



January 2023

DEPARTMENT OF ENERGY CONTRACTING

Additional Actions Could Further Strengthen Competition

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Why GAO Did This Study

DOE is one of the largest federal civilian contracting agencies, awarding contracts for research, weapons production, and environmental cleanup. Competition saves taxpayer dollars, improves contractor performance, and curbs fraud.

The explanatory statement accompanying the Consolidated Appropriations Act, 2021, includes a provision for GAO to assess competition and other aspects of DOE's contracting process. This report examines, among other things, for DOE's largest competitions for contracts awarded in fiscal years 2015 through 2020, (1) the number of offers DOE received and the acquisition environment's potential effects on competition; and (2) factors identified by selected industry entities that may hinder competition, and actions DOE has taken to address such factors.

GAO analyzed contract files for the 15 competitions in its scope, interviewed DOE officials and representatives from selected industry entities that expressed interest in the contracts and did—or did not—submit an offer, and compared DOE actions to OMB guidance for enhancing competition.

What GAO Recommends

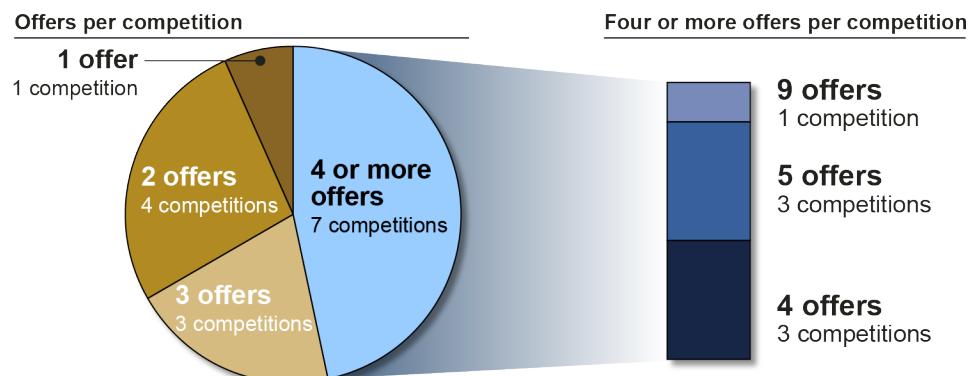
GAO is making eight recommendations, including that NNSA and the Office of Science hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated. DOE concurred and NNSA either concurred or concurred in principle with the recommendations.

View [GAO-23-105209](#). For more information, contact Alison Bawden at (202) 512-3841 or BawdenA@gao.gov.

What GAO Found

The Department of Energy (DOE) received multiple offers for almost all of its competitions for its largest contracts awarded from fiscal years 2015 through 2020 (see figure). However, relatively fewer entities—such as companies, universities, or organizations—submitted offers for management and operating (M&O) contracts than for other types of contracts. When fewer entities submit offers, risks to competition may increase, such as entities engaging in anticompetitive behavior. DOE officials say they help to mitigate these risks through relevant training for staff.

Number of Offers Received for Competitions Resulting in the Department of Energy's (DOE) Largest Contracts, Fiscal Years 2015–2020



Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

Industry representatives GAO interviewed identified wide-ranging factors that may hinder competition for DOE's largest competitions. A majority of the industry representatives expressed concerns about the fairness of aspects of the award process. For example, they questioned whether officials fairly rated offerors' performance on relevant past work. GAO did not find evidence in the contract files that supported these concerns. However, perceptions of unfairness may hinder competition, because entities may choose not to submit an offer if they perceive that they will not be treated fairly in a competition.

Some DOE components have taken actions to address factors that could hinder competition, such as sharing information with industry about the award process—consistent with guidance from the Office of Management and Budget (OMB). For example, DOE's Office of Environmental Management has recently begun holding quarterly meetings with industry entities. Agency officials and industry representatives said these meetings have been helpful. DOE's National Nuclear Security Administration (NNSA) and Office of Science, which had M&O contracts in GAO's scope, have not held similar meetings. Improved information sharing could help these components address industry perceptions about fairness, which could in turn remove barriers to a more competitive acquisition environment.

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Abbreviations

CIO	Chief Information Officer
CPARS	Contractor Performance Assessment Rating System
DOE	Department of Energy
EM	Office of Environmental Management
FAR	Federal Acquisition Regulation
GSA	General Services Administration
IDIQ	indefinite delivery/indefinite quantity
M&O	management and operating
NNSA	National Nuclear Security Administration
OMB	Office of Management and Budget

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

January 24, 2023

Congressional Committees

The Department of Energy (DOE) is one of the largest federal civilian contracting agencies. DOE, including the National Nuclear Security Administration (NNSA), relies primarily on contractors to carry out its diverse missions related to energy development, scientific research, nuclear security, and waste cleanup, among others.¹ In fiscal year 2021, approximately 80 percent of DOE's \$47 billion in total obligations was for contracts, including contracts to manage and operate its national security laboratories and nuclear weapons production facilities, construct additional facilities, conduct environmental cleanup, and provide information technology and other support services. Since 1990, we have designated aspects of DOE's acquisition function as high risk for the government because DOE's record of inadequate contract management and oversight of contractors left the department vulnerable to fraud, waste, abuse, and mismanagement.²

We have previously found that competition is the cornerstone of a sound acquisition process and a critical tool for achieving the best return on investment for taxpayers.³ Competition in federal acquisitions can help save taxpayer dollars, improve contractor performance, promote accountability for results, and curb fraud.⁴ Federal statutes and

¹NNSA is a separately organized agency within DOE. NNSA's missions include (1) maintaining and modernizing infrastructure for the U.S. nuclear weapons stockpile; (2) supporting the nation's nuclear nonproliferation efforts; (3) enhancing national security through the military application of nuclear energy; and (4) providing nuclear propulsion systems for the U.S. Navy. In addition, the Office of Naval Reactors acts semi-autonomously from NNSA. Under the NNSA Act, the NNSA Administrator has authority over and responsibility for all NNSA activities, except those of the Deputy Administrator for Naval Reactors specified in the program's foundational executive order. 50 U.S.C. § 2402. The Naval Reactor program's foundational executive order is Executive Order 12344, which is codified at 50 U.S.C. § 2511.

²GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: Mar. 2, 2021).

³See, for example, GAO, *Defense Contracting: Actions Needed to Increase Competition*, [GAO-13-325](#) (Washington, D.C.: Mar. 28, 2013).

⁴GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010).

acquisition regulations generally require that agencies award contracts on the basis of full and open competition through the use of competitive procedures.⁵ Under competitive procedures, all prospective contractors (i.e., non-federal industry entities) that meet certain criteria are permitted to submit offers in response to solicitations.

According to the Office of Management and Budget's (OMB) Office of Federal Procurement Policy, competitions that yield only one offer deprive agencies of the ability to consider alternative solutions in a reasoned and structured manner.⁶ In August 2022, DOE reported that the agency as a whole has demonstrated strong performance on competition, in part because over 90 percent of dollars obligated for contracting were awarded on a competitive basis in fiscal years 2017 through 2021.⁷ DOE did not report on the number of offers the agency received from prospective contractors for contracts awarded under full and open competition in that report.

The explanatory statement accompanying the Consolidated Appropriations Act, 2021, includes a provision for GAO to assess competition and other aspects of DOE's acquisition process.⁸ This report examines, for DOE competitions that resulted in the agency's largest contracts in fiscal years 2015 through 2020, (1) the number of offers DOE received and the acquisition environment's potential effects on competition; (2) the evaluation factors and information sources DOE used to evaluate offers and generate scores; and (3) factors that selected industry entities identified that may hinder competition, and actions DOE has taken to address such factors.⁹

⁵48 C.F.R. § 6.101.

⁶Office of Management and Budget, *Increasing Competition and Structuring Contracts for the Best Results* (Washington, D.C.: Oct. 27, 2009).

⁷Department of Energy, *Competition Advocate Report Fiscal Year 2021* (Washington, D.C.: Aug. 16, 2022).

⁸166 Cong. Rec. H8311, H8363 (daily ed. Dec. 21. 2020) (statement submitted by Rep. Lowey).

⁹We chose our timeframe for review because it included the most current available competitions when we started our review. We defined "largest contracts" as those with a potential total contract value of at least \$750 million. This is consistent with our definition of major projects and contracts for the DOE Contract and Project Management high-risk area, and it aligns with DOE's definition of a "major system project."

Our scope includes the 15 DOE competitions in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more, according to information in the Federal Procurement Data System.¹⁰ Collectively, those 15 competitions led to contracts that had a total potential value of more than \$150 billion, as of October 2021. These 15 competitions were awarded in all 6 years of our scope by five DOE components: NNSA (five competitions) and the Offices of Environmental Management (EM) (six competitions), Science (two competitions), Legacy Management (one competition), and the Chief Information Officer (CIO) (one competition). See table 1 for a list of these 15 competitions by DOE component.

Table 1: Competitions That Resulted in Contracts of \$750 Million or More Awarded Fiscal Years 2015–2020, by Department of Energy (DOE) Component

DOE component	Competition	Fiscal year DOE awarded contract
National Nuclear Security Administration (NNSA)	Management and Operation of the Los Alamos National Laboratory	2018
	Management and Operation of the Naval Nuclear Laboratory ^a	2018
	Management and Operation of the Sandia National Laboratories	2017
	Management and Operation of the Nevada National Security Site	2017
	Management and Operation of the Kansas City National Security Campus	2015
Office of the Chief Information Officer	Chief Information Officer Business Operations Support Services	2019
Office of Environmental Management	Hanford Central Plateau Cleanup	2020
	Hanford Mission Essential Services	2020
	Nationwide Deactivation, Decommissioning, and Removal	2020
	Los Alamos Legacy Cleanup	2018
	Paducah Gaseous Diffusion Plant Deactivation and Remediation	2017

¹⁰During this time frame, DOE also held competitions and made awards—but later canceled the awards—for two other large competitions that we excluded from our scope: (1) Hanford Site tank closure, awarded in fiscal year 2020, and (2) Savannah River Site liquid waste services, awarded in fiscal year 2018. We also excluded DOE's Energy Savings Performance competition, awarded in fiscal year 2017, because the resulting contract is used by agencies across the federal government. According to DOE documentation, the Office of Science extended six contracts for the management and operation of facilities during this time frame that, if competed, would have met our criteria of competitions that resulted in contracts with a potential total contract value of \$750 million or more. Three of these extended contracts were last competed in fiscal years 2005 through 2009. One—for the Oak Ridge National Laboratory—was last competed in 1999. Two others—for the Pacific Northwest National Laboratory and the SLAC National Accelerator Laboratory—have never been competed following initial award.

DOE component	Competition	Fiscal year DOE awarded contract
	Idaho Cleanup Project	2016
Office of Legacy Management	Legacy Management Support Services	2020
Office of Science	Oak Ridge Institute for Science and Education	2016
	Management and Operation of the Brookhaven National Laboratory	2015

Source: GAO analysis of DOE contract files. | GAO-23-105209

^aThe Naval Nuclear Laboratory is managed by the Naval Reactors Program, which is executed jointly with the U.S. Navy and is supported by two contracts with the same contractor: one with DOE and one with the Navy. According to NNSA, both contracts follow the same acquisition process and are jointly competed.

To address our objectives, we reviewed requirements in the Federal Acquisition Regulation (FAR), the Department of Energy Acquisition Regulation, and internal DOE directives. We also reviewed OMB guidance for improving government acquisition, enhancing competition, communicating with industry, and strengthening engagement with industry through innovative business practices.¹¹ We then analyzed contract files for the 15 competitions in our scope and other DOE documents related to competition. We also interviewed officials from the five DOE components that held the competitions in our scope: DOE's Office of the CIO, EM, Office of Legacy Management, and Office of Science; and NNSA. We also interviewed officials from DOE's Office of Acquisition Management, which establishes policies and procedures for DOE acquisitions—including maintaining the agency's Acquisition Guide. This guide identifies internal standard operating procedures and serves as a repository of best practices for acquisition.

Additionally, we interviewed representatives from 24 selected industry entities—that is, individual companies, organizations, or universities—that

¹¹OMB has issued a series of memoranda on a variety of topics, including those relating to competition. We reviewed the following: Office of Management and Budget, *Increasing Attention on Federal Contract Type Decisions*, M-21-11 (Washington, D.C.: Jan. 5, 2021); “Myth-Busting #4” – *Strengthening Engagement with Industry Partners through Innovative Business Practices* (Washington, D.C.: Apr. 30, 2019); “Myth-busting 3” *Further Improving Industry Communication with Effective Debriefings* (Washington, D.C.: Jan. 5, 2017); “Myth-Busting 2”: *Addressing Misconceptions and Further Improving Communication During the Acquisition Process* (Washington, D.C.: May 7, 2012); “Myth-Busting”: *Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process* (Washington, D.C.: Feb. 2, 2011); *Increasing Competition and Structuring Contracts; Improving Government Acquisition*, M-09-25 (Washington, D.C.: July 29, 2009); *Effective Practices for Enhancing Competition* (Washington, D.C.: July 18, 2008); and *Enhancing Competition in Federal Acquisition* (Washington, D.C.: May 31, 2007).

expressed interest in the 15 competitions in our scope. We then performed a content analysis of all interviews by coding themes and topics across interviews. The views of those we interviewed cannot be generalized to all industry entities, but they provided valuable insights to our work. We compared what we learned from these interviews and from our review of DOE documentation with OMB guidance. For more information on our methodology, see appendix I.

