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An Analysis of DoD’s Use of the Lowest Price Technically Acceptable Acquisition Strategy and Recommendations for Improvement

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Abstract

The DoD’s use of the lowest price technically acceptable (LPTA) source selection method is a source of concern for many in the defense acquisition community. Some argue that the DoD has increasingly misused LPTA to procure complex goods and services that are difficult to define. Using data collected from the Federal Business Opportunities (FBO) website and the Federal Procurement Data System (FPDS), this report seems to test claims that the DoD has increased its use of LPTA and that its usage has yielded poor results (as measured by contract cancellation rates and vendor re-award rates). The results from this data query are mixed and show that LPTA usage has increased for all types of procurements and that there is some dissatisfaction associated with LPTA. The results, however, are questionable due to data validity concerns. This report concludes with recommendations for improving data collection for DoD source selection methods and contract cancellation rates.

Introduction

The United States Department of Defense (DoD) spends approximately \$300 billion on goods and services contracts each year (Section 809 Panel, 2017). Specifically, during fiscal year (FY) 2015, the DoD “obligated more money on federal contracts (\$274 billion) than all other federal agencies combined” (Schwartz & Manuel, 2015, p. 2). DoD acquisitions amounted to 7% of the federal government’s total discretionary and mandatory spending and 62% of all federal contract obligations in FY 2015 (Schwartz & Manuel, 2015, p. 3). Ensuring efficiency within the defense acquisition system is paramount given the significant portion of taxpayer dollars the U.S. government commits annually.

This report’s central research question is the following: Is the DoD using the lowest price technically acceptable (LPTA) source selection method to achieve its mission? If the DoD is not using LPTA effectively, what should the Department do to mitigate this problem?

DoD’s Mission

The mission of the U.S. Department of Defense is to “provide the military forces needed to deter war and protect the security of our country” (DoD, 2017).



What Is LPTA?

The Federal Acquisition Regulation (FAR) governs executive federal agency acquisition processes. First written in 1984, the FAR ensures that executive federal agencies “deliver on a timely basis the best value product or service ... while maintaining the public’s trust and fulfilling public policy objectives” (FAR Foreword; FAR 1.102). While the DoD has its own internal acquisition policy guidelines and its own supplement to the FAR, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD acquisitions are subject to all of the rules contained in the FAR, unless explicitly exempt (Manuel et al., 2015, p. 33).

FAR Part 15 broadly regulates the processes for “competitive and non-competitive negotiated acquisitions” or contracts. FAR Part 15.1 establishes and governs the various source selection practices (i.e., the processes by which federal agencies may legally select bidders or vendors in a competitive bidding environment) that executive federal agencies may use to acquire goods and services. The FAR determines that federal agencies “can obtain [the] best value in negotiated acquisitions by using any one or a combination of source selection approaches” from the “Best Value Continuum” (FAR 15.101). The Best Value Continuum is a spectrum of source selection methods differentiated by the degree to which such methods prioritize cost factors over non-cost factors in a contract award process (see Figure 1). There are at least three key source selection methods along the Best Value Continuum: Subjective Tradeoff, Value Adjusted Total Evaluated Price (VATEP), and Lowest-Price, Technically-Acceptable (LPTA; DoD, 2016, pp. 2–3).

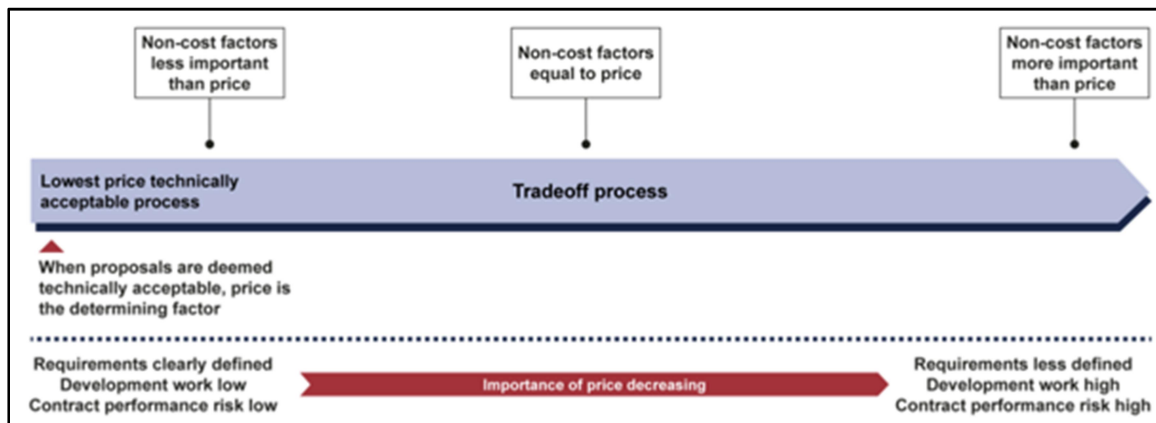


Figure 1. Best Value Continuum for Source Selection Methods
(DiNapoli, 2014, p. 4)

FAR 15.101-2 briefly describes the LPTA source selection process. The complete description contained in the FAR is as follows:

- (a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
- (b) When using the lowest price technically acceptable process, the following apply:
 - (1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the

acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in Subpart 19.6 and 15 U.S.C. 637(b)(7)).

