance with § 15.406-2. This certification states that, to the best of the person's knowledge and belief, the cost or pricing data are accurate, complete, and current as of a certain date before contract award. Cost or pricing data are required to be certified in accordance with 10 United States Code (U.S.C.) § 3702 and 41 U.S.C. § 3502. When contracting officers are required to obtain certified cost or pricing data, they must also obtain any other cost or pricing data necessary to determine the contract price is fair and reasonable. FAR § 15.402.

such as information from previous contracts, market research, or the offeror.²

Over the last few years, Congress passed legislation on various aspects of cost or pricing data. This included increasing the dollar thresholds for when offerors are required to provide certified cost or pricing data. The legislation also prohibited contracting officers from determining a price is fair and reasonable based only on historical prices paid by the government when the offeror is required to submit data other than certified cost or pricing data. Among these legislative actions, section 811(a) of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 increased the dollar threshold for offerors and contractors to submit certified cost or pricing data from \$750,000 to \$2 million for certain prime contracts, modifications, and subcontracts.³ Additionally, section 811(b) amended Title 10 of the United States Code (U.S.C.) section 2306a(d) to require Department of Defense (DOD) offerors, when certified cost or pricing data are not required, to submit data other than certified cost or pricing data if requested by the contracting officer.⁴

Section 811 included a provision for us to report on the implementation and effect of these changes. This report describes (1) how DOD and the National Aeronautics and Space Administration (NASA) implemented the provisions applicable to their agencies, and (2) the extent that DOD and NASA analyzed the effect of these changes on their ability to obtain cost or pricing data. We also provide insight on the number of awards and types of contractors affected by these changes using federal procurement data.

²Data other than certified cost or pricing data means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data but without the certification. Federal Acquisition Regulation (FAR) § 2.101. See FAR § 15.402(a)(2) for examples of data other than certified cost or pricing data. For the purposes of this report, we refer to both these data and certified cost or pricing data as cost or pricing data.

³National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 811 (2017).

⁴10 U.S.C. § 2306a was recodified as Ch. 271 Truthful Cost or Pricing Data, 10 U.S.C. §§ 3701-3708, as amended by William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-238, § 1831 (2021), as further amended by National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 1702 (2021).

To describe how agencies implemented section 811(a), we selected two agencies—DOD and NASA—that had awards with the highest and fifth highest total contract values in fiscal year 2020. Fiscal year 2020 was the latest complete year of data available in the Federal Procurement Data System (FPDS) when we initiated our review.⁵ We reviewed the July 2015 Federal Acquisition Regulation (FAR) Operating Guide, which provides the current procedures for processing FAR rules; FAR Council documentation regarding implementation of section 811(a); and DOD and NASA policy about the increased thresholds.⁶ To describe whether DOD implemented section 811(b) of the NDAA for Fiscal Year 2018, we reviewed DOD regulations and guidance. We also interviewed the Chairs of the Defense Acquisition Regulations Council and Civilian Agency Acquisition Council; Defense Acquisition Regulations System staff; and officials from the Defense Contract Management Agency, NASA's Office of Procurement, and the Office of Management and Budget's (OMB) Office of Federal Procurement Policy. The purpose of these interviews was to understand the process for incorporating the statutory increased threshold into the FAR and how DOD implemented section 811(b).

For our second objective, we reviewed analyses conducted during the FAR rulemaking process and interviewed officials within DOD's Defense Pricing and Contracting office—which is responsible for pricing, contracting, and procurement policy matters—and NASA's Office of Procurement. We also interviewed officials from the Defense Contract Audit Agency, DOD and NASA's Offices of Small Business Programs, and contracting officers from selected DOD contracting activities and NASA centers about their views on the effects of the changes from section 811.

Additionally, we used FPDS data to estimate the number of and obligations on DOD and NASA awards in fiscal year 2020 that did not require certified cost or pricing data due to the threshold increase (\$750,000 to \$2 million). For this analysis, we defined awards to include new negotiated contracts, base awards for single-award indefinite delivery / indefinite quantity contracts, and orders from multiple-award indefinite delivery / indefinite quantity contracts awarded in fiscal year

⁵FPDS is the federal government's authoritative source for contract data. Contracts whose estimated value is above the micro-purchase threshold (generally \$10,000) are reported to FPDS, with some exceptions. Federal Acquisition Regulation § 4.606.

⁶The FAR Council assists in the direction and coordination of federal government-wide procurement policy and procurement regulatory activities. 41 U.S.C. § 1302(a).

2020. Furthermore, we focused on awards with total contract values equal to and greater than \$750,000 that, based on their reported characteristics, would generally have required the submission of certified cost or pricing data before the amendments of section 811.⁷ These characteristics include awards that (1) were for products or services that were not commercial; (2) were awarded noncompetitively or competitively for which the government received only one offer; and (3) did not have a waiver to the requirement to submit certified cost or pricing data.⁸ We excluded noncompetitive orders from multiple-award indefinite delivery / indefinite quantity contracts because we are not able to differentiate orders that require certified cost or pricing data from ones that do not have this requirement

We also used these data to estimate the number and types of contractors that had awards that fell between the thresholds before and after the amendments of section 811. We excluded modifications in our analysis because in FPDS, reported modifications may combine obligations from awards where certified cost or pricing data were required with awards where the data were not required, resulting in an overestimation of obligations. We also excluded subcontracts from our analysis as FPDS does not capture information about subcontracts. We electronically tested the data from FPDS and determined the data were sufficiently reliable for the purposes of selecting DOD and NASA, and estimating data related to the thresholds for submitting certified cost or pricing data before and after the amendments of section 811. See appendix I for additional information on our scope and methodology.

We conducted this performance audit from June 2021 to April 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

⁷The exceptions to certified cost or pricing data requirements are: (1) adequate price competition; (2) price set by law or regulation; (3) acquisition of a commercial product or commercial service; or (4) waiver. FAR § 15.403-1. Adequate price competition is defined differently for agencies other than DOD, NASA, and the Coast Guard. FAR § 15.403-1(c)(1)(ii).

⁸For the purposes of this report, noncompetitive contracts refer to contracts and orders that were reported in FPDS as awarded using other than full and open competition or through an exception to fair opportunity. Competitive with only one offer contracts refer to contracts that were reported in FPDS as the government having received only one offer in response to a competitive solicitation. Certified cost or pricing data are not required if the price is based on adequate price competition. FAR § 15.403-1(b)(1). For the purposes of this report, a contract action reported in FPDS as not using FAR Part 12 commercial item procedures was categorized as not commercial.