We conducted this performance audit from May 2021 to January 2023 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

DOE's acquisition process is subject to the FAR, policy from OMB's Office of Federal Procurement Policy, the Department of Energy Acquisition Regulation, and internal DOE directives.¹² The acquisition process at DOE and other federal agencies generally includes three phases: contract pre-award, award, and post-award (see fig. 1). Key players in the acquisition process include contracting officers who negotiate, sign, modify, or terminate contracts on behalf of the government; contracting officers' representatives who perform specific technical or administrative functions as designated by a contracting officer; and program and project managers who help develop accurate requirements, define performance standards, and manage contractor activities to ensure intended outcomes are achieved.

¹²While the FAR sets forth regulatory requirements for the acquisition process government-wide, it allows agencies to issue acquisition regulations that implement or supplement the FAR. See 48 C.F.R. § 1.301(a)(1).

Figure 1: Phases of the Federal Acquisition Process



Source: GAO analysis of the Federal Acquisition Regulation. | GAO-23-105209

The pre-award phase begins when an agency determines its requirements for goods or services and plans for how to acquire them. At DOE, the acquisition process, including the pre-award phase, is led by the relevant agency component (such as NNSA or DOE's EM) with support and oversight from the relevant agency contracting office—DOE's Office of Acquisition Management or NNSA's Office of Partnership and Acquisition Services.¹³

Once the agency determines requirements, the agency conducts acquisition planning. This includes market research to determine what the market offers and the sources—including small business sources—capable of satisfying the agency's requirements. The agency also determines the best acquisition method for satisfying requirements. If the agency determines that the appropriate acquisition method is a contract, the agency makes key decisions that may affect competition, including whether the contract will be a management and operating (M&O) contract, the contract type, and fees or other incentives.¹⁴

¹³In July 2022, NNSA reorganized its office that oversees contracting. This reorganization included changing the name of the organization with this responsibility to the Office of Partnership and Acquisition Services. Prior to that time, the name was the Office of Acquisition and Project Management.

¹⁴Of the 15 competitions in our scope, 14 resulted in contracts and one resulted in a blanket purchase agreement (Chief Information Officer Business Operations Support Services). Under the General Services Administration's (GSA) Schedules program, GSA awards contracts to multiple vendors for commercially available goods and services, referred to as blanket purchase agreements, and federal agencies place orders under the contracts. Agencies may establish blanket purchase agreements under GSA's schedule contracts. Blanket purchase agreements are intended to be a simplified method of fulfilling repetitive needs for supplies and services that also provide an opportunity to seek reduced pricing from vendors' schedule prices.

-
- **M&O contracts.** DOE and NNSA rely extensively on M&O contracts, which are agreements under which the government contracts for the operation, maintenance, or support, on its behalf, of a government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more of the major programs of the contracting federal agency. In our prior work, we found that DOE uses M&O contracts for a number of reasons. For example, officials have said that the complex and unique nature of DOE's missions makes M&O contracts a good fit, and these contracts are less burdensome to manage than other types of contracts.¹⁵
 - **Contract type.** The primary contract types described by the FAR fall into two broad categories—cost-reimbursement and fixed price. Under cost-reimbursement contracts, the government pays for allowable incurred costs, to the extent prescribed in the contract. The government generally assumes the risk of a cost overrun. In contrast, under fixed-price contracts, the government generally pays a set price, and the contractor generally assumes the risk of a cost overrun. DOE's M&O contracts are generally cost-reimbursement contracts. DOE also awards indefinite delivery/indefinite quantity (IDIQ) contracts. IDIQ contracts—which can be awarded to one or more contractors for the same or similar products or services—are used when the exact timing and quantities for products or services are not known at the time of award. An IDIQ contract provides for the issuance of orders, which are used to procure specific products or services during the period of the contract. These individual orders may be cost-reimbursement or fixed price.
 - **Incentives.** Agencies may choose to add fees or other incentives in addition to the total proposed cost of a contract. Fees, either incentive fees or award fees, can be considered a part of the profit an entity earns from a government contract. The percentage of the incentive fee received by the contractor is based on applying a formula to objective criteria established by the program office. The closer to achieving the criteria a contractor gets, the higher the fee it can expect to receive. Award fees can be awarded based on subjective criteria and may be determined by contracting officials without a formula. In addition, agencies may offer additional periods of performance as an incentive if contractors achieve and sustain prescribed performance levels under the contract.

¹⁵GAO, *Department of Energy: Actions Needed to Strengthen Acquisition Planning for Management and Operating Contracts*, GAO-16-529 (Washington, D.C.: Aug. 9, 2016).

As part of the solicitation preparation process, the agency can offer opportunities to share information about its plans, including

- **Draft solicitations** allow interested parties to review the draft and provide comments, ask questions, and offer suggested changes or other feedback before the government issues the formal solicitation.
- **Industry day events** allow DOE to explain its programmatic needs and mission requirements, and agency officials may solicit questions and input from industry. Such events also present an opportunity for small business representatives to meet representatives from larger entities to facilitate potential subcontracting.
- **Pre-solicitation conferences** allow DOE to explain the particulars of specific acquisitions, including anticipated milestones, as well as solicit questions and input. According to DOE documents, these conferences are especially useful when conducted following the release of a draft solicitation.
- **Pre-proposal conferences** present an opportunity for industry entities to obtain clarification and provide feedback on elements of the solicitation to help ensure that DOE receives high-quality offers.
- **One-on-one meetings** between DOE officials and representatives from a single entity allow for communication, given industry reluctance to share information in a public forum for fear of losing competitive advantage.

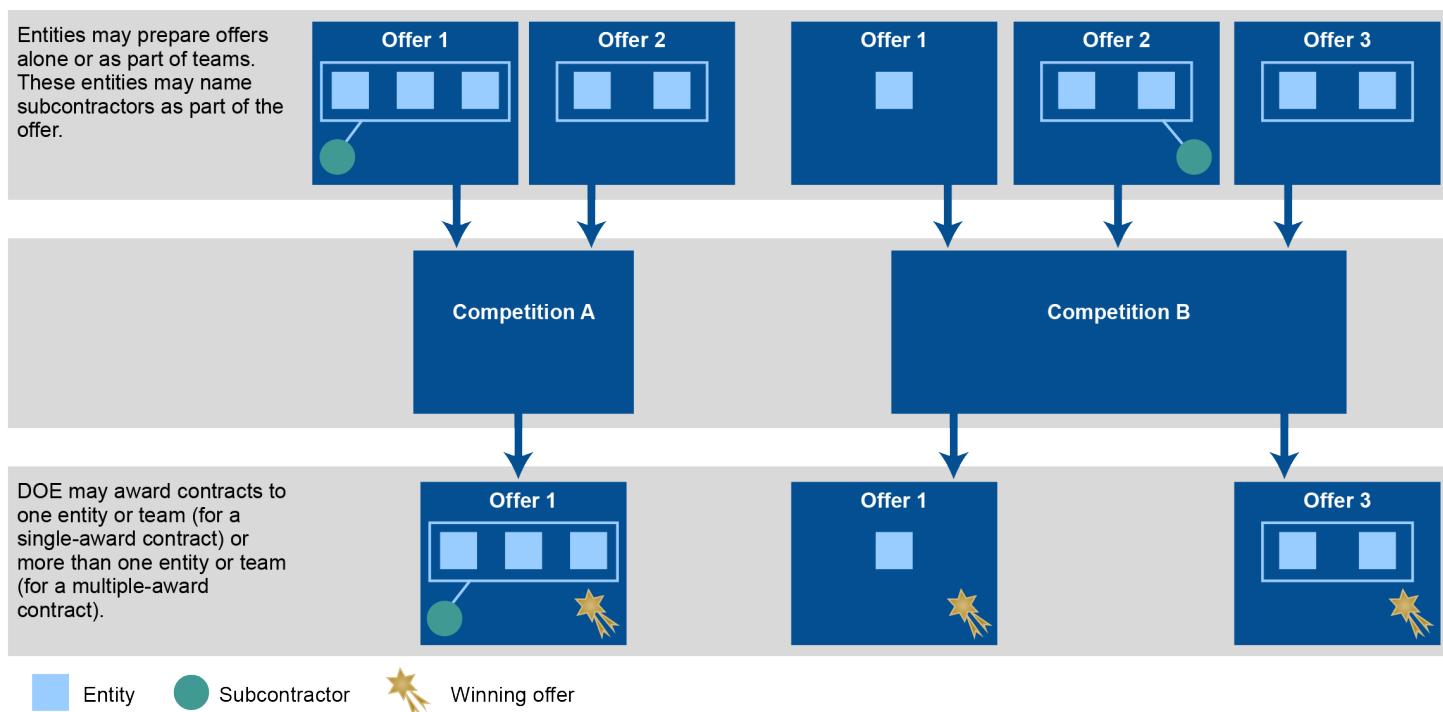
To complete the pre-award process, the agency posts the solicitation.¹⁶ The solicitation identifies what the agency wants to acquire, provides instructions on how to submit offers, and identifies the source selection method and criteria—or evaluation factors—that will be used to evaluate offers submitted in response to the solicitation. The evaluation factors in the solicitation are tailored to the acquisition, and the relative importance of those factors may vary depending on what the agency designates as relevant. The FAR requires that all solicitations use past performance and

¹⁶The procedures described in this section generally apply to the 14 contracts in our review. Certain key differences between these procedures and those applying to the blanket purchase agreement are noted as needed. For example, the contracts in our scope were initiated with a request for proposal, or solicitation, whereas the blanket purchase agreement was initiated with a request for quotations. For the purposes of this report, we refer to the blanket purchase agreement as a contract.

proposed cost to the government as evaluation factors, and additional evaluation factors are at the discretion of the agency.¹⁷

After an agency posts a solicitation, entities, such as companies or universities, determine whether to submit an offer.¹⁸ We define an entity as a single organization that may decide either to make an offer or to team with other organizations to form a limited liability company or other type of business combination that then makes an offer on a solicitation. Offerors—individual entities or teams of entities making an offer—include information in their offers based on the requirements listed in the solicitation. See figure 2 for an example of how entities or teams of entities might submit offers in different DOE competitions.

Figure 2: Example of Entities Submitting Offers in Department of Energy (DOE) Competitions



Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

¹⁷A request for quotations for a blanket purchase agreement must consider price, with other factors at the agency's discretion.

¹⁸Entities responding to a request for quotations submit quotes rather than offers.

The award phase follows the pre-award phase. To evaluate offers, the source selection authority appoints an advisory board made up of individuals chosen specifically for that acquisition. The advisory board plays a key role in the process, and it generally includes the contracting officer, legal counsel, and experts in applicable areas, such as security, health and safety, human resources, accounting, or information technology.¹⁹ The advisory board evaluates the quality of offers received in relation to the evaluation factors listed in the solicitation. The source selection authority, based on the input of the advisory board, selects the entity or team of entities to which to award the contract. The entity or team of entities that submits an offer to DOE and wins the award contracts directly with the agency. Entities or a team of entities submitting an offer can name one or more subcontractors in an offer, and once an entity or wins an award and signs a contract with DOE, that contractor would then establish contracts with the subcontractors named in the offer.

After the agency awards a contract, the agency provides debriefings on the results of the competition at an offeror's request. Debriefings allow offerors to receive an explanation of the award decision from agency officials, either orally or in writing. Unsuccessful offerors may use that information to adjust their strategy in future competitions and submit a more competitive offer. DOE guidance states that DOE officials should share the maximum amount of relevant information permitted by law and regulation.

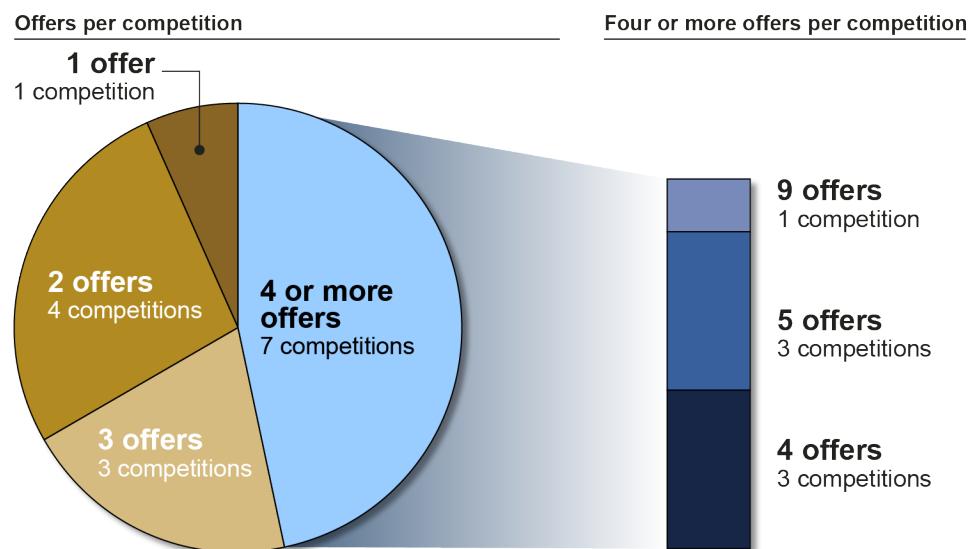
DOE Received Multiple Offers for Most of Its Recent Large Competitions, but a Limited Competitive Environment for Some Competitions Presents Risks

¹⁹The contracting officer has broad discretion in establishing suitable evaluation procedures for blanket purchase agreements. Advisory boards or panels can be employed but are not mandatory.