- (2) Tradeoffs are not permitted.
- (3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.
- (4) Exchanges may occur (see 15.306).

Unlike the FAR, the DFARS does not offer such a description of LPTA, nor does it offer a department-specific definition of LPTA.

Advantages and Disadvantages of LPTA

There are several key advantages and disadvantages associated with LPTA source selection procedures. One of the core advantages of LPTA is that it generally results in procurements with the lowest overall price for products and/or services. Additionally, LPTA provides a clear basis for decision-making because it is a less subjective award process (Gansler, Harrington, & Lucyshyn, 2013, p. 2). As such, it is also one of the quickest ways to equip warfighters with the products and services they need (Kendall, 2015, p. 1). Finally, LPTA is believed to diminish the probability of encountering a bid protest because of the reduced subjectivity in evaluating bidders (Gansler et al., 2013, p. 6).

One of the main concerns surrounding the DoD's use of LPTA is that, in using this source selection procedure, the DoD is pushing vendors or contractors to design their products so cheaply that they cannot afford to design products or plan their services in a way that is outside-of-the-box and potentially more efficient than previous products or service modes. "The downward pressure on price [caused by LPTA] reduces industry's incentive to innovate and may drive quality suppliers entirely out of the defense marketplace as they look for more lucrative opportunities" (Goodman, 2015).

Others in the acquisition community contend that the DoD has increased its use of LPTA for complex procurements and risky acquisitions (Gansler et al., 2013, p. 22). A prime example of this is the Department of the Navy's 2009 LPTA contract award to Hewlett Packard Enterprise Services to replace the Navy's prior network system, Navy/Marine Corps Intranet (NMCI), with a new system called Next Generation Enterprise Network (NGen). The Navy's transition to NGen is a significant and highly complicated undertaking. The Navy has now "delay[ed] the previously scheduled contract award" for the NGen project, "leading one to question the wisdom of using LPTA as a source selection criterion" (Gansler et al., 2013, p. 22).

Another salient concern regarding the DoD's use of LPTA is that LPTA yields poor quality products and services because the DoD is using LPTA more frequently to acquire "higher risk" goods and services (Gansler et al., 2013, p. 22). For example, in one instance in which the DoD issued an LPTA contract for procuring "network equipment for military



bases across the country”—a complex project—the “technical evaluators” for the project were forced to select a vendor from a small and less preferable pool of bidders that met the minimum qualifications (Gansler et al., 2013, p. 22). The technical evaluators would have preferred to use non-cost factors to select a vendor, yet they were “required to choose the lowest priced option over one they believed to be a superior proposal that would provide the best value to the government” (Gansler et al., 2013, p. 22).

Background

DoD Policy Guidance on LPTA

Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]), Frank Kendall’s publication of Better Buying Power (BBP) 1.0 in June 2010 may have sparked the DoD’s increased usage of LPTA (DoD, n.d.). “The common view is that the first version of Better Buying Power’s emphasis on lowering costs led the acquisition workforce to interpret the guidance as a preference for LPTA contracts whenever possible” (Serbu, 2017). BBP 1.0 emphasized fiscal austerity; its objectives included “do more without more” and “restore affordability to defense goods and services” (Carter, 2010). The policy guidance does not explicitly advocate for the use of LPTA; however, the efficiency-minded objectives likely steered defense contracting officers in the direction of LPTA (Serbu, 2017).

In March 2015, USD(AT&L) Frank Kendall issued a memorandum entitled *Appropriate Usage of Lowest Priced Technically Acceptable Source Selection Process and Associated Contract Type*. The memo established greater guidance for the DoD’s use of LPTA. According to Kendall (2015),

LPTA is the appropriate source selection process to apply only when there are well-defined requirements, the risk of unsuccessful contract performance is minimal, price is a significant factor in the source selection, and there is neither value, need, nor willingness to pay for higher performance. ... LPTA is most appropriate when best value is expected to result from the selection of the technically acceptable proposal with the lowest evaluated price. ... [LPTA] has a clear, but limited place in the source selection “best value” continuum. ... Whenever the warfighter is willing to pay more for above threshold requirements or performance standards and may benefit from an innovative and technologically superior solution to meet their mission needs, a tradeoff source selection process between cost or price and non-cost factors is optimal. (pp. 1–2)

Much of Kendall’s guidance on how the DoD should apply LPTA is reflected in the recent regulatory changes to LPTA.