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

Regulations about Obtaining Data to Assess Price Reasonableness

The FAR requires contracting officers to determine if prices proposed by offerors are fair and reasonable before awarding contracts.⁹ Figure 1 shows that the data DOD and NASA contracting officers may use to determine price reasonableness for new awards differ depending on several factors, such as competition.

⁹In accordance with 10 U.S.C. § 3206(c)(3), for DOD, NASA, and the Coast Guard, the contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation (1) has an estimated value above the simplified acquisition threshold (generally \$250,000); (2) will result in multiple-award contracts that are for the same or similar services; and (3) states that the government intends to make an award to each and all qualifying offerors. FAR § 15.304(c)(1) and FAR § 2.101.

Figure 1: Overview of Data Department of Defense and National Aeronautics and Space Administration Contracting Officers May Use to Determine Whether Contract Prices Are Fair and Reasonable



Source: GAO analysis of United States Code (U.S.C.) and Federal Acquisition Regulation (FAR). | GAO-22-105307

The Truthful Cost or Pricing Data statute, as implemented through the FAR, requires that for contracts above a certain dollar threshold awarded noncompetitively, or competitively awarded but with only one offer received, the offeror must provide cost or pricing data that are certified as accurate, current, and complete, unless an exception applies.¹⁰ If, after award, the certified cost or pricing data are found to be inaccurate, noncurrent, or incomplete as of the date of final agreement on price or an earlier date agreed upon by the parties, the government is entitled to a price adjustment. This adjustment, including profit or fee, could consist of any significant amount by which the price was increased because of the defective certified cost or pricing data.¹¹

The Truthful Cost or Pricing Data statute also provides several exceptions to the requirement that offerors submit certified cost or pricing data, including:

- If the contracting officer determines that there is adequate price competition;¹²
- If the contract is for a commercial product or commercial service;¹³ or
- If the Head of the Contracting Activity waives, in writing, the requirement for certified cost or pricing data. For example, if the contractor provided certified cost or pricing data on previous contracts, and the contracting officer determines such data are

¹⁰10 U.S.C. § 3702, 41 U.S.C. § 3502, and FAR § 15.403. For agencies other than DOD, NASA, and the Coast Guard, certified cost or pricing data may not be required when there is a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers. FAR § 15.403-1(c)(1)(ii).

¹¹FAR § 15.407-1. Defense Contract Audit Agency officials stated that the agency prioritizes auditing contracts with high risk for defective pricing based on high dollar contracts that are above \$2 million, contract types, and other factors, but it does not generally conduct defective pricing audits on a contract whose value is below \$2 million.

¹²For DOD, NASA, and the Coast Guard, adequate price competition occurs when two or more responsible offerors, competing independently, submit priced offers that satisfy the government's expressed requirement; award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and there is no finding that the price of the otherwise successful offeror is unreasonable. FAR § 15.403-1(c)(1).

¹³A commercial product may be of a type that already exists in the commercial market or requires minor modifications to meet the government's needs. See FAR § 2.101 for a complete definition of commercial product or commercial service.

sufficient when combined with updated data, the Head of the Contracting Activity may grant a waiver. The Head of the Contracting Activity is the official who has the overall responsibility for managing the contracting activity, including the authority to approve contracts for award when necessary.¹⁴

Recent Legislation Related to Cost or Pricing Data

Recent legislation includes a number of provisions related to cost or pricing data. The provisions touch on a variety of areas, from prime contractors determining whether subcontractors qualify for exceptions to submitting certified cost or pricing data to DOD establishing a program to accelerate the review of cost or pricing data for selected contracts.¹⁵ Section 811 of the NDAA for Fiscal Year 2018 made several changes to the submission of cost or pricing data.

- For prime contracts awarded after June 30, 2018, and modifications, subcontracts, and subcontract modifications awarded under those prime contracts, section 811(a) increased the threshold in the Truthful Cost or Pricing Data statute under which the offeror or contractor must submit certified cost or pricing data from \$750,000 to \$2 million. Additionally, prime contractors could also request that the threshold be increased to \$2 million for subcontracts and subcontract modifications under prime contracts awarded on or before June 30, 2018. This change was applicable across executive agencies.
- Section 811(b) amended Title 10 of the U.S.C. section 2306a, now codified at sections 3701 to 3708, to require DOD offerors, when certified cost or pricing data are not required, to submit data other than certified cost or pricing data if requested by the contracting officer to the extent needed to determine that prices are fair and reasonable.

See appendix II for additional information on changes made to cost or pricing data requirements that were included in the NDAA's from fiscal years 2016 to 2022.

¹⁴Contracting activity means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. FAR § 2.101.

¹⁵National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 822 (2016) and John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 890 (2018).

Prior GAO Reports

We have issued several reports that assessed DOD's efforts to obtain cost or pricing data from contractors. Our reports addressed issues such as the challenges encountered by contractors in obtaining information from their subcontractors, and contracting officers' challenges in obtaining cost or pricing data for contracts related to sole-source spare parts.

- In July 2018, we reported on four interrelated factors that influenced how and whether DOD determined if an item was commercial and if its price was reasonable.¹⁶ These factors included (1) the information available about the item in the commercial market; (2) DOD contracting officers' ability to obtain cost or pricing data from contractors; (3) the extent of DOD-specific modifications to the item; and (4) the reliability of prior commercial item determinations. In the case studies we reviewed, most contractors provided relevant information to DOD after multiple requests, but not without delays and challenges. The contractors had challenges in obtaining information, such as cost or pricing data, from their subcontractors and also provided insufficient information to support a commercial item or price reasonableness determination.¹⁷ We also found that DOD had taken initial steps to share more information across the department to inform commercial item determinations, but that DOD did not have a comprehensive information sharing strategy. DOD concurred with our recommendation to develop a strategy for how information related to commercial item and price reasonableness determinations should be shared across the department. In December 2018, DOD took several actions, including designating the Defense Contract Management Agency Commercial Item Group to serve as the determining office for

¹⁶GAO, *Defense Contracts: Improved Information Sharing Could Help DOD Determine Whether Items Are Commercial and Reasonably Priced*, [GAO-18-530](#) (Washington, D.C.: July 31, 2018).