DOE Received Three or More Offers for Most Competitions, Which DOE Views as Sufficiently Competitive

DOE received a median of three offers per competition and a range of one to nine offers for the 15 competitions in our scope (see fig. 3).²⁰ The number of offers received per competition is one indicator of whether it is sufficiently competitive. Although there is one formal benchmark for a target number of offers that ensures competition, DOE officials said they generally consider three or more offers to be sufficiently competitive.²¹ Some DOE officials with whom we spoke emphasized that receiving a smaller number of high-quality offers was more important to them than receiving a larger number of lower-quality offers.

Figure 3: Number of Offers Received for Department of Energy (DOE) Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020



Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

²⁰The competition that received nine offers was a based on a multiple-award IDIQ solicitation, meaning that DOE could make an award to more than one offeror. DOE made awards to all entities that submitted offers in response to that solicitation.

²¹In some cases, effective competition is defined as two or more competitors actively contending for the government's business. The FAR defines effective competition for major systems acquisitions in this way. 48 C.F.R. § 34.001. The Department of Defense also generally considers competitions that receive fewer than two offers to have "ineffective competition." Relatedly, OMB's Office of Federal Procurement Policy has noted that competitions that yield only one offer in response to a solicitation deprive agencies of the ability to consider alternative solutions in a reasoned and structured manner, and it has referred to competitions that receive only one offer as resulting in high-risk contracts. Office of Management and Budget, *Increasing Competition and Structuring Contracts*.

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more. The competition with nine offers is a multiple-award contract, and DOE awarded the contract to all nine offerors.

For all 15 competitions in our scope, DOE officials told us that they were satisfied with the quality of the offers they received. For example, officials from DOE's Office of Legacy Management told us that they were happy with the quality of the five offers they received in response to their Support Services competition. The officials said that if they had received a larger number of lower-quality offers, they would have been less satisfied with the overall level of competition. According to Office of Science documents, the Office received only one offer in response to the solicitation for management and operation of the Brookhaven National Laboratory. Officials considered the competition to be a success because the incumbent contractor, which made the single offer and won, changed its leadership, improved its science vision, reduced its annual fee, and markedly improved safety performance following the agency's decision to hold a competition for the contract.

The number of offers per competition varied across DOE components (see table 2). The median number of offers submitted for the five NNSA competitions in our scope was four offers and ranged from two to five offers. DOE's Office of Science had the lowest median number of offers for its two competitions in our scope, which officials told us was likely because of industry perceptions about the incumbents' strong performance.

Table 2: Median Number of Offers Received for Department of Energy (DOE) Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020, by DOE Component

DOE component	Number of competitions	Median number of offers per competition
Office of the Chief Information Officer	1	5 ^a
Office of Legacy Management	1	5 ^a
National Nuclear Security Administration	5	4
Office of Environmental Management	6	3
Office of Science	2	1.5

Source: GAO analysis of DOE contract files. | GAO-23-105209

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more.

^aThere was only one competition in our scope for this office, so the number in this column reflects the number of offers for this competition, rather than a median number of offers across multiple competitions.

The Acquisition Environment for M&O Competitions May Present Risks to Competition

We have previously found that the nature of the work performed under the scope of M&O contracts may lead to a limited competitive environment for a number of reasons, including that there were few contractors able to perform the highly technical and broad-ranging work that is done under the scope of M&O contracts.²² Based on our current review of entities submitting offers and winning awards for M&O contracts, a limited competitive environment may still exist for DOE's M&O contracts. Specifically, we found that fewer entities submitted offers alone or as part of a team for the M&O competitions in our scope than for the non-M&O competitions.²³ Specifically, a total of 19 entities submitted offers in the six M&O competitions in our scope, with a median of three entities submitting offers for each of those competitions. In contrast, a total of 61 entities submitted offers in the nine non-M&O competitions in our scope, with a median of eight entities submitting offers in each of those competitions.

In limited competitive environments, risks increase. For example, we have found in other industries where there are fewer suppliers, there is a greater risk that suppliers could (1) reduce the quality of their work products or cut back on services because the lack of competitive alternatives may limit a buyer's ability to obtain services elsewhere, (2) feel less pressure to introduce innovative products or services, or (3) more easily coordinate their actions with other suppliers to raise costs for customers.²⁴

For the competitions we reviewed, several entities joined with other entities in complex ways—for example working with entities to make teamed offers in one competition, and then competing with those same entities in another competition, creating complex teaming networks. Some in industry use the term "competimates" to describe entities that

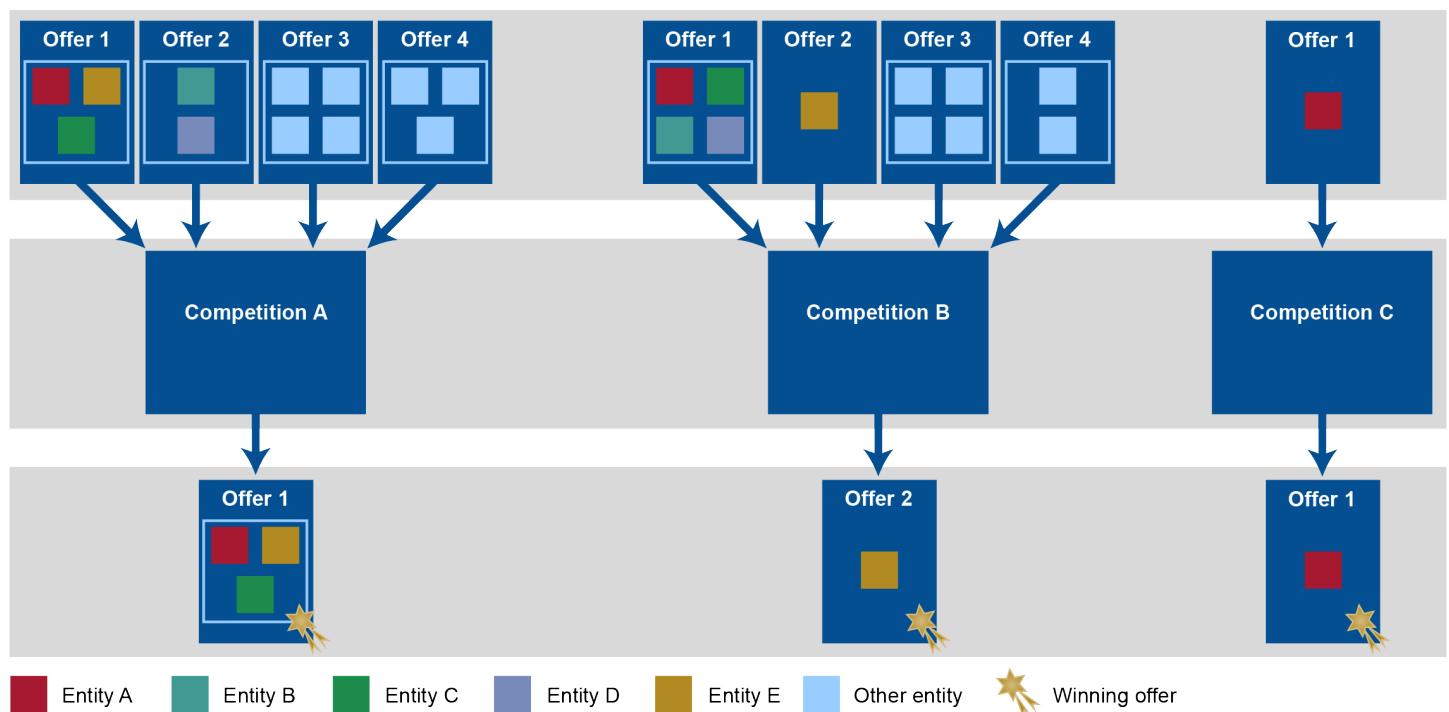
²²[GAO-16-529](#).

²³The M&O competitions in our scope were for management and operation of the following sites (overseen by the following DOE components): Brookhaven National Laboratory (Office of Science), Kansas City National Security Campus (NNSA), Los Alamos National Laboratory (NNSA), Naval Nuclear Laboratory (NNSA), Nevada National Security Site (NNSA), and Sandia National Laboratories (NNSA).

²⁴See, for example, GAO, *Audits of Public Companies: Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action*, [GAO-08-163](#) (Washington, D.C.: Jan. 9, 2008); and *Public Accounting Firms: Mandated Study on Consolidation and Competition*, [GAO-03-864](#) (Washington, D.C.: July 30, 2003). Because our review focused on the pre-award phase of the acquisition process, we did not conduct work to determine whether the M&O contractors in our scope reduced the quality of their work products or felt less pressure to innovate.

sometimes team with and sometimes compete against one another. See figure 4 for an example of one entity's offers with, and in competition with, other entities for three competitions in our scope.

Figure 4: Examples of Teaming Networks for Selected Entities Submitting Offers on Three Department of Energy (DOE) Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020



Entity A made three offers for competitions in our scope and won two of those competitions. Entity A teamed with Entity C on two offers. Entity A teamed with Entity E on one offer but competed against that entity on another offer. Similarly, Entity A teamed with Entities B and D on one offer and competed against them on another offer.

Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

Anticompetitive behavior is prohibited,²⁵ and federal regulations recognize that complex teaming networks can increase the risk of such behavior. Specifically, the FAR cautions that such networks may not violate antitrust statutes or limit the government's ability to pursue its policies on competitive contracting.²⁶ Further, the FAR states that contracting

²⁵Our analysis did not include an investigation of whether entities in our scope engaged in anticompetitive behavior. Such investigations would typically be carried out by entities with subpoena authority such as the Antitrust Division of the Department of Justice.

²⁶48 C.F.R. § 9.604.

personnel are an important potential source of information on such behavior, and they should be sensitive to indications of unlawful behavior as well as report any anti-competitive practices.²⁷ Officials acknowledged these risks and noted that there are some safeguards in place to mitigate them. For example, NNSA officials said that entities would not engage in behavior that could risk future contract awards, which helps to mitigate this risk.

DOE and NNSA officials said they also attended a training in September 2022 from the Department of Justice on the ways in which companies might engage in anticompetitive behavior and suspicious patterns to help identify such behavior.²⁸ Awareness of these risks of anticompetitive behavior is important for ensuring that the benefits of competition are maximized, even in environments where the pool of potential offerors may be smaller, such as with M&O contracts.

DOE Compared Competing Offers on a Range of Factors Using Various Information Sources

DOE Used Combinations of 14 Evaluation Factors to Compare Competing Offers Using Information Provided in Offers and from Other Sources

DOE compared competing offers for each competition in our scope by evaluating the offers on different combinations of 14 evaluation factors.²⁹ The DOE component responsible for preparing each solicitation chose the evaluation factors for that competition. The components chose between three and eight evaluation factors (with an average of more than four factors) for competitions in our scope. For example, EM chose three evaluation factors for its competition for Nationwide Deactivation, Decommissioning, and Removal, and the Office of Science chose eight evaluation factors for each of its two competitions—Management and

²⁷48 C.F.R. § 3.301.

²⁸We did not evaluate the effectiveness of the actions officials have taken in response to these risks.

²⁹Components use different names for their evaluation factors. For our analysis, we categorized the evaluation factors using common terms. If an evaluation factor included elements of two evaluation factors—such as key personnel and organization—we counted the factor in both categories.

Operation of the Brookhaven National Laboratory and Oak Ridge Institute for Science and Education.

OMB guidance on enhancing competition discusses the importance of choosing evaluation factors that allow officials to make meaningful comparisons among offers.³⁰ The solicitation for each competition contained details about information required by DOE that would allow the agency to evaluate the proposal against the evaluation factors it specified. See table 3 for the 14 factors DOE used for the competitions in our scope and examples of information required by DOE to help officials evaluate offers.

Table 3: Evaluation Factors and Examples of Information Required by Department of Energy (DOE) for Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020

Evaluation factor	Examples of the types of information required
Price	Amount or amounts to be paid for supplies or services.
Past performance	Description of an offeror's past work that was similar in size, scope, and complexity to the requirements in the solicitation.
Key personnel	Individual roles, responsibilities, qualifications, and experience for specific personnel named as part of the offer (e.g., Laboratory Director).
Organization	Proposed organization—including organizational chart, lines of authority, communication approach, and governance approach.
Technical approach	Information on how the offeror proposes to meet requirements outlined in the solicitation, including information on technical assumptions.
Management approach	Description of how the offeror would manage the work through, for example, a staffing plan or documented approach to working with DOE and other contractors to accomplish the work.
Relevant experience	Description of the extent and strength of technical, operations, and business management previously or currently performed by the offeror relevant to the solicitation.
Small business participation	Description of proposed approach to using small businesses, including veteran-owned, service-disabled veteran-owned, disadvantaged, and women-owned businesses.
Transition Plan	Plans for the phase-in period prior to assuming responsibility for the contract (sometimes associated with DOE management and operating contracts), including staffing and qualifications of transition team members, equipment and support requirements, or any interactions with the current contractor and DOE.
Offeror's commitments	Proposed resources, services, or support to be provided as part of the contract at no cost to the government, such as funds, facilities, equipment, intellectual property, or human resources
Vision	Description of the offeror's overall sense of how to achieve DOE's mission in relation to the solicitation.
Environmental, safety, and health compliance	Description of the offeror's commitment to environmental, safety, and health (e.g., exchanges with regulators on environmental matters and examples of entity health and safety programs).
Teaming approach	Information on how the offeror plans to establish effective business relationships with partners or subcontractors to support the government's needs.