Recent Regulatory Changes to LPTA

Congress mandated regulations around the DoD’s LPTA usage via the National Defense Authorization Acts (NDAAs) for FY 2017 and FY 2018. Specifically, sections 813, 814, 885, and 892 of the 2017 NDAA establish circumstances under which the DoD may use the LPTA source selection procedure. Section 813 requires the Secretary of Defense to revise the DFAR to limit LPTA usage to the following contracting scenarios:

1. When the DoD can clearly articulate criteria for “performance objectives, measures, and standards that will be used to determine acceptability of offers” in a request for proposals (RFP);



2. When the DoD does not realize any additional advantage by “exceeding the minimum technical or performance requirements set forth in the request for proposal”;
3. When the technical requirements of the contract do not call for “subjective judgement ... as to the desirability of one offeror’s proposal versus a competing proposal”;
4. When the “source selection authority has a high degree of confidence that a review of technical proposals of offerors other than the lowest bidder would not result in the identification of factors that could provide value or benefit to the Department”;
5. The DoD contracting officer must provide a written justification for their use of LPTA source selection; and
6. The DoD must conclude that the lowest-price proposal “reflects full life-cycle costs, including for operations and support.” (NDAA for FY 2017, 2016, §§ 2270–2271)

Sections 813 further encourages DoD contracting officers to avoid the use of LPTA in the following contracting scenarios:

1. Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services;
2. Personal protective equipment;
3. Knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq. (NDAA for FY 2017, §§ 2270–2271)

Finally, Section 813 requires that the Comptroller General report to Congress documenting LPTA usage for contracts with a value greater than \$10 million by December 2017 (NDAA for FY 2017, §§ 2270–2271).

Section 814 prohibits the use of LPTA for personal protective equipment (PPE) contracts (NDAA for FY 2017, § 2271). Section 885 calls for an assessment of the bid protest system for DoD contracts and requires the Secretary of Defense to assess and provide data regarding the extent to which the existing bid protest system affects the “decision to use lowest price technically acceptable procurement methods” (NDAA for FY 2017, § 2319). Section 892 of the 2017 NDAA requires the DoD to award audit services and audit readiness service contracts to bidders only using the tradeoff source selection method, not LPTA (NDAA for FY 2017, § 2324).

The 2018 NDAA contained three new provisions governing the DoD’s LPTA usage. Specifically, Sections 822, 832, and part of 874 further regulate how the DoD may use LPTA. Section 822 amends Section 813 of the 2017 NDAA by adding the following paragraphs:

- (7) the Department of Defense would realize no, or minimal, additional innovation or future technological advantage by using a different methodology; and
- (8) with respect to a contract for procurement of goods, the goods procured are predominantly expendable in nature, nontechnical, or have a short life expectancy or short shelf life. (U.S. House of Representatives, 2017)



Section 822 also reduces the reporting requirement for LPTA threshold from \$10 million to \$5 million (U.S. House of Representatives, 2017).

Section 832 amends Title X, Chapter 42 of United States Code to include § 2442. Subsection 2442 proscribes the DoD from using LPTA to procure “engineering and manufacturing development contract [for] major defense acquisition program[s]” (MDAPs; U.S. House of Representatives, 2017). Finally, Section 874, subsection (g)(2), limits the use of LPTA for software development and agile acquisitions (U.S. House of Representatives, 2017).

These recent legislative changes underscore the importance and relevance of the LPTA issue. Further, these new laws demonstrate Congress’ awareness of the problems associated with LPTA. In the House Armed Services Committee (HASC) Report for the 2017 NDAA, the committee expressed concern that DoD contracting officers have frequently used LPTA source selection inappropriately for procurements such as “electronic test equipment that are very technical in nature and require calibration, repair, and software updates during their life cycle” (U.S. House Armed Services Committee, 2016, p. 183). The report further stated, “These anecdotal examples suggest a more widespread over-use of LPTA processes and contracts that may be having substantial unintended consequences” (U.S. House Armed Services Committee, 2016, p. 183). The Senate Armed Services Committee (SASC) Report for the 2017 NDAA expressed similar concerns and disagreement with the use of LPTA for personal protective equipment. The Senate Committee report also said,

While LPTA and reverse auction contracting techniques are appropriate for some types of purchases, the committee believes that lowest price is not always the best strategy when quality and innovation are needed. In these cases, the committee believes a best value acquisition approach is more appropriate. (U.S. House Armed Services Committee, 2016, p. 215)

The congressional committees continued to express their concern for better defining LPTA in the 2018 NDAA. In the HASC Report for the 2018 NDAA, the committee wrote that LPTA is a valid source selection criterion for “acquisitions with well-defined and non-complex requirements that are not expected to evolve over the life of a contract.” The HASC report further noted its concern that the DoD “continues to use LPTA criteria for other acquisitions, including those for innovative professional services and high-performance technologies” (U.S. House of Representatives, 2017).