¹⁷During the pre-award process for DOD commercial procurement actions over \$1 million, two distinct determinations regarding commerciality and price reasonableness take place: (1) a contracting officer must determine in writing whether a product or service being procured is commercial, and (2) the contracting officer must determine if the offered price is fair and reasonable.

all commercial item review requests submitted to the Defense Contract Management Agency.¹⁸

- In May 2021, we found that DOD issued a memorandum in March 2019 requiring defense agencies to report when contractors outright refuse to provide cost or pricing data.¹⁹ However, DOD was not collecting information on the extent that delays in obtaining the data affect the time that it takes to award certain contracts. Defense Logistics Agency, Air Force, and Navy contracting officers said that while they were able to determine if prices were reasonable, delays in obtaining contractors' cost or pricing data contributed to the length of time needed to award seven of the 10 sole-source spare parts contracts we reviewed. DOD concurred with our recommendation to identify options for collecting information on the extent and nature of delays that contracting officers experience in obtaining cost or pricing data on sole-source contracts. As of March 2022, DOD has yet to finish identifying options for collecting this information.

DOD and NASA Changed Policy and Took Other Steps to Implement Section 811

DOD and NASA initially implemented section 811(a) of the NDAA for Fiscal Year 2018—the threshold increase for requiring certified cost or pricing data—using class deviations. Agencies may issue class deviations to deviate from the FAR when necessary to meet the specific needs and requirements of the agency. When agencies require a class deviation on a permanent basis, they should propose a FAR revision, if appropriate.²⁰ The FAR was subsequently revised to incorporate the increased threshold for requiring certified cost or pricing data. Separately, DOD officials stated they are considering how their agency regulations could be strengthened based on the section 811(b) requirement that offerors

¹⁸Defense Federal Acquisition Regulation Supplement (DFARS) § 212.102(a)(i) and DFARS Procedures, Guidance, and Information § 212.102(a)(i) provide directions for documenting and uploading commercial item determinations over \$1 million and advises contracting activities on how to request assistance from the Defense Contract Management Agency Commercial Item Group.

¹⁹GAO, *Spare Parts Contracts: Collecting Additional Information Could Help DOD Address Delays in Obtaining Cost or Pricing Data*, [GAO-21-388](#) (Washington, D.C.: May 26, 2021).

²⁰Class deviations affect more than one contract action. FAR §§ 1.402, 1.404.

provide data other than certified cost or pricing data if requested by the contracting officer.

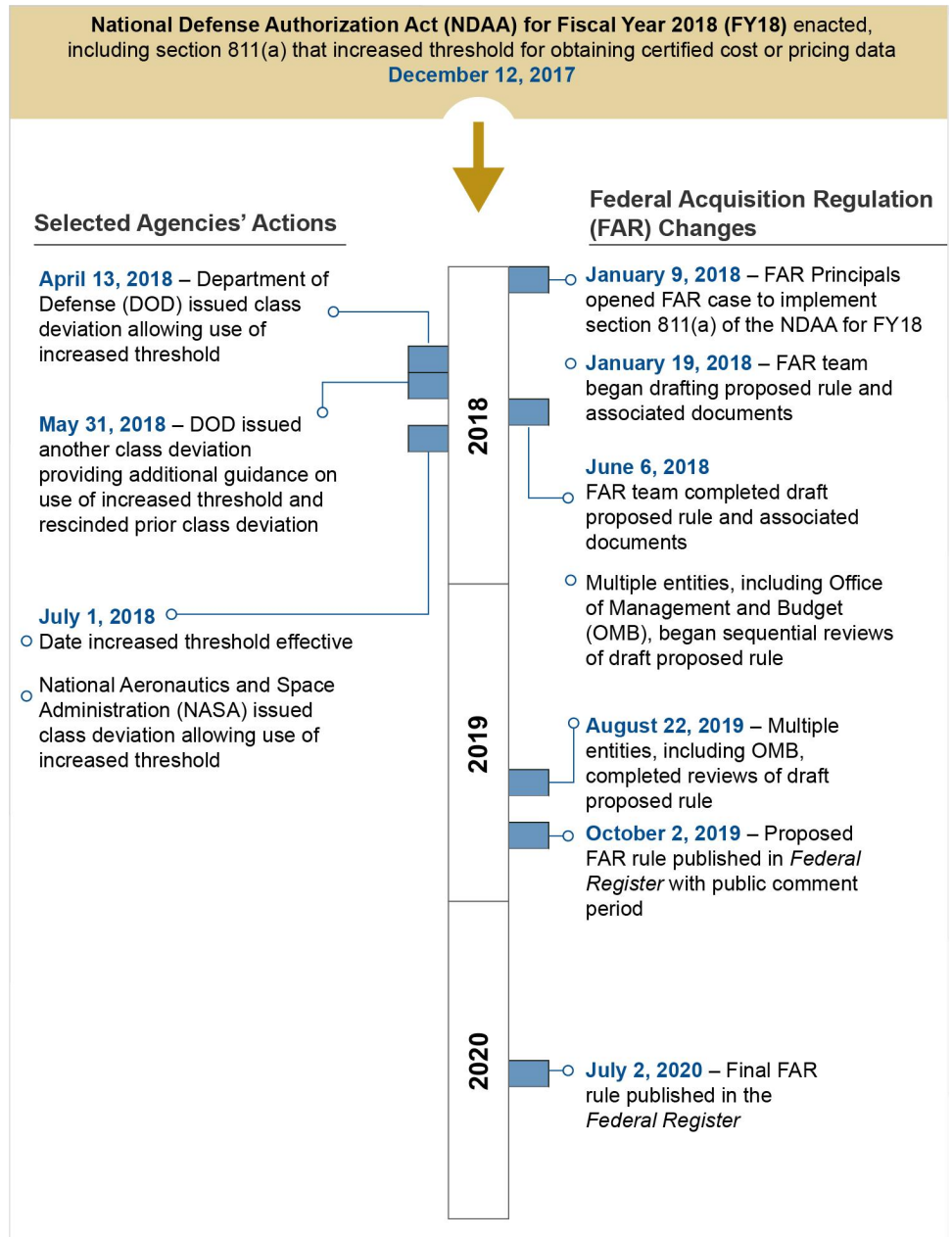
DOD and NASA Implemented Certified Cost or Pricing Data Threshold Increase through Policy

DOD and NASA implemented the increased threshold from \$750,000 to \$2 million for obtaining certified cost or pricing data by issuing class deviations either on or before July 1, 2018, the effective date specified by section 811(a).²¹ DOD and NASA policy officials stated that they did so as they did not believe that the standard rulemaking process to implement a change in the FAR would be completed in time.