³⁰Office of Management and Budget, *Enhancing Competition in Federal Acquisition*; and *Increasing Competition and Structuring Contracts*.

Evaluation factor	Examples of the types of information required
Independent technical judgment	Description of how the offeror plans to provide unbiased, independent technical support, including how it will show independence from other parts of the offeror's organization.

Source: GAO analysis of DOE contract files. | GAO-23-105209

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more.

All competitions in our scope used the price and past performance factors. However, there was some variation in the other factors that components elected to use for their competitions. For example, only NNSA chose to use small business participation as a standalone factor in its competitions, although other competitions included small business participation as part of another factor. See table 4 for the number of competitions in our scope that used each evaluation factor.

Table 4: Number of Department of Energy (DOE) Competitions Using Each Evaluation Factor in Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020

Evaluation factor	Number of competitions using the factor, by DOE component						Total
	National Nuclear Security Administration (5 competitions)	Office of Environmental Management (6 competitions)	Office of Science (2 competitions)	Office of Legacy Management (1 competition)	Office of the Chief Information Officer (1 competition)	(15 competitions)	
Price	5	6	2	1	1		15
Past performance	5	6	2	1	1		15
Key personnel	4	5	2	0	0		11
Organization	4	4	2	0	0		10
Technical approach	0	6	0	1	1		8
Management approach	1	3	2	1	1		8
Relevant experience	0	3	2	0	0		5
Small business participation	4	0	0	0	0		4
Transition plan	1	0	2	0	0		3
Offeror's commitments	0	0	2	0	0		2
Vision	0	0	2	0	0		2
Environmental, safety, and health compliance	1	0	0	0	0		1
Teaming approach	0	0	0	1	0		1

Evaluation factor	Number of competitions using the factor, by DOE component					Total
	National Nuclear Security Administration (5 competitions)	Office of Environmental Management (6 competitions)	Office of Science (2 competitions)	Office of Legacy Management (1 competition)	Office of the Chief Information Officer (1 competition)	
Independent technical judgment	1	0	0	0	0	1

Source: GAO analysis of DOE contract files. | GAO-23-105209

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more.

DOE components designated which factors were most important for each competition. Five of the six EM competitions we reviewed designated technical approach as the most important factor, and four of the five NNSA competitions designated past performance as the most important factor. Other DOE components designated other factors as most important. See table 5 for factors components designated as most important for the competitions in our scope, along with the number of competitions for which that factor was designated as most important.

Table 5: Evaluation Factors Designated by the Department of Energy (DOE) as Most Important in Competitions That Resulted in DOE's Largest Contracts, Fiscal Years 2015–2020

Evaluation factor	Number of competitions for which the factor was designated as most important, by DOE component					
	National Nuclear Security Administration (5 competitions)	Office of Environmental Management (6 competitions)	Office of Science (2 competitions)	Office of Legacy Management (1 competition)	Office of the Chief Information Officer (1 competition)	Total (15 competitions)
Technical approach	0	5	0	1	0	6
Past performance	4	1	0	0	1	6
Key personnel	1	2	1	0	0	4
Management approach	0	2	2	0	0	4
Organization	1	1	1	0	0	3
Vision	0	0	2	0	0	2
Independent technical judgment	1	0	0	0	0	1

Source: GAO analysis of DOE contract files. | GAO-23-105209

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more. The number of

evaluation factors designated as most important may not total the number of competitions for a component, because some components identified multiple factors as most important for some competitions.

DOE officials told us that they have made changes over time as to which evaluation factors they use in competitions for large contracts. For example, EM and NNSA officials told us that they have stopped using the technical approach factor in recent competitions to minimize work and costs for offerors and simplify agency evaluation. They told us that they felt comfortable making this change in part because this particular factor did not commonly highlight distinctions among offers that helped them in their decision-making.

Officials told us they relied primarily on the information in the offers themselves to conduct their evaluations of offers. For example, to evaluate an offer's proposed organization factor, officials reviewed any offeror-submitted organizational charts, information on lines of authority, and information on communication approaches.

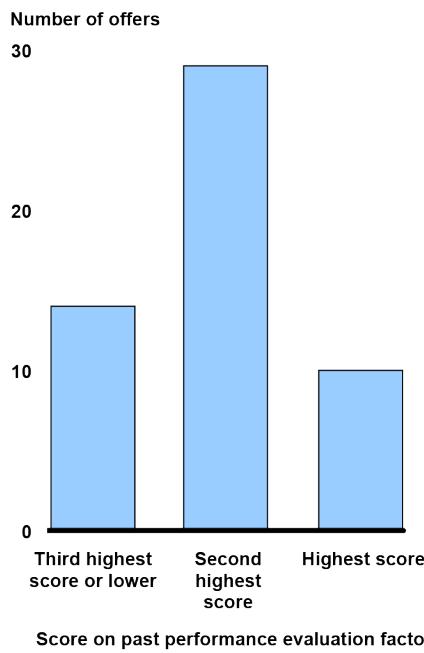
For some evaluation factors, DOE officials reviewed additional sources of information beyond what was included in an offer. For example, to evaluate key personnel, officials called references, and to evaluate price, officials reviewed proposed cost data in relation to their own estimates.³¹ To evaluate past performance, in addition to using information in the offers, contract documents or interviews with agency officials indicate that officials reviewed information from sources such as the Contractor Performance Assessment Reporting System (CPARS)—the government-wide system for contractor performance information. They also reviewed other agency data such as safety statistics from the Occupational Safety and Health Administration, DOE Performance Evaluation Reports, and information from “close-at-hand” sources within DOE, such as information from DOE’s Office of Enforcement on nuclear security violations.

³¹DOE’s estimates of costs can come, for example, from an Independent Government Cost Estimate. According to documents we reviewed, certified cost or pricing data was usually not required for the competitions in our scope. See also 48 C.F.R. § 15.403-4 and 48 C.F.R. § 970.1504-3-1.

Source Selection Authorities Assigned Scores, Which Sometimes Differed from Scores Recommended by Their Advisory Boards

Source selection authorities, who are the officials generally responsible for making acquisition decisions, largely assigned favorable scores for evaluation factors. For example, when evaluating past performance, source selection authorities assigned either the highest or second highest available scores (e.g., “excellent” or “good”) to 39 of the 53 evaluated offers in our scope.³² See figure 5 for information on scores assigned by source selection authorities on past performance for offers submitted to DOE in response to solicitations that resulted in contracts with a potential total contract value of \$750 million or more from fiscal years 2015 through 2020.

Figure 5: Past Performance Scores Assigned by Department of Energy (DOE) Source Selection Authorities on Offers for Competitions That Resulted in DOE’s Largest Contracts, Fiscal Years 2015–2020



Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more. One additional offer, not shown, received a neutral score for past performance, because DOE officials determined that the offeror did not have relevant past performance. Under 48 C.F.R. § 15.305, in a negotiated acquisition, an offeror without a record of relevant past performance may not be evaluated favorably or unfavorably on past performance.

³²To evaluate offers, DOE officials sometimes used a 4-point scale and other times used a 5- or 6-point scale. DOE received a total of 54 offers for the 15 competitions in our scope, but one offer was deemed unacceptable and not evaluated.

Source selection authorities adopted the scores recommended by their advisory boards for all but four NNSA competitions in our scope. The FAR requires that source selection authorities consider the recommendations of advisory boards, but source selection authorities must make award decisions based on independent judgement and must document their rationale.³³ The source selection authorities who adopted different scores than were recommended documented the reasons for their decisions, as required. For three of these four NNSA competitions, the difference between the recommended scores from advisory boards and the final scores assigned by the source selection authorities may have made a difference in which offer was selected for award.

Specifically, for these three NNSA competitions, the source selection authority assigned scores that gave the winning entity a greater competitive advantage on one or more of the most important evaluation factors (past performance, key personnel, or both), compared to the advisory board scores. For NNSA's fourth solicitation in which the source selection authority did not adopt the advisory board's recommendation, the difference between the advisory board's recommendation and the source selection authority's ultimate decision was less likely to have affected which offer the agency selected.

When we discussed the differing scores with NNSA officials, they told us that their decision documents provide clear rationales for differences in scores between the advisory boards and the source selection authorities. We reviewed the rationales, which were generally clear and understandable. However, entities may choose not to submit an offer if they perceive that they will not be treated fairly in a competition. According to the NNSA officials, final scores that differ from advisory board recommendations can raise questions during debriefs with unsuccessful offerors, but such questions are usually resolved. For example, in one competition, officials told us that an unsuccessful offeror protested the decision based on a final score that differed from the score recommended by the advisory board, but once NNSA provided a formal response to the offeror's protest, the offeror withdrew the protest.

³³48 C.F.R. §§ 15.303, .308.

DOE Has Taken Some Actions to Address Industry Perceptions and Other Factors That May Hinder Competition, but Actions Are Inconsistent

Industry representatives we interviewed identified several factors that may hinder competition, based on their experiences in deciding whether to make offers for competitions. We found that these factors generally fell into two categories: (1) perceptions about the fairness of DOE's award process—potentially based on experiences with prior competitions—and (2) business considerations about the attractiveness of a competition that may affect whether an entity decides to make an offer. We did not find evidence that supported industry representatives' perceptions about the fairness of the award process for the competitions in our scope. However, such perceptions may hinder competition because entities may choose not to submit an offer if they perceive that they will not be treated fairly in a competition. DOE has taken some actions to address industry perceptions about the award process and to make DOE's largest contracts more attractive to industry, but these actions have been inconsistent across components.

DOE Has Taken Some Actions to Address Industry Perceptions About Fairness, but These Perceptions Remain

Industry Perceptions about the Fairness of Evaluation Factors and Scoring Were Generally Not Reflected in Documentation for DOE's Largest Contracts

Representatives from 15 of the 24 industry entities we interviewed expressed concerns about the fairness of DOE's evaluation factors or scoring of certain factors, but we did not find evidence that supported those perceptions in our review of documentation for the competitions in our scope.³⁴ For example:

- **Scoring of past performance.** Representatives from seven of 24 entities expressed concerns about how DOE has scored past performance. These included a few specific concerns. For example, some representatives said that they thought DOE has defined relevant past work too narrowly, excluding similar past work for other federal agencies or other potentially relevant past work, such as universities' experience in academic research. We found that definitions of relevant past work varied but all focused on similarity in

³⁴For the purposes of this report, we examined contract files for evidence of the general approach taken by DOE in relation to issues raised by industry relating to its perceptions about fairness. We did not conduct any legal analysis as to the appropriateness of any individual DOE decision. We separately adjudicate challenges to the terms of a solicitation or the award of a federal contract through our bid protest function.

size, scope, and complexity. All but one solicitation we reviewed explicitly defined relevant past work as including past contracts for other agencies or non-contracted work experience.³⁵ In addition, while industry representatives expressed concern that relevant definitions of past performance may be too narrow, we found that DOE officials determined that 52 of the 53 evaluated offers in our scope had at least some relevant past work.³⁶

Other representatives said that DOE officials have relied too heavily on information from CPARS for assessing past performance. As discussed previously, we found that DOE used various types of information to evaluate past performance. For example, officials told us that, in addition to CPARS, they used past performance questionnaires and DOE performance evaluation reports, among other sources.³⁷

- **Scoring of key personnel.** Representatives from four of the 24 entities expressed concerns about how DOE has scored key personnel. Specifically, representatives said that individual personnel have received inconsistent scores across competitions. For the competitions we reviewed, we did not find evidence to support these perceptions. Specifically, of the 226 people that were listed as key personnel in the documentation we reviewed for the competitions in our scope, we found that 22 were listed in more than one competition. Only four of those 22 people received scores that differed by 2 or more points on a 5-point scale (e.g., rated as a significant strength in one competition and neither a strength nor a weakness in another). These people may have been differently qualified for different roles and solicitations, or they may have had changes in their performance in the time between competitions—both of which could be reflected in scores.
- **Evaluation of price.** Representatives from two of the 24 entities expressed concerns about how DOE has evaluated price. Specifically, they expressed concern that some winning offerors have underbid the

³⁵However, NNSA officials told us that they prioritize past work for DOE as most relevant in those solicitations, given the agency's need to manage risks associated with the particularly sensitive mission in its M&O contracts. We did not independently assess whether NNSA's definitions are appropriate to manage risk.

³⁶The remaining offer, for an NNSA competition, was scored neutrally on past performance.