GAO Reporting on LPTA

In November 2017, the Government Accountability Office (GAO) released a report at the end of 2017 assessing the DoD’s LPTA practices. The report found that, during the first half of 2017, the three military departments, the Air Force, Army, and Navy, “rarely used LPTA source selection procedures for IT and support services contracts valued at \$10 million or more” (GAO, 2017). The GAO pulled 781 contracts valued at \$10 million or more and identified 133 contract awards within this larger pool of contracts that were for IT and support services. The GAO found that only nine of the 133 IT and support services contracts valued at \$10 million or more were awarded on an LPTA basis. The GAO also found that for seven of the nine LPTA contracts identified, contracting officers “determined that the government would not receive a benefit for paying more than the lowest price” and that “LPTA procedures were used, in part, because the requirements were well-defined, non-complex, or reoccurring” (GAO, 2017, p. 10).

In 2014, the GAO found that the DoD’s use of LPTA had grown between 2009 and 2013 for contracts valued at \$25 million or more. Specifically, between 2009 and 2013, the DoD’s LPTA usage had grown from 26% to 36%, respectively (see Figure 2).



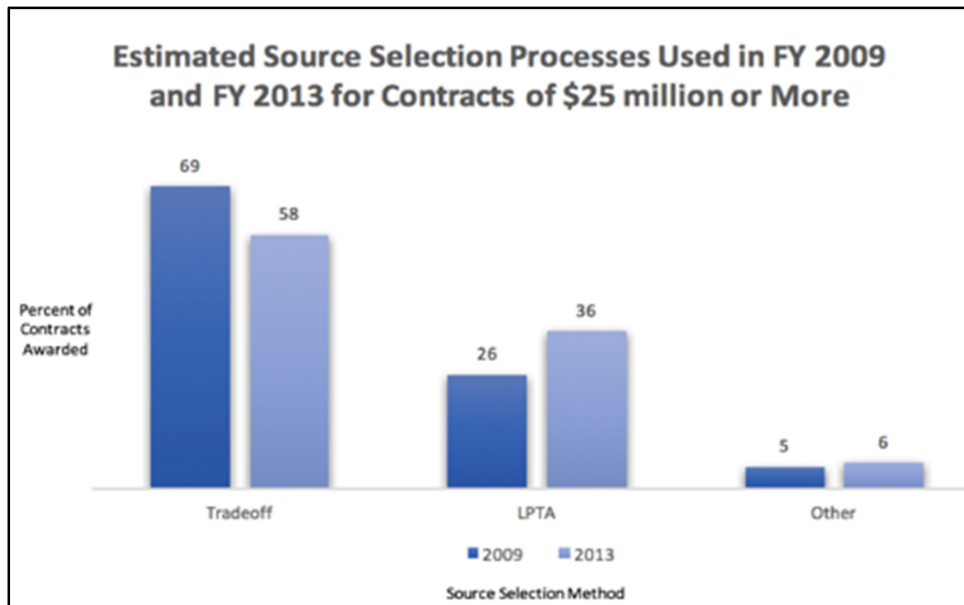


Figure 2. Source Selection Method Frequency in FY 2009 and FY 2013
(DiNapoli, 2014)

The GAO (2017) also found that 45% of contracts with obligation values between \$1 million and \$25 million were granted on an LPTA basis. These awards were for both “products and services” (p. 8). The GAO (2017) wrote, “We identified relatively few uses of LPTA to acquire high dollar services” and that contracting officials chose source selection methods based on their “knowledge about the requirements and contractors” (p. 8).

In sum, the GAO’s 2014 and 2017 reports on the DoD’s LPTA usage suggest that the Department has used LPTA marginally to procure complex services. Moreover, the GAO found that in those instances in which the DoD used LPTA to procure complex services, its usage was appropriate. These findings contradict the broader literature’s anecdotal findings, which suggest that the DoD has misused LPTA.

Methodology

To answer the central research question, I used a two-phased, mixed methodology approach. The first phase was a simple data collection and comparison of LPTA contracts. In the second phase, I used the Delphi method to collect qualitative data from experts in the Defense acquisition field. For the purposes of this paper and forum, I will focus only on Phase 1, the FBO-FPDS data query.