To ensure consistency, DOD and NASA, in coordination with other agencies as part of the FAR Council, subsequently incorporated the increased threshold into the FAR on July 2, 2020. Figure 2 shows the overall timeline for implementing section 811(a).

²¹DOD Class Deviation 2018-O0012 (April 13, 2018), DOD Class Deviation 2018-O0015 (May 31, 2018), and NASA Procurement Class Deviation 18-04 (July 1, 2018).

Figure 2: Timeline of Select Steps Taken to Implement Section 811(a)



Source: GAO analysis of NDAA, DOD and NASA documents, and *Federal Register*. | GAO-22-105307

We found that the time to amend the FAR took about a year longer than suggested by the FAR Operating Guide. Specifically, the drafting of the proposed rule and OMB’s review of the proposed rule took nearly 3

months and 8 months longer, respectively, than the estimated times in the FAR Operating Guide. OMB officials told us that their review of the proposed rule was delayed by the government shutdown in January 2019, and the ongoing implementation of an executive order that required identifying two prior regulations to be eliminated for every new regulation issued.²² However, the effective date of section 811(a) was not delayed by the FAR change for DOD and NASA because these agencies had previously issued class deviations.

DOD Is Considering Whether Changes to Existing Defense Acquisition Regulations Are Needed

DOD officials stated that they are considering whether further changes to the Defense Federal Acquisition Regulation Supplement (DFARS) are needed to implement section 811(b). DOD officials noted that since January 2018, the DFARS has required contracting officers to include a provision in solicitations describing requirements related to submitting either certified or data other than certified cost or pricing data. Under this provision, if the offeror submitted data other than certified cost or pricing data, it was to include the minimum information necessary for the contracting officer to determine that the proposed price was fair and reasonable. The provision further required that, should the contracting officer provide a written request for additional information, the offeror was to provide within 10 days either the requested information or a written explanation for its inability to fully comply.²³ Section 811(b) similarly requires offerors to submit data other than certified cost or pricing data, if requested, to the extent necessary.

DOD officials noted that they are considering whether to further amend the DFARS to address or clarify section 811(b)'s requirements. To do so, DOD officials initiated a DFARS case and tasked a team to draft a proposed rule by April 2022 that would address section 811(b), as well as implement two other recent statutory provisions related to cost or pricing data requirements. These other provisions include section 804 of the NDAA for Fiscal Year 2022 and section 814 of the NDAA for Fiscal Year 2021. Additional information on these two provisions may be found in appendix II.

²²Exec. Order. No. 13,771, 82 Fed. Reg. 9339 (Feb. 3, 2017).

²³See DFARS §§ 215.408(5)(i), 252.215.7010(d).

DOD and NASA Have Not Formally Assessed the Effects of Section 811 after Implementation

Section 811 does not require executive agencies to evaluate the effects of this provision's changes, and as of January 2022, NASA and DOD officials told us they had not formally analyzed the effects. NASA officials stated they might conduct analysis to determine changes in the number of contracts that require certified cost or pricing data and their ability to obtain data other than certified cost or pricing data, among other factors. In response to a separate NDAA provision—section 814 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021—DOD is working to report by July 1, 2022, on the effect of increasing the threshold for requiring certified cost or pricing data to \$2 million. This report is to cover any subcontract or any modification based on price adjustments entered into on or after January 1, 2021. DOD is also to consider, among other things, the efficiencies achieved and associated costs to the government based on the change to the threshold.

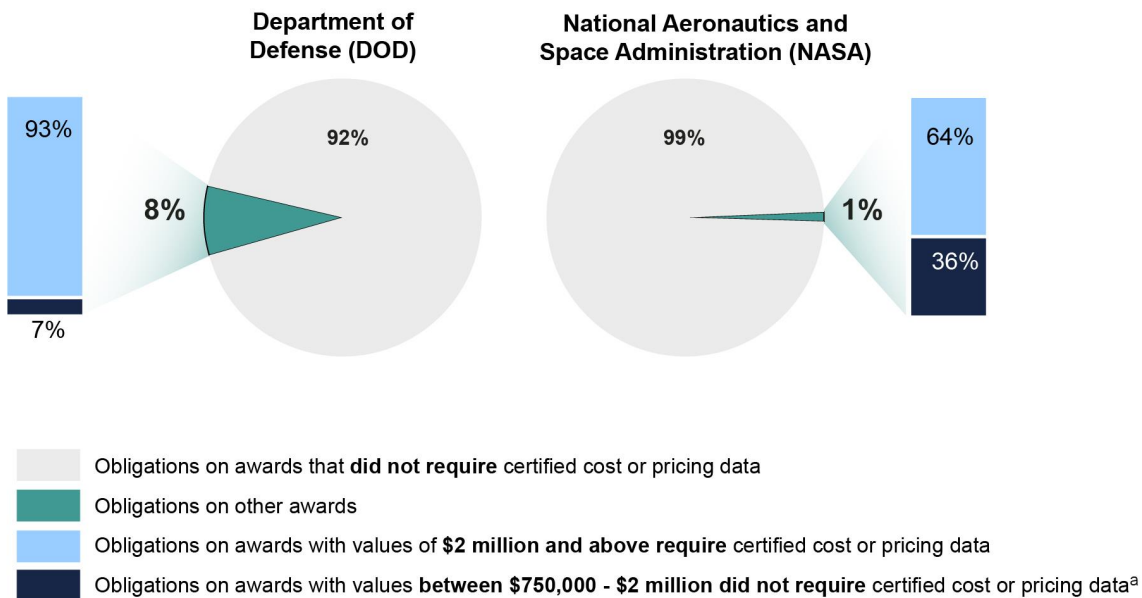
DOD officials stated that identifying the relevant subcontracts and modifications will be challenging because FPDS does not capture subcontracts. Furthermore, reported modifications may combine obligations from contract actions where certified cost or pricing data were required as well as contract actions where the data were not required. DOD officials stated that they plan to identify organizations within the department that track contract actions where certified cost or pricing data were provided. However, the officials said that they were unsure if the tracking would capture contract actions affected by section 814 of the NDAA for Fiscal Year 2021.

Despite not conducting formal analysis, DOD and NASA contracting officials told us that generally only a small percentage of their total awards would be affected by the threshold increase. DOD and NASA officials' observation of the potential effect of the increase in the threshold is consistent with the FAR Council's and our analyses. During the FAR rulemaking process for this provision, DOD, NASA, and the General Services Administration—as part of the FAR Council—used FPDS data to estimate the number of awards in fiscal year 2016 that would be affected by section 811(a). The FAR Council analysis estimated that 2,697 awards by all federal agencies in fiscal year 2016 would be affected by the

increased threshold and therefore no longer require the submission of certified cost or pricing data.