³⁷This is consistent with OMB guidance on innovative business practices in contracting, which states that agencies should use information beyond CPARS ratings in their evaluation of past performance. Office of Management and Budget, "Myth-Busting #4."

cost of the contract, and DOE may not have factored that underbidding into its evaluation.³⁸ Again, we did not find evidence to support these perceptions in the competitions we reviewed. We found that DOE evaluated all offers for price realism or reasonableness. When certain components of the overall cost or price were considered unrealistic, DOE selection officials noted that in their assessments. Source selection authorities found that 49 of 53 evaluated offers' overall prices were realistic. In addition, we found that for eight of the 13 relevant competitions in our scope (62 percent), the lowest offered price did not win.³⁹

- **Scoring of technical approach.** Representatives from two of the 24 entities expressed concerns about how DOE has scored technical approach. Specifically, they said that incumbent entities have had an advantage based on knowledge of the site or work. However, we found that offers without incumbent entities scored as high or higher on technical approach compared to offers with incumbent entities for four of the six relevant competitions in our scope.⁴⁰ In addition, offers that did not include any incumbent entities in the offering team won seven of 12 relevant contracts (58 percent).⁴¹

Although we did not find evidence supporting perceptions about unfairness in the award process for the competitions we reviewed, the perceptions themselves may still hinder competition. If an entity perceives that it will not be treated fairly in a competition, it may not submit an offer.

³⁸Representatives described underbidding as knowingly proposing an unrealistically low dollar amount to win an award, then later requesting an adjustment or cutting corners. 48 C.F.R. § 15.305 requires that agencies evaluate price for reasonableness and realism when contracting on a cost-reimbursement basis. Such an evaluation need not be conducted when contracting on a fixed-price basis, because competition is expected to establish price reasonableness for such contracts.

³⁹The two competitions in our scope that were not relevant to this analysis were a competition with only one offer and a multiple-award competition.

⁴⁰The nine competitions in our scope that were not relevant to this analysis were a competition with only one offer, two competitions without incumbent contractors (including the multiple-award competition), and six competitions without an evaluation factor on technical approach.

⁴¹The three competitions in our scope that were not relevant to this analysis were a competition with only one offer and two competitions without incumbent contractors (including the multiple-award competition).

DOE Components’ Communication with Industry About Award Processes Is Inconsistent

Some DOE components have taken actions to address perceptions of unfairness in the award process through improved communication with industry. Other components have not taken such actions. We found that DOE communication with industry about the award process was consistent with OMB guidance for communication during the acquisition process for specific competitions in our scope. However, communication about the award process more generally, and outside of specific acquisitions, varied across components.

To promote communication during the acquisition process, DOE developed a vendor communication plan at the direction of OMB and updated this plan in February 2020.⁴² In the plan, DOE commits to early, frequent, and constructive communication with industry during the acquisition process. Mechanisms include industry day events, pre-solicitation and pre-proposal conferences, one-on-one meetings, and debriefings.

We found that DOE generally fulfilled these commitments for individual competitions by, for example, providing debriefings with details on the agency’s evaluation of offers and answers to questions submitted by offerors, which are both in line with OMB guidance.⁴³ In the debriefing documents for one competition we reviewed, EM officials solicited questions from offerors in advance of the oral debriefing and drafted responses to those questions as well as additional anticipated questions. The debriefing slides for this competition provided detailed information on DOE’s evaluation of offers and rationale for awards. In addition, the meeting minutes for this competition indicate that DOE held an open, two-way conversation with industry representatives in which DOE officials (1) asked probing questions that could help the entity submit a more competitive offer in the future, and (2) requested feedback on specific aspects of the acquisition process.

However, communications during specific competitions may not fully address industry perceptions that may hinder competition. For example, debriefings are only available to entities that submitted offers and are not a venue for providing ongoing information to industry. Likewise, entities may only attend industry day events and conferences for specific

⁴²Department of Energy, *DOE/NNSA Vendor Communication Plan* (February 2020). In 2011, OMB directed certain agencies, including DOE, to develop vendor communication plans to help ensure agencies take full advantage of communication flexibilities allowed under the FAR. Office of Management and Budget, “*Myth-Busting*.”

⁴³Office of Management and Budget, “*Myth-busting 3.*”

competitions in which they have an interest. Alternatively, representatives from entities may not attend such events if they do not want others to know about their entity's interest in the competition.

Some DOE components have communicated outside of individual acquisitions through structured mechanisms for ongoing communication, but these efforts are inconsistent. In February 2021, EM began holding quarterly meetings with an industry association. EM officials and association representatives told us that the meetings have provided an opportunity for EM to share helpful information with industry. In addition, in February 2021, EM hired an outside consultant to interview industry representatives whose entities have shown interest in competitions but have not submitted offers or won awards. The consultant completed a report in April 2021. EM has since implemented some of the resulting recommendations, such as broadening its definition of relevant past performance and revising invoicing policies to reduce upfront costs for offerors and new contractors.

Additionally, DOE's Office of the CIO held a conference on cybersecurity and technology innovation that officials in the Office of Acquisition Management said helps agency officials and industry representatives connect on a variety of issues. Further, DOE's Office of Small and Disadvantaged Business Utilization holds an annual small business forum and other events to share information about the contracting process with small businesses, and DOE's Office of Economic Impact and Diversity recently held an industry forum on reducing barriers to DOE opportunities. Other DOE components—including DOE's Office of Science and NNSA's Office of Partnership and Acquisition Services—have not taken similar actions to communicate with industry outside of individual acquisitions, because they have not established structured communication mechanisms for ongoing communication.⁴⁴

OMB guidance on improving communication with industry during the acquisition process states that early, frequent, and constructive engagement with industry leads to better acquisition outcomes, including increased competition.⁴⁵ Such engagement may reveal perceptions that

⁴⁴The evidence we collected from NNSA was from the Office of Acquisition and Project Management. In July 2022, NNSA reorganized its office that oversees major capital asset acquisitions and M&O contracts from the Office of Acquisition and Project Management to the Office of Partnership and Acquisition Services.

⁴⁵Office of Management and Budget, “*Myth-Busting*.”

evaluation factors did not permit meaningful comparison and discrimination between offers, or it may reveal perceptions from earlier experiences with the agency.⁴⁶ According to OMB guidance, if agency officials use the opportunity to demonstrate that they have acted with fairness, consistency, and objectivity in accordance with the competition's evaluation factors, nonselected entities are typically able to accept unfavorable outcomes.

Representatives of one industry association with whom we spoke noted an effort at the Department of Homeland Security that is designed to strengthen acquisitions. The effort, called Acquisition Innovations in Motion, uses various mechanisms to communicate with industry outside of individual acquisitions. For example, according to publicly available information about the effort:

- **Strategic Industry Conversations** enable discussions between agency leaders and industry. Unlike typical industry day events for specific acquisitions, the conversations focus on topics that span multiple components (e.g., cybersecurity, artificial intelligence).
- **Acquisition Innovation Roundtables** bring together government and industry leaders to make improvements in targeted business areas. Improvements have addressed effective pricing strategies and personnel security, among other areas.

OMB has also identified best practices that agencies have used for ongoing communication with industry, which is distinct from communication about individual acquisitions.⁴⁷ These include quarterly meetings with industry and information sessions on new agency initiatives. According to OMB, as part of such outreach, agency officials should ask industry whether planned changes in agency practices will be effective in encouraging competition and whether other alternatives should be considered.⁴⁸ EM's quarterly meetings, for example, are consistent with these practices.

By implementing communication practices taken by EM and others, DOE's Office of Science and NNSA's Office of Partnership and Acquisition Services could help address industry perceptions about the fairness of DOE's award processes. Such communications could include

⁴⁶Office of Management and Budget, "Myth-busting 3."

⁴⁷Office of Management and Budget, "Myth-Busting 2"; and "Myth-Busting #4."

⁴⁸Office of Management and Budget, *Increasing Competition and Structuring Contracts*.

periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated, as well as any changes in agency practices. In turn, this could help remove barriers to a more competitive acquisition.

DOE Has Taken Some Actions to Make Competitions More Attractive to Industry, but Actions Are Inconsistent

Some DOE Competitions Experienced Long and Overlapping Evaluation Timelines

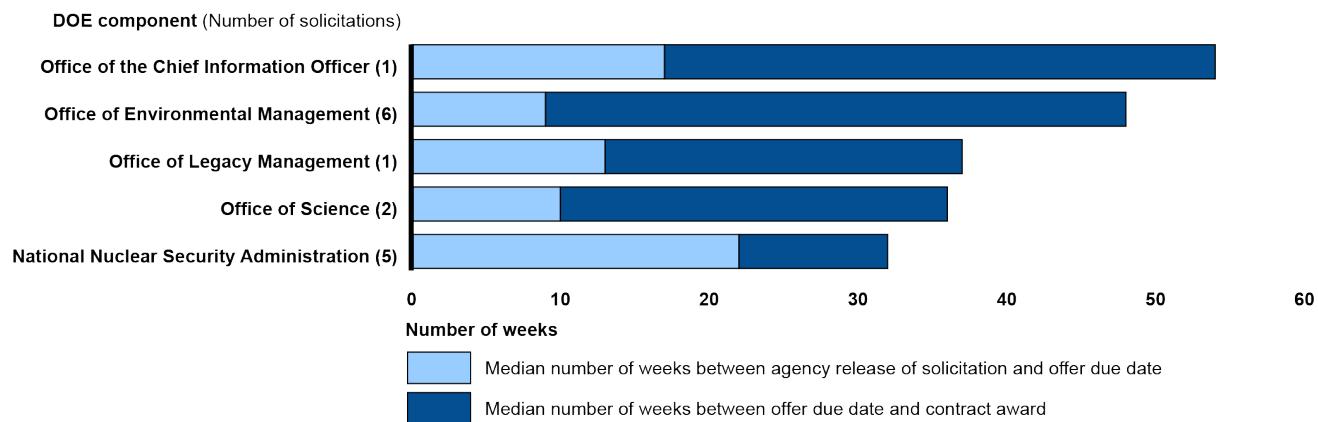
According to industry representatives we interviewed, entities consider various business factors related to the attractiveness of a competition when deciding whether to submit an offer. These factors include timing, risk versus reward, and work scope. DOE components have taken some actions to make DOE's largest contracts more attractive to industry where feasible, but these actions have been inconsistent.

Representatives from five of the 24 entities we interviewed expressed concerns about lengthy award evaluations and the effect of overlapping competition timelines on their ability to submit high-quality offers. In particular, representatives from three entities said that they cannot include people as key personnel on an offer if those people are already included on an offer for another competition undergoing award evaluation at the same time. According to these representatives, this can limit their ability to include their most qualified personnel on the offer. For example, if highly qualified people are listed as named key personnel on an offer that ultimately fails, those people would have been ineligible to be listed on offers for other ongoing competitions.

In our review of documentation for the competitions in our scope, we found that the award evaluation length and extent to which competition timelines overlapped varied across DOE components.

- **Award evaluation length.** The length of time between an offer's due date and award varied widely for competitions in our scope. DOE spent a median of 21 weeks (about 5 months) evaluating offers for the competitions in our scope, ranging from 8 weeks at NNSA to 38 weeks at EM, which contributes to the overall length of the award process and the extent of time during which people listed as key personnel in an offer must await an award decision before being listed on other offers (see fig. 6).

Figure 6: Award Process Length for the Department of Energy's (DOE) Largest Contracts, by Component, Fiscal Years 2015–2020



Source: GAO analysis of DOE contract pre-award files. | GAO-23-105209

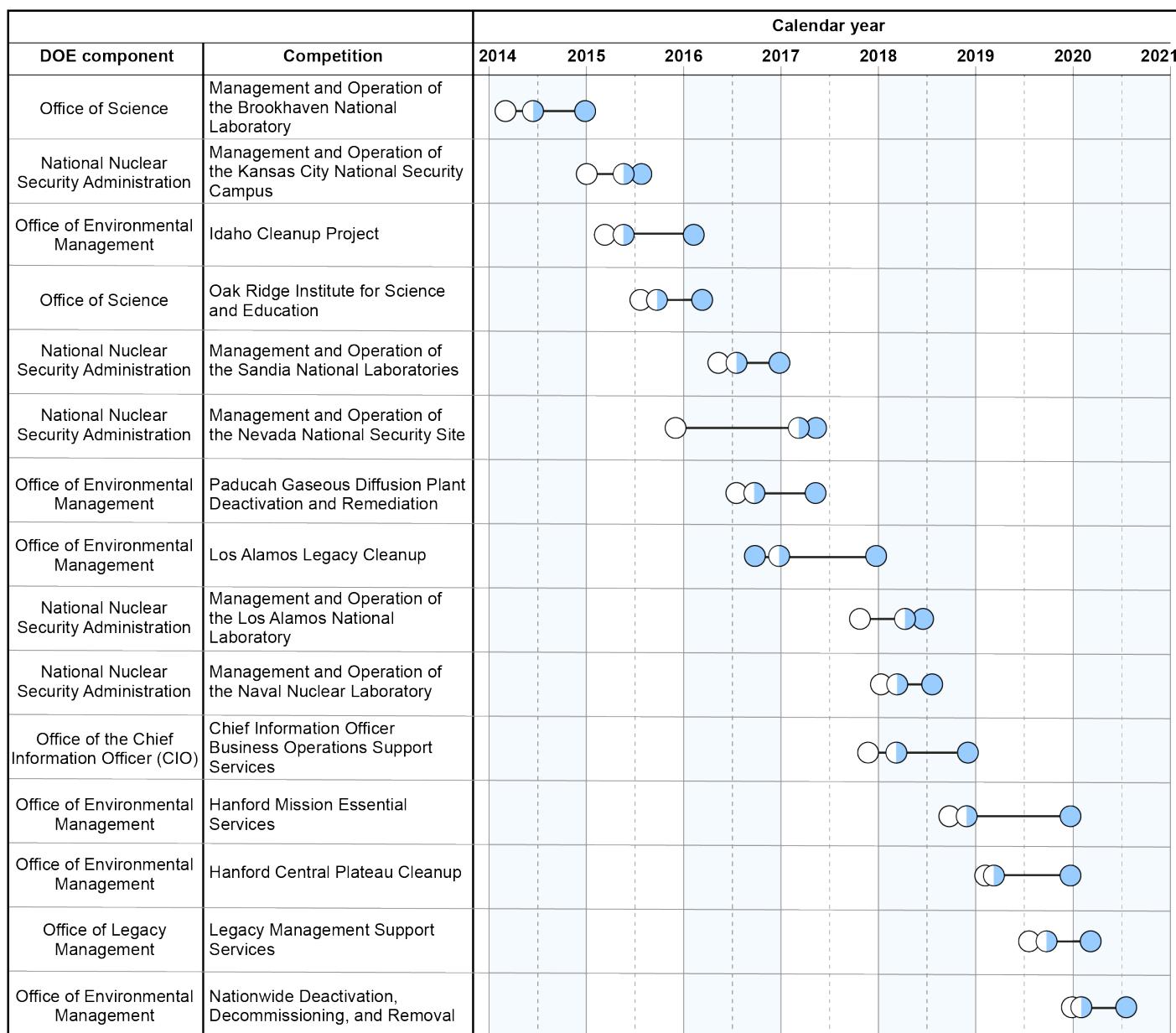
Note: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more.