Phase 1: FBO-FPDS Data Query

I gathered information on LPTA contracts using the Federal Business Opportunities website (FBO.gov) and the Federal Procurement Data System website (FPDS.gov). For this phase, I operationalized the central research question by asking the following subsidiary questions:

1. Has the DoD increased its usage of LPTA contracts over time?
 - a. If so, has the DoD increased its usage of LPTA source selection for complex or non-complex procurements?
2. Does LPTA source selection yield poor outcomes for DoD contracts?

- a. Is there high dissatisfaction (as measured by contract cancellation rates) for LPTA contracts? If so, is this dissatisfaction greater for LPTA contracts used for complex or non-complex procurements?
- b. To what extent is the DoD's usage of LPTA source selection associated with contractor non-performance (as measured by failure to re-award to a vendor after awarding an LPTA contract)?

A "Yes" answer to these questions would indicate that the DoD has not been effectively using LPTA to fulfill its mission.

As I collected data from FBO (See Appendix for further details on FBO data collection), I identified complex and non-complex LPTA contracts. I originally intended to collect data on non-LPTA contracts as well; however, collecting such data yielded tens of thousands of observations (i.e., individual contract award announcements). Due to time and resource limitations, I was unable to collect information on non-LPTA contracts. I identified complex and non-complex LPTA contracts by using the Product and Service Codes (PSCs) search filter in FBO. I collected contract information using the following PSCs:

- **Simple Good:** (51) Hand tools, (74) Office machines, text processing systems & visible record equipment, (75) Office supplies and devices.
- **Complex Good:** (10) Weapons, (17) Aircraft launching, landing & ground handling equipment, and (18) Space vehicles.
- **Simple Service:** (C) Architect and engineering services, (S) Utilities and housekeeping services, and (Z) Maintenance, repair, and alteration of real property
- **Complex Service:** (A) Research and development, (D) Information technology services, including telecommunications services, and (H) Quality control, testing & inspection services.

Using these search criteria and steps in FBO, I constructed four discrete samples based on the complexity of the procurement (i.e., complex vs. non-complex, or high-risk vs. low-risk). Using this strategy allowed me to test whether or not LPTA is increasingly applied for inappropriate types of acquisitions. I collected most of the contract data from FBO and used FPDS (1) to corroborate information found on FBO, (2) to assess whether the contract subsequently won an award with the same buying entity (i.e., from the same service department), and (3) to find out whether the contract was eventually terminated.

Contract terminations and re-awards are appropriate proxy variables for contractor performance because termination and failure to re-award are indicators that the contractor was no longer able to meet the government's needs at the estimated price—they are proxies for "contractor non-performance" (Staff member, Personal communication, October 13, 2017). For example, if a contractor underestimates the cost of labor in their bid, and is unable to find labor at the estimated price after winning a contract, the DoD may terminate the contract as it no longer meets the LPTA standard (Staff member, Personal communication, October 13, 2017).

To the best of my knowledge, there is no other research publicly available that tracks the misuse of LPTA source selection by procurement category. The 2014 GAO tracked LPTA usage by dollar value, which may be a proxy variable for procurement complexity (DiNapoli, 2014). I noted contract award value for all contracts in my data collection, but the focus of my data collection was to identify contracts through a set of pre-determined procurement categories.



Limitations

While FBO is a very useful tool for collecting basic information on government contracts, it is an imperfect data collection system with some noteworthy limitations. First, data collected from FBO does not account for contract renewal fatigue, wherein the government automatically decides not to re-award a contract to the same supplier (Staff member, Personal communication, October 13, 2017). It is also possible that some vendors simply did not seek re-award with the DoD. Second, while my total sample size included over 400 award notices across 12 PSCs, the sample itself represents a small portion of total DoD LPTA contracts and, therefore, may not be generalizable to all LPTA contracts across all procurement categories. Third, it is likely that within each PSC category, there is an inherent range of complexity. For example, with an IT service PSC, IT services may range from front desk help to a new cutting-edge technology. Unfortunately, with the Federal Business Opportunities website, it is not possible to filter potential complexity within PSCs. Finally, because data is manually entered into FBO, there is the potential for human error and inconsistency. In other words, contracting personnel who are entering data into FBO may have done so incorrectly or not thoroughly, and their level of accuracy and thoroughness may vary from year to year. We therefore must assume that the personnel who are entering data for LPTA contracts and non-LPTA contracts are doing so with the same level of accuracy (or inaccuracy) and the same level of thoroughness (Staff member, Personal communication, November 3, 2017).