Using FPDS data, we estimated that less than 1 percent of about 542,000 of DOD’s and NASA’s total awards in fiscal year 2020 may require submitting certified cost or pricing data depending on the dollar threshold applied. Of that 1 percent, nearly half of the awards—over 2,000—are estimated not to require contractors to submit certified cost or pricing data due to the threshold change. Additionally, our analyses found that, as a percentage of obligations made on these awards in fiscal year 2020, the increased threshold affected a lower percentage of obligations at DOD than it did at NASA—7 percent versus 36 percent (see fig. 3). However in terms of amount of obligations, the increased threshold meant that approximately \$1.7 billion and \$19 million of DOD and NASA’s obligations, respectively, would not be subject to certified cost or pricing data requirements.

Figure 3: Estimated Percentage of DOD and NASA’s Obligations on Awards in Fiscal Year 2020 That Did Not Require Certified Cost or Pricing Data Due to the Threshold Change



Source: GAO analysis based on Federal Procurement Data System data. | GAO-22-105307

Accessible Data Table for Figure 3

| | Obligations on awards that did not require certified cost or pricing data (in percent) | Obligations on other awards (in percent) | Obligations on awards with values of \$2 million and above require certified cost or pricing data (in percent) | Obligations on awards with values between \$750,000 - \$2 million did not require certified cost or pricing data (in percent) |
|---|--|--|--|---|
| Department of Defense | 92 | 8 | 93 | 7 |
| National Aeronautics and Space Administration | 99 | 1 | 64 | 36 |

^aSection 811(a) of the National Defense Authorization Act for Fiscal Year 2018 changed the threshold for requiring certified cost or pricing data. Pub. L. No. 115-91 (2017).

Note: We defined awards to include new negotiated contracts awarded, base awards for single-award indefinite delivery / indefinite quantity contracts, and orders from multiple-award indefinite delivery / indefinite quantity contracts awarded in fiscal year 2020. We focused on awards with total contract values equal to and greater than \$750,000 that, based on their reported characteristics, would generally have required the submission of certified cost or pricing data before the amendments of section 811. These characteristics include awards that (1) were for products or services that were not commercial; (2) were awarded noncompetitively or competitively for which the government received only one offer; and (3) did not have a waiver to the requirement to submit certified cost or pricing data. We excluded noncompetitive orders from multiple-award indefinite delivery / indefinite quantity contracts because we are not able to differentiate orders that require certified cost or pricing data from ones that do not have this requirement. The estimated percentage of NASA's obligations on other awards was less than 0.5 percent, so we rounded to 1 percent for readability.

DOD and NASA contracting officers we interviewed did not perceive the change in the threshold as having a significant effect on their ability to obtain cost or pricing data, such as helping address the challenges in obtaining the data or affecting how they used the information to determine if a proposed price was fair and reasonable. DOD and NASA contracting officers stated that, while they were no longer able to require contractors to certify the data below \$2 million, they generally obtained data other than certified cost or pricing data and conducted the same type of analyses as before the threshold change. Additionally, DOD officials we interviewed did not view the change implemented by section 811(b)—that the offeror is required to provide data other than certified cost or pricing data when requested by the contracting officer—as improving their ability to obtain data. Specifically, Air Force and Navy contracting officers said that they already relied on existing agency policy.

In our discussions, DOD and NASA contracting officers also noted that the challenges they experienced in obtaining cost or pricing data generally remained the same regardless of the increase in threshold. For example, DOD and NASA contracting officers we interviewed said that

contractors may not provide the requested data in a timely fashion or that they may need to request additional data several times. As we previously noted, we found in our prior work that while Defense Logistics Agency, Air Force, and Navy contracting officers were able to determine if prices were reasonable, they experienced delays in obtaining contractor's cost or pricing data for seven of the 10 sole-source spare parts contracts we reviewed from fiscal year 2019.²⁴

In terms of how the change in threshold may have affected contractors, we estimated that about 1,300 unique DOD and NASA contractors had awards in fiscal year 2020 with total contract values between \$750,000 and \$2 million. As such, these contractors would not be required to submit certified cost or pricing data for these awards due to the increased threshold. Of the 1,300 unique contractors, we estimated that about 70 percent—or 900—were identified in FPDS as small businesses and the remaining 30 percent were other than small businesses, including major defense contractors. FPDS does not provide information about the extent to which a specific contractor saved time or reduced costs from not being required to submit certified cost or pricing data due to the increased threshold. There are contractors that have awards both below and above the \$2 million threshold, so they would be required to provide certified cost or pricing data for the applicable awards above \$2 million. We estimated that approximately 400 of the 1,300 DOD and NASA contractors fall into this category. Of these 400 contractors, about half were identified as small businesses.

Agency Comments

We provided a draft of this report to DOD, NASA, and OMB for their review and comment. NASA and OMB had no comments on the draft report. DOD provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Administrator of NASA, and

²⁴[GAO-21-388](#). Also, in December 2021, the DOD Inspector General found that Defense Logistics Agency contracting officers faced challenges in obtaining data other than certified cost data from TransDigm Group Inc., a contractor selling spare parts, for awards below the threshold in the Truthful Cost or Pricing Data statute. Department of Defense, Office of Inspector General, *Audit of the Business Model for TransDigm Group Inc. and Its Impact on Department of Defense Spare Parts Pricing*, DODIG-2022-043 (Alexandria, Va.: Dec. 13, 2021).

the Director of OMB. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or DinapoliT@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink, appearing to read "Timothy J. DiNapoli". The signature is fluid and cursive, with the first name "Timothy" and last name "DiNapoli" clearly legible.

Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions

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Appendix I: Objectives, Scope, and Methodology

Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 included a provision for GAO to report on the implementation and effect of modifications to the requirements related to the submission of cost or pricing data.¹ Section 811(a) of the NDAA for Fiscal Year 2018 increased the dollar threshold for offerors and contractors to submit certified cost or pricing data from \$750,000 to \$2 million for certain prime contracts, modifications, and subcontracts.² Additionally, section 811(b) amended Title 10 of the United States Code (U.S.C.) section 2306a, now codified at sections 3701 to 3708, to require Department of Defense (DOD) offerors, when certified cost or pricing data are not required, to submit data other than certified cost or pricing data if requested by the contracting officer.³ This report describes (1) how DOD and the National Aeronautics and Space Administration (NASA) implemented the provisions applicable to their agencies, and (2) the extent that DOD and NASA analyzed the effect of these changes on their ability to obtain cost or pricing data.