- **Overlapping competition timelines.** For 11 of 15 competitions in our scope, offers were due before other competitions in our scope had been awarded (see fig. 7). Some competitions also overlapped within a single DOE component. Specifically, two EM competitions had offers due while EM was still making an award decision for a prior competition,⁴⁹ and one NNSA competition had offers due while NNSA was still making an award decision for a prior competition.⁵⁰

⁴⁹In addition, these timelines overlapped for a third EM solicitation, Hanford Site Tank Closure. We excluded the solicitation from our scope because DOE ultimately canceled the award.

⁵⁰In addition, these timelines overlapped for a second NNSA solicitation not shown in this figure—the first competition for the Management and Operation of the Nevada National Security Site. Offers were initially due in December 2015. NNSA awarded the contract in August 2016, but the award was canceled. NNSA then collected new offers in March 2017, as shown.

Figure 7: Timelines for Competitions That Resulted in the Department of Energy's (DOE) Largest Contracts Awarded, Fiscal Years 2015–2020



(●) Date agency component released the solicitation

(●) Offer due date

(●) Contract award date

Source: GAO analysis of DOE contract pre-award files and data from the Federal Procurement Data System. | GAO-23-105209

Notes: These competitions are the 15 with contracts awarded in fiscal years 2015 through 2020 with a potential total contract value of \$750 million. For the Management and Operation of the Nevada National Security Site contract, offers were initially due in December 2015. The National Nuclear Security Administration awarded the contract in August 2016, but the award was canceled. The National Nuclear Security Administration then collected new offers in March 2017, as shown. In addition, the timelines overlapped for a third Office of Environmental Management competition, for Hanford Site tank closure. We excluded the competition from our scope because DOE ultimately canceled the award

The amount of time it takes to move through the acquisition process increases the likelihood that different competitions will overlap. EM and NNSA officials acknowledged the overlapping timelines, and EM officials said they planned to monitor the availability of highly qualified key personnel on an ad hoc basis, particularly during periods of substantial overlap across competitions. For example, in its acquisition plan for the Hanford Site, EM weighed the benefits of staggering the Central Plateau Cleanup competition with the Mission Essential Services competition against mission needs such as safety performance. However, officials said there may be times that mission needs do not allow for staggering the timing of competitions. For example, DOE and NNSA officials told us that they would have to extend certain contracts to stagger upcoming competitions, which presents other effects on competition. Further, DOE officials said that they already have strong incentives to stagger competitions so that their contracting staff are not stretched too thin, but that mission needs take priority in determining when to compete a contract.

EM Has Taken Initial Actions to Better Understand Industry Views on Risks and Rewards, but Other Components Have Not

Representatives from 13 of the 24 industry entities we interviewed expressed concerns about the risks associated with working for DOE compared with the rewards. These included concerns about profit margins, upfront costs, and corporate risk.

- **Profit margins.** Representatives from seven of the 24 entities we interviewed expressed concerns that profit margins on DOE contracts were too low. For example, four representatives said that fees were too low or unallowable costs were too high.⁵¹ DOE officials said that they already set fees appropriately to align with risk. For example, officials said that NNSA contracts pose higher risks than Office of Science contracts, so NNSA's fees are higher. Office of Science officials acknowledged that their competitions may be less attractive to for-profit entities.

⁵¹Allowable costs are described in 48 C.F.R. part 31, Contract Cost Principles and Procedures.

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- **Upfront costs.** Representatives from 10 of the 24 entities expressed concerns about high upfront costs before a potential contract begins, including high proposal costs. To reduce upfront costs, EM simplified technical and cost proposal requirements and revised invoicing practices, NNSA set page limits for offers, and Office of Science officials said they plan to reduce the number of evaluation factors for future competitions.
 - **Corporate risk.** Representatives from seven of the 24 entities expressed concerns about risk to their business portfolio, including damage to their reputation with other federal agencies or the public. Representatives stated that DOE nuclear work is riskier than work at other federal agencies. Specifically, representatives from two entities said that if they entered into a contract with DOE and received an unfavorable performance rating because of an adverse event, their current and future contracts with other federal agencies may be put in jeopardy. In addition, representatives from two entities said that shareholders may have a negative opinion of nuclear work. Last, representatives from three entities said any adverse event at a nuclear site, whether the fault of the entity or not, could diminish its consumer brand, such as for producing commercial goods. NNSA officials said they do not see this as an issue that would limit competition.

Across DOE components, efforts to solicit industry feedback on entities' offer decisions have been inconsistent. EM has taken initial actions to seek information to better understand industry concerns about risks of working with DOE compared with the rewards. As stated previously, in 2021, EM commissioned a study on entities' reasons for not submitting offers. EM then took a number of actions in response to the study. For example, because entities need time to weigh the risks versus rewards when deciding whether to submit an offer for a competition, the study recommended that EM allow at least 60 days between issuing a solicitation and the due date for offers. EM said it would consider allowing 60 days between issuing the solicitation and the due date for offers on a case-by-case basis. Other DOE components—including NNSA and the Offices of the CIO, Legacy Management, and Science—have not taken similar actions to seek information from entities that did not submit offers on competitions in our scope, according to agency officials we interviewed.

OMB guidance for strengthening engagement with industry partners through innovative business practices states that agencies seeking

information on industry practices benefits the agency.⁵² Better understanding of an entity's decision to bid or not bid, and the work associated with this decision, can drive process improvements that invite more effective competition. For example, the OMB guidance states that reverse industry day events—which provide information to an agency's acquisition workforce through the eyes and perceptions of industry—can be used to educate agency officials on industry activities and considerations. The events can provide an agency's acquisition professionals with an opportunity to learn more about industry's processes related to pursuing, bidding on and winning federal contracts; debriefs; and protests—from industry's viewpoint. For example, the Department of Homeland Security's Acquisition Innovations in Motion effort, discussed previously, has held reverse industry day events that included panels of industry leaders and skits that demonstrate how entities decide whether to submit an offer for a competition or whether to file a protest.

Efforts to solicit industry feedback on entities' offer decisions across DOE have been inconsistent, because none of the DOE components in our scope had an established mechanism for seeking information from industry outside of individual competitions. EM's actions included receiving information from external parties at one point in time, but they do not represent an ongoing effort. Other components have also not undertaken ongoing efforts.

A structured mechanism for seeking information on entities' offer decisions, such as through periodic reverse industry day events, could help DOE components whose competitions we reviewed—including EM and the Office of Science, and NNSA's Office of Partnership and Acquisition Services—understand and address factors that may hinder competition. Specifically, by holding such events, DOE components could obtain more consistent information, independent of any specific competition, on how entities consider corporate risk versus the profit margins they expect to achieve, while also accounting for upfront costs. For components with fewer large competitions—such the Offices of the CIO and Legacy Management—DOE's Office of Acquisition Management has an opportunity to help those offices determine the relevance to their competitions and share information as appropriate.

⁵²Office of Management and Budget, "*Myth-Busting #4*."

NNSA and the Office of Science Have Not Taken Actions to Consider Alternate Work Scopes for All M&O Competitions

Representatives from 13 of the 24 entities we interviewed stated that large scopes of work in a single solicitation may hinder their willingness or ability to submit offers. They identified several challenges related to large work scopes, including

- **Need for broad skill sets.** Representatives from five entities mentioned that large scopes of work can require a broad skill set spanning different fields (e.g., industrial, nuclear, environmental). They said that few entities have all of these skills.
- **Need to team with other entities.** Representatives from three entities mentioned the need to team with other entities on offers to be able to compete for contracts with large scopes. One representative said such teaming arrangements can be complex and difficult to navigate.
- **Limited opportunities for small and mid-sized entities.** Representatives from 10 entities mentioned that small and mid-sized entities have limited opportunities to compete for DOE's largest contracts, outside of opportunities to subcontract with large entities. Representatives from five mid-sized entities said that they even face challenges obtaining subcontracts, because they are not eligible for small business incentives. One representative said that mid-sized entities may have specialized skills that could benefit DOE, but they face difficulty getting on teams or obtaining subcontracts to perform such work. According to representatives from two entities, it would be easier for them to compete for contracts with smaller or more specialized scopes of work.⁵³

During acquisition planning, NNSA and Office of Science officials chose to use cost-reimbursement M&O contracts for most of their largest solicitations, which included the entire scope of work to manage and

⁵³In October 2022, DOE issued a notice to highlight existing flexibilities that DOE officials can use to increase new entrants from underserved communities and advance equity through M&O and other major site and facility subcontracts. See Department of Energy, *Increasing New Entrants From Underserved Communities and Advancing Equity in Department of Energy (DOE) Management and Operating (M&O) and Major Site and Facility Subcontracts*, Acquisition Letter 2023-01 (Washington, D.C.: Oct. 12, 2022). In addition, in July 2022, DOE released a policy flash memorandum that summarized existing requirements and flexibilities available to DOE officials to increase opportunities for new entities interested in contracting with the agency. Many of these flexibilities focused on increasing opportunities for small or disadvantaged businesses during the pre-award phase. See Department of Energy, *Attachment to Policy Flash 2022-42 to increase opportunities for New Entrants in DOE Acquisitions* (Washington, D.C.: July 18, 2022).

operate several sites. The FAR requires that agencies discuss feasible acquisition alternatives in written plans.⁵⁴ We and others have previously reported that alternatives could include breaking out certain aspects of the scope for smaller contracts or for federalization—that is, having federal employees perform the work.⁵⁵ For example:

- **Cost-reimbursement contracts.** OMB guidance on contract types states that agencies that consider breaking work into smaller pieces with more clearly defined deliverables and predictable pricing may be able to avoid using riskier cost-reimbursement contracts.⁵⁶ For example, more than a decade ago, NNSA considered a different acquisition strategy for construction within the nuclear security enterprise and anticipated doing so could create efficiencies, but NNSA has not implemented this approach.
- **M&O contracts.** DOE's Acquisition Guide states that for M&O contracts, officials must prepare an acquisition alternatives package that includes a thorough discussion of the acquisition alternatives.⁵⁷ It must also include a reasoned consideration of (1) whether the entire scope of work should be extended or competed as-is, or (2) whether some aspects of the current effort should be extended, while other areas should be competed and contracted for separately.

We found that NNSA and the Office of Science selected their contracting and scoping approaches for certain M&O contracts without fully documenting consideration of other alternatives. Specifically, acquisition planning for four of the five NNSA M&O competitions and the Office of Science's only M&O competition in our scope did not include a thorough discussion of acquisition alternatives or a reasoned consideration of scoping options, according to DOE documents we reviewed.⁵⁸ Instead,

⁵⁴48 C.F.R. § 7.105(a)(1).

⁵⁵We also reported that federalization could involve the current federal workforce or new hires. [GAO-16-529](#).

⁵⁶Office of Management and Budget, *Increasing Attention on Federal Contract Type Decisions*.

⁵⁷Department of Energy, "Acquisition Planning in the M&O Environment," Ch. 70.1706-1 of *Acquisition Guide* (November 2016).

⁵⁸Acquisition planning for the Brookhaven National Laboratory M&O competition and three of NNSA's five M&O competitions were completed before DOE revised the acquisition guide in November 2016. The revised guide directed officials to include a thorough discussion of alternatives beyond simply extending or re-competing an M&O contract, so they were subject to the less specific requirement in 48 C.F.R. § 7.105(a)(1) that agencies discuss feasible acquisition alternatives in written plans.

acquisition planning documents for the competitions stated that the proposed competitions met the criteria for M&O contracts, and that no other alternatives were feasible.