As stated previously, the data collected for the FBO-FPDS data query portion of this research was derived from award announcements found on FBO.gov using a predetermined set of search criteria. While FBO allows users to search for award announcements that contain the term “LPTA,” the results do not necessarily mean that an award was made on an LPTA basis. The award announcement results that FBO generates when using the “LPTA” search term may be a mixture of (1) awards that the service departments granted by using LPTA source selection procedures, or (2) awards that the service departments granted in which the solicitation referenced the LPTA evaluation criteria at one point or another (but didn’t necessarily stay that way). The only way to verify whether a contract was solicited and awarded on an LPTA basis is to look within Section M (Evaluation Factors for Award) of a solicitation (Staff member, Personal communication, February 8, 2018). Unfortunately, FBO does not include copies of solicitations used for all contract awards. Further, I was unable to collect and verify the available solicitations in this sample due to time constraints. Therefore, this report assumes that each of the contracts identified was, during at least one point, solicited on an LPTA basis, but may not have been awarded as such.



Data & Analysis

I operationalized the quantitative data collection and analysis into sub-questions. The subsidiary questions and the answers gleaned from the FBO-FPDS Data Query are summarized in Table 1.

Table 2. Summary of FBO-FPDS Data Findings

Subsidiary Question	Key Findings	Effective Usage?
<i>Has DoD increased its usage of LPTA contracts over time? If so, has DoD increased its usage of LPTA for complex or non-complex procurements?</i>	<ul style="list-style-type: none"> DoD's LPTA usage for complex/non-complex goods and services rose rapidly after 2011. LPTA contracts since 2002 have been marginal. LPTA usage for simple goods/services has generally exceeded LPTA usage for complex goods/services. DoD's use of LPTA appears to be declining 	Yes and No
<i>Is there higher dissatisfaction (as measured by contract cancellation rates) for LPTA? If so, is this dissatisfaction greater for LPTA contracts used for complex or non-complex procurements?</i>	<ul style="list-style-type: none"> Of the 467 contracts in the sample, only 13 contract cancellations noted in FPDS. 10 out of the 13 cancellations were for service procurements. 	Yes and No
<i>To what extent is DoD's usage of LPTA source selection associated with contractor non-performance (as measured by failure to re-award to a vendor after awarding an LPTA contract)?</i>	<ul style="list-style-type: none"> 261 of the 373 individual awardees in the sample (70%) were subsequently re-awarded a contract with the same department. Re-award rates were 68% and 75% for simple services and complex services, respectively. 	Yes

Sub-Question #1: Has the DoD increased its usage of LPTA contracts over time? If so, has the DoD increased its usage of LPTA for complex or non-complex procurements?

The data collected from FBO suggests that the number of award notices linked to solicitations that evaluated bidders on an LPTA basis at least once during the source selection process has increased over time. The total increase in LPTA criteria usage over time, however, has been marginal. Figure 3 shows that, since 2002, the percent of award notices and solicitations that referenced LPTA at least once represented less than 2.25% of those award notices and solicitations that did not.



