

Highlights of [GAO-13-118](#), a report to the Chairman, Subcommittee on Contracting Oversight, Committee on Homeland Security and Governmental Affairs, United States Senate

Why GAO Did This Study

SBA's 8(a) program is the government's primary means of developing small businesses owned by socially and economically disadvantaged individuals, including firms owned by Alaska Native Corporations and Indian tribes. The NDAA for Fiscal Year 2010, enacted on October 28, 2009, called for revisions to the FAR to provide for a written justification for sole-source 8(a) contracts over \$20 million, where previously justifications were not required. GAO determined (1) the timeliness with which this new justification requirement was incorporated in the FAR; (2) the number of 8(a) sole-source contracts valued over \$20 million that have been awarded since October 2009 and trends over time; and (3) the extent to which agencies have implemented this new justification requirement. GAO analyzed federal procurement data, reviewed the 14 contracts subject to the requirement across five federal agencies, and interviewed officials from OFPP, SBA, the Department of Defense, and other agencies.

What GAO Recommends

GAO recommends that OFPP issue guidance to clarify the circumstances in which an 8(a) justification is required. GAO also recommends that the General Services Administration—which operates FPDS-NG—implement controls in FPDS-NG to help ensure that contract values are accurately recorded, and that SBA take steps to ensure that its staff confirm the presence of justifications. OFPP and GSA generally agreed with the recommendations. SBA indicated it would take some actions but did not fully address the recommendations.

View [GAO-13-118](#). For more information, contact Michele Mackin at (202) 512-4841 or mackinm@gao.gov.

December 2012

FEDERAL CONTRACTING

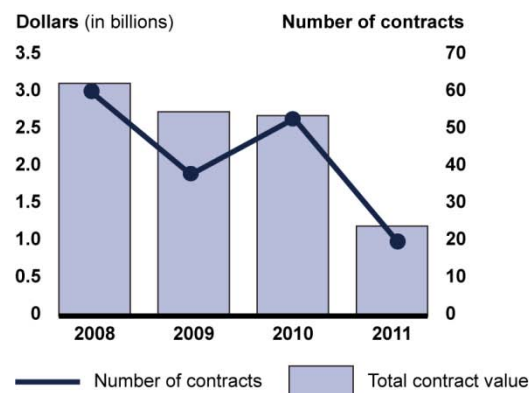
Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts

What GAO Found

The National Defense Authorization Act (NDAA) for Fiscal Year 2010 required that the Federal Acquisition Regulation (FAR) be amended within 180 days after enactment to require justifications for 8(a) sole-source contracts over \$20 million. These justifications bring more attention to large 8(a) sole source contracts. The FAR Council, which updates the FAR, missed this mandatory deadline by almost 325 days. During this delay, based on data in the Federal Procurement Data System-Next Generation (FPDS-NG), 42 sole-source 8(a) contracts with reported values over \$20 million, totaling over \$2.3 billion, were awarded without being subject to a justification. Office of Federal Procurement Policy (OFPP) representatives involved with the FAR Council's implementation of this rule attributed the delay primarily to the time required to establish a process for consulting with Indian Tribes and Alaska Native Corporations.

From October 28, 2009, through March 31, 2012, agencies reported awarding 72 sole-source 8(a) contracts over \$20 million. GAO also analyzed trend information in FPDS-NG from fiscal year 2008 through fiscal year 2011 (the most current available information), which showed that the number and value of these contracts declined significantly in 2011. While GAO determined that FPDS-NG data was sufficiently reliable for the purposes of this review, GAO found errors, such as contracts with an implausible reported value of zero.

Number and Value of New 8(a) Sole-Source Contracts with Reported Values over \$20 Million in Fiscal Years 2008 through 2011



Source: GAO analysis of FPDS-NG data.

GAO found a slow start to implementation of the new justification requirement. Of the 14 sole-source 8(a) contracts awarded since the FAR was revised, only three included an 8(a) justification. The agencies awarding the remaining 11 contracts did not comply, either because contracting officials were not aware of the justification requirement or because they were confused about what the FAR required. For example, contracting officials were confused in one instance where another justification was already in place that covered multiple contracts. Further, the Small Business Administration (SBA) cannot accept a contract over \$20 million for negotiation under the 8(a) program unless the procuring agency has completed a justification, but GAO found that SBA did not have a process in place to confirm the presence of a justification.