Documentation for the NNSA competitions did not specify those potential alternatives or demonstrate a reasoned consideration of scoping options. Documentation for the Office of Science M&O competition in our review offered some information on potential scoping alternatives for the Brookhaven National Laboratory M&O competition, but the documentation stated that the alternatives were deemed infeasible, without a thorough discussion or reasoned consideration of those alternatives. In addition, officials identified portions of the statement of work that could have small business opportunities, but documentation did not include a thorough discussion or any consideration of alternatives.

In contrast, documentation for NNSA's Naval Reactors Program included potential scoping alternatives and demonstrated a reasoned consideration of those alternatives for its management and operation of the Naval Nuclear Laboratory competition. This included consideration of whether the entire scope of work from the prior M&O contract should be competed as-is, or whether some aspects of the current effort should be competed and contracted for separately.

In addition, DOE components generally documented their consideration of alternative work scopes for the non-M&O competitions we reviewed. In some cases, officials ultimately decided to maintain the same scope of work as under a prior iteration of the contract. In other cases, officials decided to break up the scope. This resulted in plans for small business set-asides—portions of the scope that are set aside for small business contracting—for six competitions in our scope. Of note, in 2016, EM developed a single master acquisition plan for the Hanford Site to begin acquisition planning with a single overarching vision and strategy. The plan listed three alternatives for one of the competitions in our scope, and it assessed the alternatives based on technical considerations (e.g., needed skill sets), business practicalities (e.g., likelihood to attract competition), socioeconomic considerations (e.g., small business opportunities), and other factors. As part of the analysis, EM also assessed alternative contract types (e.g., cost-reimbursement) and fee types (e.g., award, incentive).

NNSA and Office of Science officials told us that breaking up work scope among multiple contractors at a given site is not feasible because it decreases the agency's ability to hold contractors accountable. NNSA

officials also said that overseeing multiple contractors at a given site makes work harder to manage, and that NNSA does not have sufficient staff to do so. This may indicate a preference for meeting a goal of more streamlined oversight but does not include information on how the agency weighs other contracting goals, such as enhancing competition, which can improve cost effectiveness and performance among other things. Except in the Naval Reactors Program M&O competition we reviewed, NNSA and the Office of Science did not demonstrate that officials studied the issues in depth to make a reasoned consideration of the associated benefits and drawbacks of recognizing a variety of contracting goals and how alternative scopes could help meet those goals. Other components have found alternative scopes to be feasible for M&O contracts, even if those alternatives were not ultimately selected.

Without information from NNSA and Office of Science on the overall contracting goals to consider when scoping alternatives, officials may continue to demonstrate ineffectively to taxpayers that they have made sincere efforts to understand and decide on tradeoffs among different contracting goals—such as those to enhance competition—when making their scoping decisions. By documenting consideration of a broader range of contract scopes—including their feasibility, benefits, and drawbacks—NNSA and the Office of Science could better determine whether other scopes would produce improved outcomes, including on competition, which is generally associated with achieving more favorable prices, as we have previously found.⁵⁹

Based on recent examples, not clearly considering competition can present risks, such as decreased taxpayer value and rework. For example, in May 2022, NNSA announced that it had canceled the Pantex Plant and Y-12 National Security Complex M&O competition, and it terminated the resulting award due to concerns with the scope of the contract, among other things. According to a DOE press release, NNSA plans to re-compete the contract as two competitions.

Conclusions

DOE received multiple offers for most recent large competitions in our scope, and we did not find evidence that supported industry representatives' perceptions about the fairness of the award process for the competitions in our scope. However, such perceptions may hinder competition, because entities may choose not to submit an offer if they perceive that they will not be treated fairly in a competition. Further,

⁵⁹[GAO-16-529](#).

entities identified conditions that affect the attractiveness of DOE competitions that influence their decision on whether to make an offer.

Opportunities exist for DOE and its components to help address industry concerns about the fairness of DOE's competition process and, within reason, the attractiveness of DOE contracts. First, by holding regular meetings with industry, independent of a specific competition, NNSA and DOE's Office of Science could better assure entities that the agency will fairly evaluate their offers. Second, efforts to gather information on how entities decide whether to submit an offer for a solicitation by NNSA and DOE's Offices of the CIO, EM, Legacy Management and Science have been inconsistent, because they have no mechanism in place to learn more about how entities decide whether to submit offers. By establishing such a mechanism, these DOE components may be able to better understand and address factors that may hinder competition. Third, by documenting the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts, including how to take into account a competition's goals when considering alternatives, officials in NNSA and DOE's Office of Science could better demonstrate that they have made sincere efforts to decide among contracting goals—such as those to enhance competition—when making their scoping decisions.

Recommendations for Executive Action

We are making a total of eight recommendations, including five to DOE and three to NNSA:

The Associate Administrator for NNSA's Office of Partnership and Acquisition Services should hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated, including any changes in agency practices. (Recommendation 1)

The Director of DOE's Office of Science should hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated, including any changes in agency practices. (Recommendation 2)

The Assistant Secretary for EM should use structured mechanisms for soliciting information on how entities decide whether to submit an offer for a solicitation, such as through periodic reverse industry day events. (Recommendation 3)

The Associate Administrator for NNSA's Office of Partnership and Acquisition Services should use structured mechanisms for soliciting information on how entities decide whether to submit an offer for a solicitation, such as through periodic reverse industry day events. (Recommendation 4)

The Director of DOE's Office of Science should use structured mechanisms for soliciting information on how entities decide whether to submit an offer for a solicitation, such as through periodic reverse industry day events. (Recommendation 5)

The Director of DOE's Office of Acquisition Management should determine whether using structured mechanisms for soliciting industry feedback on entities' offer decisions, such as through periodic reverse industry day events, would be appropriate for smaller DOE offices with fewer large competitions. Depending on that determination, DOE's Office of Acquisition Management should share information with those offices as appropriate. (Recommendation 6)

The Associate Administrator for NNSA's Office of Partnership and Acquisition Services should document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts and how to take into account a competition's goals when considering alternatives. (Recommendation 7)

The Director of DOE's Office of Science should document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts and how to take into account a competition's goals when considering alternatives. (Recommendation 8)

Agency Comments

We provided a draft of this report to DOE for review and comment. In its comments, reproduced in appendix II, DOE stated that it concurred, and that NNSA either concurred or concurred in principle, with our recommendations. DOE also provided technical comments, which we incorporated as appropriate.

In discussing the recommendations, DOE stated that it believes the Office of Science has fully addressed three recommendations with its current efforts and considers the recommendations to be closed. However, our recommendations to improve competition go beyond the agency's current efforts, and we believe additional actions are needed to fully address these recommendations, as discussed below.

-
- In response to our recommendation that the Office of Science hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated (Recommendation 2), DOE provided examples of the types of meetings the office holds when conducting specific competitions and stated that it will continue those efforts. However, as our report states, communications during specific competitions may not fully address industry perceptions that may hinder competition. Consistent with OMB guidance, other DOE components and executive branch agencies have made efforts to communicate with industry beyond specific competitions. We continue to believe that additional communication with industry—Independent of specific competitions—could help address industry perceptions about the fairness of the award process and in turn remove barriers to competition.
 - In response to our recommendation that the Office of Science use structured mechanisms for soliciting information on how entities decide whether to submit an offer for a solicitation (Recommendation 5), DOE stated that the office would continue efforts to solicit feedback with industry during specific competitions. However, these efforts do not provide a structured mechanism for obtaining feedback independent of a specific competition and would not, for example, allow the Office of Science to obtain information from entities that decided not to submit an offer. We continue to believe that, by using structured mechanisms such as reverse industry day events, which OMB says can provide valuable information on the perceptions of industry, the Office of Science could better understand and address factors that may hinder competition.
 - In response to our recommendation that the Office of Science document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts and how to take into account a competition's goals when considering alternatives (Recommendation 8), DOE stated that documentation would include a more thorough discussion of acquisition alternatives in future competitions. This is a promising statement, but the Office of Science has not yet taken this action and, therefore, we do not consider the recommendation to be implemented.

NNSA concurred in principle with our recommendation that it hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated (Recommendation 1) and our recommendation that it use structured mechanisms for soliciting industry feedback on entities' offer decisions (Recommendation 4). NNSA described actions that it is already taking to share information with and solicit feedback from industry. However, as is the case with the Office of Science, most of these actions focus on specific competitions. NNSA stated that it would fully consider or evaluate GAO's observations to identify ways to further enhance existing processes. We continue to believe that NNSA's existing processes could be enhanced by additional communication with industry that is independent of specific competitions.

We note that in our final report, the phrasing of recommendations 4 and 5 differs slightly from the phrasing of these recommendations as reviewed by DOE and NNSA in our draft report. We have updated the phrasing of these two recommendations for consistency with similar recommendations made to other DOE components.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Energy, the Administrator of NNSA, the Director of OMB, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or bawdena@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions are listed in appendix III.

A handwritten signature in black ink, appearing to read "Allison Bawden".

Allison Bawden
Director, Natural Resources and Environment

List of Committees

Chair
Ranking Member
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate

The Honorable Chuck Fleischmann
Chair
Ranking Member
Subcommittee on Energy and Water Development, and Related Agencies
Committee on Appropriations
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report examines, for Department of Energy (DOE) competitions that resulted in the agency's largest contracts in fiscal years 2015 through 2020, the most current available when we started our review, (1) the number of offers DOE received and the acquisition environment's potential effects on competition; (2) the evaluation factors and information sources DOE used to evaluate offers and generate scores; and (3) factors that selected industry entities identified that may hinder competition, and actions DOE has taken to address such factors.¹

Our scope includes the 15 DOE competitions in fiscal years 2015 through 2020 that resulted in contracts with a potential total contract value of \$750 million or more, according to information in the Federal Procurement Data System.² Collectively, those 15 competitions led to contracts that had a total potential value of more than \$150 billion, as of October 2021. These 15 competitions were issued in all 6 years of our scope by five DOE components: the National Nuclear Security Administration (NNSA) (five competitions); and the Offices of Environmental Management (EM) (six competitions), Science (two competitions), Legacy Management (one competition), and the Chief Information Officer (CIO) (one competition). See table 6 for a list of these 15 competitions by DOE component.

¹We defined "largest contracts" as those with a potential total contract value of at least \$750 million. This is consistent with our definition of major projects and contracts for the DOE Contract and Project Management high-risk area, and it aligns with DOE's definition of a "major system project."

²During this time frame, DOE also held competitions and made awards—but later canceled the awards—for two other large competitions that we excluded from our scope: (1) Hanford Site tank closure, awarded in fiscal year 2020, and (2) Savannah River Site liquid waste services, awarded in fiscal year 2018. We also excluded DOE's Energy Savings Performance competition, awarded in fiscal year 2017, because the resulting contract is used by agencies across the federal government. According to DOE documentation, the Office of Science extended six contracts for the management and operation of facilities during this time frame that, if competed, would have met our criteria of competitions that resulted in contracts with a potential total contract value of \$750 million or more. Three of these extended contracts were last competed in fiscal years 2005 through 2009. One—for the Oak Ridge National Laboratory—was last competed in 1999. Two others—for the Pacific Northwest National Laboratory and the SLAC National Accelerator Laboratory—have never been competed following initial award.

**Appendix I: Objectives, Scope, and
Methodology**

Table 6: Competitions That Resulted in Contracts of \$750 Million or More Awarded Fiscal Years 2015–2020, by Department of Energy (DOE) Component

DOE component	Competition	Fiscal year DOE awarded contract
National Nuclear Security Administration (NNSA)	Management and Operation of the Los Alamos National Laboratory	2018
	Management and Operation of the Naval Nuclear Laboratory ^a	2018
	Management and Operation of the Sandia National Laboratories	2017
	Management and Operation of the Nevada National Security Site	2017
	Management and Operation of the Kansas City National Security Campus	2015
Office of the Chief Information Officer	Chief Information Officer Business Operations Support Services	2019
Office of Environmental Management	Hanford Central Plateau Cleanup	2020
	Hanford Mission Essential Services	2020
	Nationwide Deactivation, Decommissioning, and Removal	2020
	Los Alamos Legacy Cleanup	2018
	Paducah Gaseous Diffusion Plant Deactivation and Remediation	2017
	Idaho Cleanup Project	2016
Office of Legacy Management	Legacy Management Support Services	2020
Office of Science	Oak Ridge Institute for Science and Education	2016
	Management and Operation of the Brookhaven National Laboratory	2015

Source: GAO analysis of DOE contract files. | GAO-23-105209

^aThe Naval Nuclear Laboratory is managed by the Naval Reactors Program, which is executed jointly with the U.S. Navy and is supported by two contracts with the same contractor: one with DOE and one with the Navy. According to NNSA, both contracts follow the same acquisition process and are jointly competed.

To address our objectives, we reviewed requirements in the Federal Acquisition Regulation (FAR), the Department of Energy Acquisition Regulation, and internal DOE directives. We also reviewed OMB guidance for improving government acquisition, enhancing competition, communicating with industry, and strengthening engagement with

industry through innovative business practices.³ We then analyzed contract files for the 15 competitions in our scope using a data collection instrument to collect systematic information from each file, including key dates in the competition, contract type, whether the award was protested, evaluation factors, offeror scores, industry organizations involved in each offer, and key personnel named in each offer. We pretested our data collection instrument to ensure consistent and complete data collection. Two analysts reviewed all data collected and came to agreement on the accuracy, completeness, and characterization of that data.