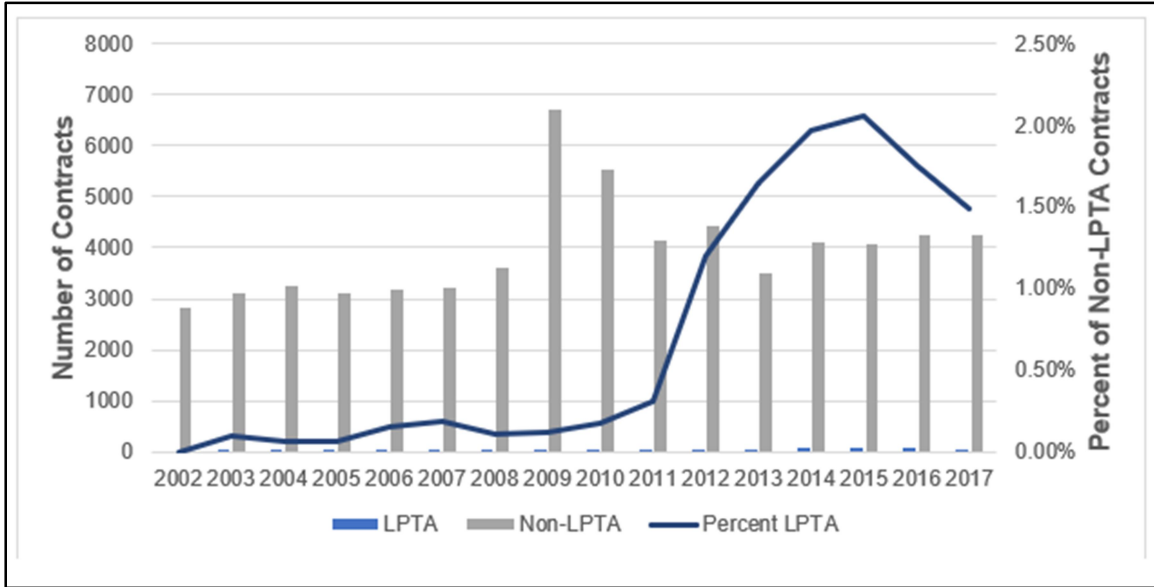


Figure 3. Total Sample of LPTA and Non-LPTA Contracts (2002–2017)
(Federal Business Opportunities website)

While the use of the LPTA evaluation criteria has marginally increased since 2002, it also appears to be declining in recent years. Figure 4 shows that the frequency of award notices and corresponding solicitations that referenced an LPTA evaluation criteria sharply increased between 2011 and 2012, peaked in 2015, and has been declining ever since.

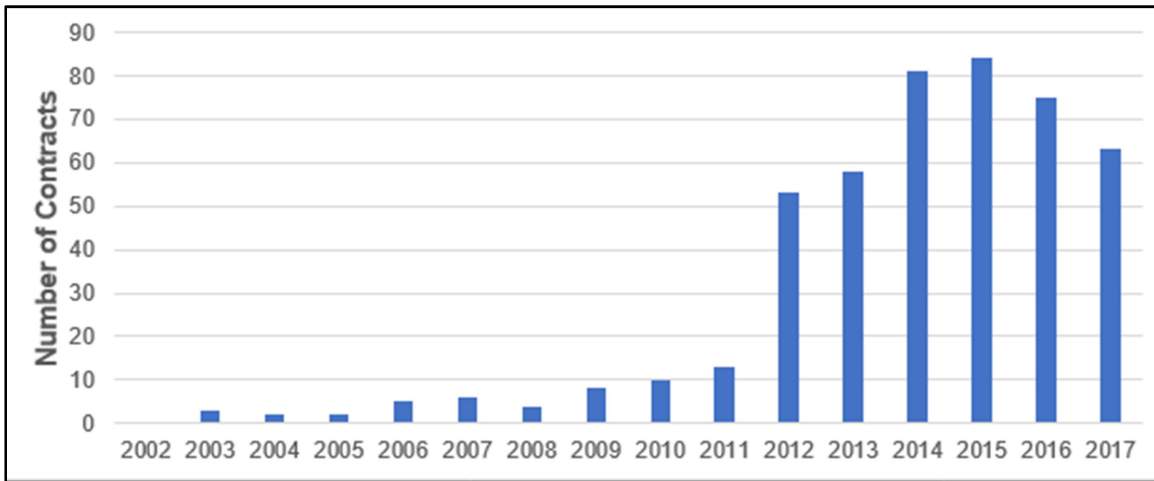


Figure 4. Total Sample LPTA Frequency (2002–2017)
(Federal Business Opportunities website)

There is no discernable trend when comparing the frequency of LPTA awards for simple goods with the frequency of LPTA awards for complex goods. Figure 5 shows that, in total, the service departments awarded only four more contracts referencing an LPTA evaluation criteria for simple goods than for complex goods. In 2015, the service departments granted awards four times more often for complex goods than for simple goods. The year 2015, however, was the only one in which the frequency of LPTA award announcements for complex goods exceeded that of simple goods. By 2017, none of the service departments granted an LPTA-based award for complex goods