¹National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 811 (2017).

²Certified cost or pricing data are required to be submitted in accordance with Federal Acquisition Regulation (FAR) § 15.403-4 and § 15.403-5 and are required to be certified, in accordance with § 15.406-2. This certification states that, to the best of the person's knowledge and belief, the cost or pricing data are accurate, complete, and current as of a certain date before contract award. Cost or pricing data are required to be certified in accordance with 10 United States Code (U.S.C.) § 3702 and 41 U.S.C. § 3502. When contracting officers are required to obtain certified cost or pricing data, they must also obtain any other cost or pricing data necessary to determine the contract price is fair and reasonable. FAR § 15.402.

³Data other than certified cost or pricing data means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data but without the certification. Federal Acquisition Regulation (FAR) § 2.101. See FAR § 15.402(a)(2) for examples of data other than certified cost or pricing data. 10 U.S.C. § 2306a was recodified as Ch. 271 Truthful Cost or Pricing Data, 10 U.S.C. §§ 3701-3708, as amended by William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-238, § 1831 (2021), as further amended by National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 1702 (2021).

To describe how agencies implemented section 811(a), we selected two agencies—DOD and NASA—that had awards with the highest and fifth highest total contract values in fiscal year 2020. Fiscal year 2020 was the latest complete year of data available in Federal Procurement Data System (FPDS) when we initiated our review.⁴ For the purposes of this analysis, awards included new contracts, purchase orders, and orders from both single-award indefinite delivery / indefinite quantity contracts and multiple-award indefinite delivery / indefinite quantity contracts awarded in fiscal year 2020.⁵ This analysis included awards that had total contract values of \$2 million or more, which is the section 811 threshold for requiring offerors to submit certified cost or pricing data. Also, we selected DOD and NASA because the same regulatory standards for adequate price competition, an exception to the requirement to obtain certified cost or pricing data, applied to these agencies.⁶

We reviewed applicable sections of the Truthful Cost or Pricing Data statute to understand the changes made by section 811. We also reviewed the July 2015 Federal Acquisition Regulation (FAR) Operating Guide, which provides the current procedures for processing FAR rules; FAR Council documentation regarding implementation of section 811(a) such as the proposed and final FAR rules; and DOD and NASA policy about the increased thresholds.⁷ We interviewed the Chairs of the Defense Acquisition Regulations Council and Civilian Agency Acquisition Council; Defense Acquisition Regulations System staff; and officials from the Defense Contract Management Agency, NASA's Office of Procurement, and the Office of Management and Budget's Office of Federal Procurement Policy to understand the process for incorporating the statutory increased threshold into the FAR. To describe whether DOD implemented section 811(b), we reviewed applicable sections on

⁴FPDS is the federal government's authoritative source for contract data. Contracts whose estimated value is above the micro-purchase threshold (generally \$10,000) are reported to FPDS, with some exceptions. Federal Acquisition Regulation § 4.606.

⁵Indefinite delivery / indefinite quantity contracts—which can be awarded to one or more contractors for the same or similar products or services—are used when the exact quantities and timing for products or services is not known at the time of award. Single-award indefinite delivery / indefinite quantity contracts refers to situations when only one contract is awarded under a solicitation. Multiple-award indefinite delivery / indefinite quantity contracts refers to situations when contracts are awarded to two or more contractors under a single solicitation.

⁶Federal Acquisition Regulation §§ 15.403-1(c)(1), 15.403-1(b).

⁷The FAR Council assists in the direction and coordination of federal government-wide procurement policy and procurement regulatory activities. 41 U.S.C. § 1302(a).

obtaining cost or pricing data from the FAR, Defense Federal Acquisition Regulation Supplement (DFARS), and DFARS Procedures, Guidance, and Information. We also interviewed Defense Acquisition Regulations System staff and the Chair of the Defense Acquisition Regulations Council.

For our second objective, we reviewed analyses conducted during the FAR rulemaking process. We interviewed officials within DOD's Defense Pricing and Contracting office—which is responsible for pricing, contracting, and procurement policy matters—and NASA's Office of Procurement. We also interviewed officials from the Defense Contract Audit Agency, DOD and NASA's Offices of Small Business Programs, and contracting officers from selected DOD contracting activities and NASA centers about their views on the effects of the changes from section 811. Specifically, we interviewed contracting officers from the Air Force's Hanscom Air Force Base and Big Safari in the Life Cycle Management Center, the Navy's Naval Air Systems Command and Naval Sea Systems Command, and NASA's Jet Propulsion Laboratory and Marshall Space Flight Center. We selected these DOD contracting activities and NASA centers based on their number of awards with total contract values between \$750,000 and \$2 million and obligations on these awards. In addition, we reviewed relevant GAO and DOD Inspector General reports to better understand past issues with obtaining cost or pricing data.

Additionally, we attempted to describe the potential effect of the change in the threshold to submit certified cost or pricing data. We estimated the number of and obligations on DOD and NASA awards in fiscal year 2020 that did not require certified cost or pricing data due to the threshold increase. For our estimate, we analyzed data from FPDS to identify the number of and obligations made under DOD and NASA awards in fiscal year 2020 that had total contract values between \$750,000 and \$2 million—the thresholds for requiring the submission of certified cost or pricing data before and after the amendments of section 811. We defined awards to include new negotiated contracts, base awards for single-award indefinite delivery / indefinite quantity contracts, and orders from multiple-award indefinite delivery / indefinite quantity contracts awarded in fiscal year 2020. Furthermore, we focused on awards with total contract values equal to and greater than \$750,000 that, based on their reported characteristics, would generally have required the submission of certified

cost or pricing data before the amendments of section 811.⁸ These characteristics include awards that (1) were for products or services that were not commercial; (2) were awarded noncompetitively or competitively for which the government received only one offer; and (3) did not have a waiver to the requirement to submit certified cost or pricing data.⁹ We also used these data to estimate the number and types of contractors that had awards that fell between the thresholds before and after the amendments of section 811. We excluded orders from single-award indefinite delivery / indefinite quantity contracts and noncompetitive orders from multiple-award indefinite delivery / indefinite quantity contracts because we are not able to differentiate orders that require certified cost or pricing data from ones that do not have this requirement.¹⁰

We also excluded awards that did not require contracting officers to obtain certified cost or pricing data from our analysis. For example, we excluded DOD and NASA contracts awarded to the Canadian Commercial Corporation as well as NASA's Small Business Innovation Research program Phase II contracts because the agencies waived the requirement for submission of certified cost or pricing data.¹¹ We also excluded undefinitized contract actions and awards that used sealed-bid procedures.