We also reviewed other DOE documents related to competition issues, such as DOE's competition reports for fiscal years 2019 through 2021 and documentation on the agency's efforts to improve competition. We also interviewed officials from the five DOE components that issued the competitions in our scope: DOE's Offices of the CIO, EM, Legacy Management, and Science; and NNSA.⁴ We also interviewed officials from DOE's Office of Acquisition Management—which establishes policies and procedures for DOE acquisitions, including maintaining the agency's Acquisition Guide, and which identifies internal standard operating procedures and is intended to be a repository of best practices for acquisitions.

In addition, we interviewed representatives from 24 selected industry entities—that is, individual companies, organizations, or universities—that expressed interest in the 15 competitions in our scope. Specifically, to

³The Office of Management and Budget (OMB) has issued a series of memoranda on a variety of topics, including those relating to competition. We reviewed the following: Office of Management and Budget, *Increasing Attention on Federal Contract Type Decisions*, M-21-11 (Washington, D.C.: Jan. 5, 2021); “Myth-Busting #4” – *Strengthening Engagement with Industry Partners through Innovative Business Practices* (Washington, D.C.: Apr. 30, 2019); “Myth-busting 3” *Further Improving Industry Communication with Effective Debriefings* (Washington, D.C.: Jan. 5, 2017); “Myth-Busting 2”: *Addressing Misconceptions and Further Improving Communication during the Acquisition Process* (Washington, D.C.: May 7, 2012); “Myth-Busting”: *Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process* (Washington, D.C.: Feb. 2, 2011); *Increasing Competition and Structuring Contracts for the Best Results* (Washington, D.C.: Oct. 27, 2009); *Improving Government Acquisition*, M-09-25 (Washington, D.C.: July 29, 2009); *Effective Practices for Enhancing Competition* (Washington, D.C.: July 18, 2008); and *Enhancing Competition in Federal Acquisition* (Washington, D.C.: May 31, 2007).

⁴Within NNSA, we interviewed officials from the Office of Partnership and Acquisition Services. In July 2022, NNSA reorganized its office that oversees contracting. This reorganization included changing the name of the organization to its current name. Prior to that time, the name was the Office of Acquisition and Project Management.

identify relevant entities, we collected information from contract files on all entities that attended competition-related informational events—such as a pre-solicitation conference or industry day event, submitted offers, or both—which produced a list of 401 possible entities to interview. We selected a nongeneralizable sample of entities that had either (1) submitted offers and won, (2) submitted offers and did not win, or (3) expressed interest but did not submit offers. In total, we interviewed 11 entities that described themselves as large entities and 13 that described themselves as small or mid-sized entities.⁵ To further understand industry perspectives, we interviewed representatives of two industry organizations, including the Professional Services Council. We selected these organizations because they represent the types of entities that have expressed interest in competing for DOE’s largest contracts in the past. We then performed a content analysis of all interviews. One analyst reviewed information collected in interviews, coded the information into topics, and identified themes across interviews. A second analyst reviewed the information to ensure agreement on coding and themes. The views of those we interviewed cannot be generalized to all industry entities, but they provided valuable insights to our work. We compared what we learned from our review of DOE documentation and interviews with OMB guidance to assess the extent to which DOE and NNSA followed OMB guidance on enhancing competition, as noted earlier.

We conducted this performance audit from May 2021 to January 2023 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.

⁵The U.S. Small Business Administration lists size standards for different industries as described by the North American Industry Classification System. DOE categorized the contracts resulting from each competition in our scope with a specific industry code. For example, five competitions in our scope resulted in contracts that use the code for Facilities Support Services (561210), and the Small Business Administration considers entities working under this code with average annual receipts at or below \$41.5 million to be small businesses. Six other competitions resulted in contracts that use the code for Environmental Remediation Services (562910), and the Small Business Administration considers entities working under this code with average employment of 750 or fewer employees to be small businesses.

Appendix II: Comments from the Department of Energy



Department of Energy

Washington, DC 20585

December 20, 2022

Ms. Allison Bawden
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street N.W.
Washington, DC 20548

Dear Ms. Bawden:

The Department of Energy (DOE or Department) appreciates the opportunity to comment on the Government Accountability Office's (GAO) draft report titled, "*Department of Energy Contracting: Additional Actions Could Further Strengthen Competition (GAO-23-105209)*." The draft report contained a total of eight recommendations, of which GAO directed five recommendations to DOE and three to the National Nuclear Security Administration (NNSA). DOE concurs with GAO's recommendations, while NNSA concurs and concurs in principle, with details provided in the enclosure.

The Department continues to be proactive in working with industry to obtain high quality offers and promote fair competition, as noted in the draft report. However, the Department will take further action to address the report recommendations and improve upon currently established practices, as deemed necessary by the cognizant Departmental elements.

GAO should direct any questions to Matthew Parker in the DOE Field Assistance and Oversight Division (MA-621) at 301-250-3086 or matthew.parker@hq.doe.gov.

Sincerely,

Ingrid Kolb Digital signature icon Digitally signed by Ingrid Kolb
Date: 2022.12.20
16:33:45 -05'00'

Ingrid Kolb
Director
Office of Management

Enclosure

Appendix II: Comments from the Department of Energy

Enclosure

Management Response

GAO Draft Report: "Department of Energy Contracting: Additional Actions Could Further Strengthen Competition (GAO-23-105209)"

DOE appreciates that GAO has reviewed and confirmed that DOE has taken significant action to ensure competitive acquisitions receive meaningful competition. As noted by GAO, DOE works hard to drive competition, typically resulting in multiple competitive offers for major competitions. DOE will strive to continue the trend of increased competition by coordinating internally to address the below GAO recommendations.

National Nuclear Security Administration

Recommendation 1: The Director of NNSA's Office of Partnership and Acquisition Services should hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated, including any changes in agency practices.

NNSA Response: Concur in Principle

NNSA's Office of Partnership and Acquisition Services shares information with industry regarding the processes for conducting competitions and how offers are evaluated in a variety of ways including identifying evaluation factors when providing industry requests for proposal or information, issuing draft solicitations, scheduling debriefings to provide details regarding the evaluation of offers and to address questions submitted by offerors; participating in the DOE/NNSA Small Business Forum and Expo; and posting notices of Contract Opportunities in SAM.gov. NNSA will, however, fully consider GAO's observations contained in this report to identify any best practices to further enhance our current industry outreach activities.

Estimated Completion Date: June 30, 2023

Recommendation 4: The Associate Administrator for NNSA's Office of Partnership and Acquisition Services should use structured mechanisms for soliciting industry feedback on entities' offer decisions, such as through periodic reverse industry day events.

NNSA Response: Concur in Principle

NNSA's Office of Partnership and Acquisition Services currently obtains information from industry related to factors influencing decisions on whether to compete for NNSA awards through several mechanisms. These include posting draft solicitations to allow for questions, clarifications, and feedback before the formal solicitation is issued and holding pre-solicitation conferences to discuss the acquisition process and key milestones. Through these activities, NNSA has a keen awareness of the key factors influencing offeror decisions. NNSA will, however, fully evaluate GAO's observations

Appendix II: Comments from the Department of Energy

Enclosure

Management Response

GAO Draft Report: "Department of Energy Contracting: Additional Actions Could Further Strengthen Competition (GAO-23-105209)"

contained in this report to identify any best practices to further enhance our existing processes.

Estimated Completion Date: June 30, 2023

Recommendation 7: The Associate Administrator for NNSA's Office of Partnership and Acquisition Services should document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for Management & Operating (M&O) contracts and how to take into account a competition's goals when considering alternatives.

NNSA Response: Concur

NNSA's Office of Partnership and Acquisition Services plans to document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts and how to consider a competition's goals when considering alternatives. In future M&O competitions, NNSA will enhance discussion of scoping considerations and goals, consistent with applicable Federal Acquisition Regulations, Department of Energy Acquisition Regulations, and agency policy.

Estimated Completion Date: Implementation of this action will occur, and closure will be evaluated, with award of the next NNSA facility operations contract, currently estimated for December 2025.

Office of Science

Recommendation 2: The Director of DOE's Office of Science should hold periodic meetings to share information with industry about how competitions are conducted and how offers are evaluated, including any changes in agency practices.

DOE Response: Concur

The Office of Science (SC) has historically utilized a number of mechanisms to share information with industry as standard practice. SC will utilize the following mechanisms, as appropriate, to share information with offerors: establishing a formal dedicated website for the acquisition(s), issuance of contract opportunities notice and Request for Information, providing draft Requests for Proposals (RFPs) for comment, holding pre-solicitation conferences and site visits, scheduling one-on-one meetings with industry participants, and providing debriefings to offerors. These meetings and communications provide ample information to industry on how competitions are conducted and offers are evaluated. Additionally, SC will look at streamlining proposal requirements to further encourage competition when conducting future contract competitions.

Appendix II: Comments from the Department of Energy

Enclosure

Management Response

GAO Draft Report: “Department of Energy Contracting: Additional Actions Could Further Strengthen Competition (GAO-23-105209)”

Estimated Completion Date: This effort will be ongoing and will continue to take place with every contract competition. This recommendation is considered closed.

Recommendation 5: The Director of DOE’s Office of Science should use structured mechanisms for soliciting industry feedback on entities’ offer decisions, such as through periodic reverse industry day events.

DOE Response: Concur.

As noted in SC’s response to GAO’s second recommendation, SC has historically utilized a number of mechanisms to share information and solicit feedback with industry as standard practice. SC will utilize, as appropriate: Requests for Information for industry to provide feedback and suggestions on elements of the proposed acquisition; draft RFPs, which will solicit direct feedback and suggestions on the proposed solicitation; pre-solicitation conferences and site visits; one-on-one meetings with industry; and formal debriefings to offerors.

Estimated Completion Date: This effort will be ongoing and will continue to take place with every contract competition. This recommendation is considered closed.

Recommendation 8: The Director of DOE’s Office of Science should document the types of scoping alternatives that contracting officials should consider as part of acquisition planning for M&O contracts and how to take into account a competition’s goals when considering alternatives.

DOE Response: Concur

The Secretary must decide whether to extend or compete an M&O contract. To inform this decision, programs must prepare an Acquisition Alternatives Package twenty-four months before contract expiration. This is the current practice of the Office of Science. The DOE Acquisition Guide requires that within that Acquisition Alternatives Package a thorough discussion of the acquisition alternatives, to include a reasoned consideration of whether the entire scope of work should be extended or competed as-is, or whether some aspects of the current effort should be extended while other areas (e.g., mission support functions) should be competed and contracted for separately. The package includes the recommended acquisition alternative and supporting rationale for that recommendation. SC will provide a more thorough discussion of acquisition alternatives, beyond just extending or competing the M&O contract, in future acquisition alternatives packages.

Estimated Completion Date: This effort will be ongoing and will continue to take place with every contract competition. This recommendation is considered closed.

Appendix II: Comments from the Department of Energy

Enclosure

Management Response

GAO Draft Report: "Department of Energy Contracting: Additional Actions Could Further Strengthen Competition (GAO-23-105209)"

Office of Environmental Management

Recommendation 3: The Assistant Secretary for Environmental Management should use structured mechanisms for soliciting information on how entities decide whether to submit an offer for a solicitation, such as through periodic reverse industry day events.

DOE Response: Concur

The Office of Environmental Management (EM) concurs with GAO's recommendation, which aligns with many structured mechanisms that EM has already instituted, including industry day one-on-ones to allow potential offerors an opportunity to provide input into draft solicitations. EM will further consider process improvements to our current industry day events, including reverse industry day events.

Estimated Completion Date: September 30, 2023

Office of Management

Recommendation 6: The Director of DOE's Office of Acquisition Management should determine whether using structured mechanisms for soliciting industry feedback on entities' offer decisions, such as through periodic reverse industry day events would be appropriate for smaller DOE offices within fewer large competitions. Depending on that determination, DOE's Office of Acquisition Management should share information with those offices as appropriate.

DOE Response: Concur

The Office of Management (MA) concurs with GAO's recommendation, which aligns with many structured mechanisms that MA has already instituted, including industry day one-on-ones to allow potential offerors an opportunity to provide input into draft solicitations with high visibility for acquisitions made by smaller DOE offices that are above the Head of Contracting Activity procurement authority threshold. MA will further consider process improvements to current industry day events, including reverse industry day events on a case-by-case basis with the approval of the program office(s) involved with the solicitation requirements.

Estimated Completion Date: September 30, 2023

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact	Allison Bawden at (202) 512-3841 or bawdena@gao.gov
Staff Acknowledgments	In addition to the contact named above, Hilary Benedict (Assistant Director), Candace Carpenter (Analyst-in-Charge), Kelsey Kennedy, Kevin Michel, Maura Sullivan, and Conner Wilson made key contributions to this report. In addition, Antoinette Capaccio, Suellen Foth, Ellen Fried, Cindy Gilbert, Julia Kennon, Sara Sullivan, Jack Wang, and Tatiana Winger contributed to the report.

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