We excluded modifications in our analysis because in FPDS, reported modifications may combine obligations from awards where certified cost or pricing data were required with awards where the data were not required, resulting in an overestimation of obligations. For example, one

⁸The exceptions to certified cost or pricing data requirements are: (1) adequate price competition; (2) price set by law or regulation; (3) acquisition of a commercial product or commercial service; or (4) waiver. FAR § 15.403-1. Adequate price competition is defined differently for agencies other than DOD, NASA, and the Coast Guard. FAR § 15.403-1(c)(1)(ii).

⁹For the purposes of this report, noncompetitive contracts refer to contracts and orders that were reported in FPDS as awarded using other than full and open competition or through an exception to fair opportunity. Competitive with only one offer contracts refer to contracts that were reported in FPDS as the government having received only one offer in response to a competitive solicitation. Certified cost or pricing data are not required if the price is based on adequate price competition. FAR § 15.403-1(b)(1). For the purposes of this report, a contract action reported in FPDS as not using FAR Part 12 commercial item procedures was categorized as not commercial.

¹⁰The number of DOD and NASA orders from single-award indefinite delivery / indefinite quantity contracts in fiscal year 2020 was 2.9 million.

¹¹DFARS § 252.215-7004; NASA FAR Supplement § 1815.403-170.

modification we identified as being subject to the increased thresholds changed the contract value by \$1.5 million and obligated \$721 million to the contract. Only \$1.5 million of the \$721 million in obligations would be subject to the increased threshold, and the modification would not require certified cost or pricing data. We also excluded subcontracts from our analysis as FPDS does not capture information about subcontracts. We did not use the cost or pricing data field in FPDS to determine if cost or pricing data were obtained for an award because this field is not reviewed as part of DOD and NASA's annual certification of data reported to FPDS and is also not included in GAO's work examining the quality of federal spending data published on USAspending.gov.¹²

Our analysis is an estimate of the effect of the increased threshold requiring submission of certified cost or pricing data. Our estimates may exclude some awards that did not indicate they require certified cost or pricing data based on general characteristics, but did require certified cost or pricing data. Conversely, our estimates may include some awards that the reported data indicated would require certified cost or pricing data, but did not. For example, we identified a DOD contract that was reported as having the characteristics of a contract indicating it would require submitting certified cost or pricing data, such as having a total contract value over \$2 million, was not awarded competitively, and was not for commercial products or commercial services. This contract was included in a list that DOD provided of contracts that waived the requirement for certified cost or pricing data. We found that in FPDS this contract was not entered as having waived the requirement for certified cost or pricing data. We excluded this contract from our analysis. Additionally, we were not able to exclude awards where the Head of the Contracting Activity authorized a contracting officer to obtain certified cost or pricing data for awards with a total contract value below \$2 million, or prices are set by law or regulation, because FPDS does not capture this information.¹³ To assess the reliability of data from FPDS, we electronically tested the data from FPDS and interviewed knowledgeable agency officials about limitations of the FPDS data. We determined the data were sufficiently reliable for the purposes of selecting DOD and NASA, and estimating

¹²USAspending.gov—a public-facing website—integrates data from many sources, including data obtained directly from agency systems and data pulled or derived from external government-wide reporting systems, such as FPDS.

¹³FAR § 15.403-4(a)(2); FAR § 15.403-1(b)(2).

data related to the thresholds for submitting certified cost or pricing data before and after the amendments of section 811.

We conducted this performance audit from June 2021 to April 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summary of Recent Provisions from National Defense Authorization Acts Related to Cost or Pricing Data

Table 1: Provisions from the National Defense Authorization Acts for Fiscal Years 2016-2022 Related to Cost or Pricing Data

| Sections | Summary of threshold changes | Summary of other changes |
|--|------------------------------|--|
| National Defense Authorization Act for Fiscal Year 2016 | | |
| Sec. 812 | None | Adds an exception for submitting certified cost or pricing data when such data relate to an offset agreement in connection with a contract for sales of weapons systems or defense-related items to a foreign country or firm, and does not relate to a contract or subcontract under the offset agreement for work performed in the foreign country or by the foreign buyer that is directly related to the items purchased. |
| Sec. 851 | None | <p>Allows a Department of Defense (DOD) contracting officer to use a previously established commercial item determination made by DOD as a determination for future procurements for the purpose of applying the commercial item exception to the required submission of certified cost or pricing data. If a prior determination is not used for an item previously determined to be a commercial item, the contracting officer is required to request that the head of the contracting activity review the prior determination and either confirm that the prior determination is still valid or issue a revised determination with a written explanation for the revision.</p> <p>Requires the Secretary of Defense to establish and maintain a centralized capability to oversee the making of commercial item determinations for DOD procurements, and provided public access to DOD commercial item determinations.</p> <p>Requires that the Defense Federal Acquisition Regulation Supplement be updated to reflect the requirements of this section.</p> |
| Sec. 852 | None | Identifies actions a contracting officer shall take to the extent necessary to determine price reasonableness of a major weapon system sought to be procured as a commercial item, such as requiring the offeror to submit prices paid for the same or similar commercial items under comparable terms, and if the submitted pricing information is not sufficient to determine price reasonableness, requiring other information. |

**Appendix II: Summary of Recent Provisions
from National Defense Authorization Acts
Related to Cost or Pricing Data**

| Sections | Summary of threshold changes | Summary of other changes |
|-----------------|-------------------------------------|---|
| Sec. 853 | None | Requires a contracting officer to consider recent prices paid by the government for similar items to determine price reasonableness of a commercial item. If the contracting officer is satisfied, the prices previously paid are valid references for comparison, based on factors such as the quantities purchased by the government and how long ago the prices were paid. |

National Defense Authorization Act for Fiscal Year 2017

| | | |
|----------|------|---|
| Sec. 822 | None | <p>Adds “that is only expected to receive one bid” to the description of the circumstances in which an offeror of a prime contract is required to submit cost or pricing data in 10 United States Code (U.S.C.) § 2306a(a), now codified at 10 U.S.C. § 3702.</p> <p>In a list of exceptions to the requirement to submit certified cost or pricing data, replaces “adequate price competition” in 10 U.S.C. § 2306a(b), now codified at 10 U.S.C. § 3703, with “adequate competition that results in at least two or more responsive and viable competing bids” that is applicable to DOD, NASA, and the Coast Guard. Makes prime contractors that are required to submit certified cost or pricing data responsible for determining whether subcontracts under the prime contract qualify for exceptions from certified cost or pricing data submission requirements.</p> |
| Sec. 873 | None | Removes the requirement for public access to DOD commercial item determinations, changes the purpose of DOD’s centralized capability from oversight of commercial item determinations to providing assistance to military departments and Defense Agencies, and expands the scope of DOD’s centralized capability to include assistance in conducting market research and price reasonableness analysis. |

National Defense Authorization Act for Fiscal Year 2018

**Appendix II: Summary of Recent Provisions
from National Defense Authorization Acts
Related to Cost or Pricing Data**

| Sections | Summary of threshold changes | Summary of other changes |
|---|---|---|
| Sec. 811 | <p>Increases the Truthful Cost or Pricing Data threshold for requiring certified cost or pricing data from \$750,000 to \$2 million for prime contracts awarded after June 30, 2018, as well as its modifications, subcontracts, and subcontract modifications.</p> <p>Increases the Truthful Cost or Pricing Data threshold for requiring certified cost or pricing data from \$750,000 to \$2 million for subcontracts and subcontract modifications awarded after June 30, 2018, for prime contracts awarded on or before June 30, 2018, when requested by the prime contractor.</p> <p>Otherwise, the threshold for requiring certified cost or pricing data remains \$750,000. Future threshold increases to account for inflation will follow section 1908 of title 41.</p> | Amends 10 U.S.C. § 2306a, now codified at 10 U.S.C. §§ 3701-3708, to require offerors to submit data other than certified cost or pricing data if requested by the contracting officer when certified cost or pricing data are not required. |
| John S. McCain National Defense Authorization Act for Fiscal Year 2019 | | |
| Sec. 836 | None | Replaces “commercial item” with “commercial product” or “commercial service” throughout 10 U.S.C. § 2306a, now codified at 10 U.S.C. §§ 3701-3708, and other statutes. |
| John S. McCain National Defense Authorization Act for Fiscal Year 2019 | | |
| Sec. 890 | None | Requires the Secretary of Defense to establish a pilot program to reform and accelerate contracting and pricing processes for contracts greater than \$50 million by basing price reasonableness determinations on actual cost or pricing data for prior Department of Defense purchases of the same or similar products and reducing the cost and pricing data to be submitted in accordance with 10 U.S.C. § 2306a, now codified at 10 U.S.C. §§ 3701-3708. The pilot program may include no more than 10 contracts and none of the selected contracts may be part of a major defense acquisition program. The Secretary of Defense’s authority to carry out the pilot program will expire on January 2, 2021. The Secretary of Defense must submit a report by January 30, 2021, on the results of the pilot program and include an assessment of whether the program should be continued or expanded. |
| National Defense Authorization Act for Fiscal Year 2020 | | |

**Appendix II: Summary of Recent Provisions
from National Defense Authorization Acts
Related to Cost or Pricing Data**

| Sections | Summary of threshold changes | Summary of other changes |
|-----------------|-------------------------------------|---|
| Sec. 803 | None | <p>Prohibits contracting officers from determining a price to be fair and reasonable based solely on historical prices paid by the government when the offeror is required to submit data other than certified cost or pricing data. Also, section 803 requires that if the contracting officer is unable to determine whether proposed prices are fair and reasonable by any other means, an offeror that fails to make a good faith effort to comply with a reasonable request to submit data other than certified cost and pricing data is ineligible for contract award unless the head of the contracting activity or designee determines it is in the best interest of the government based on factors such as the urgency of the government's need, the offeror's justification for not providing the requested data, and other factors.</p> <p>Directs the Under Secretary of Defense for Acquisition and Sustainment, or a designee, to report annually on offerors that have denied multiple requests for submission of data other than certified cost or pricing data over the preceding 3-year period but nevertheless received an award. The Under Secretary is required to assess the extent to which these offerors are sole-source providers and develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply.</p> |
| Sec. 825 | None | <p>Makes administrative changes to the pilot program created by section 890 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, including eliminating the pilot program limitation to 10 contracts that are not part of a major defense acquisition program and extending the pilot program's conclusion date from January 2, 2021, to January 2, 2023.</p> |

William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

| | | |
|----------|--|--|
| Sec. 814 | <p>Amends 10 U.S.C. § 2306a(a), now codified at 10 U.S.C. § 3702, to increase the threshold for requiring certified cost or pricing data to \$2 million for any modification based on price adjustments or any subcontract entered into on or after January 1, 2021.</p> | <p>Requires the Secretary of Defense, in consultation with the Secretaries of the military departments, to provide to the congressional defense committees a report analyzing the impact, including benefits, of the amendments made in this section by July 1, 2022. The report is required to include (1) data to illustrate efficiencies achieved, costs avoided, and acquisition timelines improved; (2) analysis of associated costs to the government, if any; (3) analysis of the underlying factors that limited any benefits of the \$2 million threshold for obtaining certified cost or pricing data for modifications of prime contracts; and (4) other matters the Secretary deems appropriate.</p> |
|----------|--|--|

National Defense Authorization Act for Fiscal Year 2022

**Appendix II: Summary of Recent Provisions
from National Defense Authorization Acts
Related to Cost or Pricing Data**

| Sections | Summary of threshold changes | Summary of other changes |
|-----------------|---|---------------------------------|
| Sec. 804 | Amends 10 U.S.C. § 2306a(a), now codified at 10 U.S.C. § 3702, to require the head of the agency to modify prime contracts that were awarded on or before June 30, 2018, as soon as practicable to reflect the \$2 million threshold for modifications and subcontracts. The prime contractor no longer has to request this change. | None |

Source: GAO analysis of National Defense Authorization Acts for Fiscal Years 2016-2022. | GAO-22-105307

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Timothy J. DiNapoli at (202) 512-4841 or DinapoliT@gao.gov

Staff Acknowledgments

In addition to the contact named above, Penny Berrier (Assistant Director), Carmen Yeung (Analyst-in-Charge), Brandon Booth, Lorraine Ettaro, Suellen Foth, Stephanie Gustafson, Alex Shura, Anne Louise Taylor, and Robin Wilson made key contributions to this report.

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