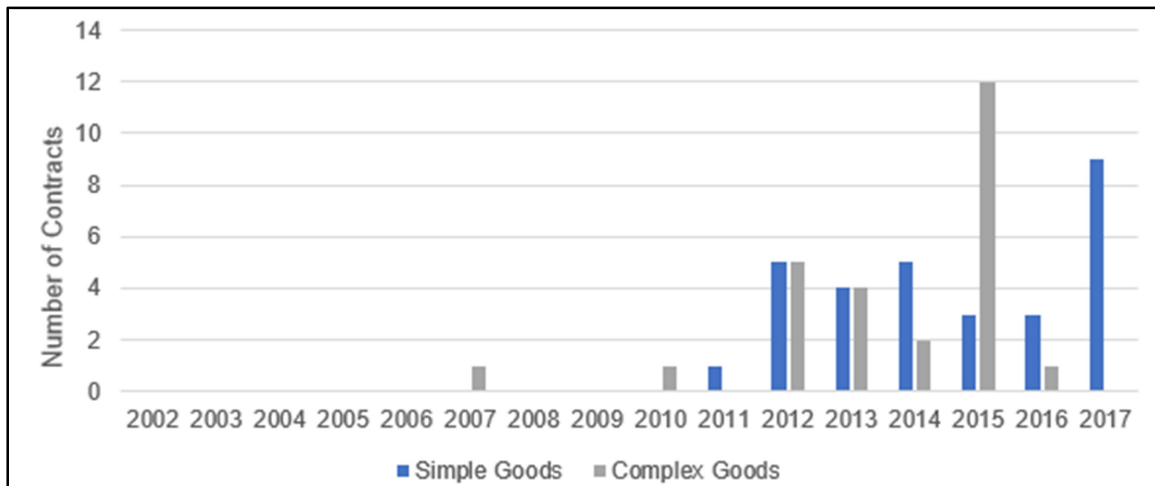


Figure 5. LPTA Award Announcements for Simple Goods vs. Complex Goods (2002–2017)

(Federal Business Opportunities website)

Since 2002, the frequency of award notices for simple services has typically surpassed the frequency of award notices for complex services (see Figure 6). The frequency gap grew sharply in 2012 when the number of award notices for complex services was eight, and the number of award notices for simple services was 35. That said, the number of award notices for complex services gradually increased from four in 2006 to 14 in 2017. It is important to note that the number of award announcements for complex services peaked in 2016 at 29 award notices.

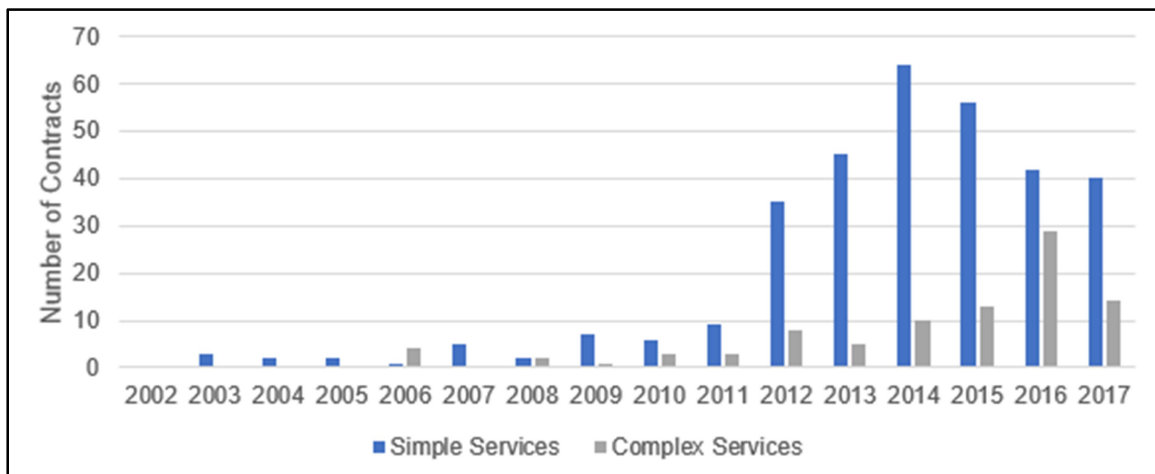


Figure 6. LPTA Award Announcements for Simple Services vs. Complex Services (2002–2017)

(Federal Business Opportunities website)

In sum, the DoD has increased its LPTA usage over time. LPTA usage increased sharply between 2011 and 2012. This is unsurprising given that this occurred shortly after Frank Kendall issued BBP 1.0 in 2010. The DoD’s use of LPTA to procure complex goods and complex services also rose markedly after 2010 but has generally been lower than the DoD’s use of LPTA to procure non-complex goods and services. With the understanding that using LPTA to procure complex goods and services is an ineffective or inappropriate

usage of LPTA, the data so far suggests that the DoD has not been using LPTA effectively. However, it appears that the DoD typically uses LPTA more frequently for appropriate procurements than inappropriate procurements. Further, the DoD's inappropriate usage of LPTA appears to be declining.

Sub-Question #2a: Is there higher dissatisfaction (as measured by contract cancellation rates) for LPTA? If so, is this dissatisfaction greater for LPTA contracts used for complex or non-complex procurements?

From the total sample of 467 discrete award announcements collected from FBO, there were only 13 contract cancellations noted in FPDS. This represents 2.7% of the entire sample of LPTA award announcements. The sub-sample with the greatest frequency of contract cancellations was the simple services sample, which had seven contract cancellations. The sub-sample with the second highest frequency of contract cancellations was the complex services sub-sample, which included four contract cancellations (see Figure 7). Ten of the total contract cancellations identified were terminated for convenience: One was terminated for default, one was a legal contract cancellation, and one was a terminate for cause.

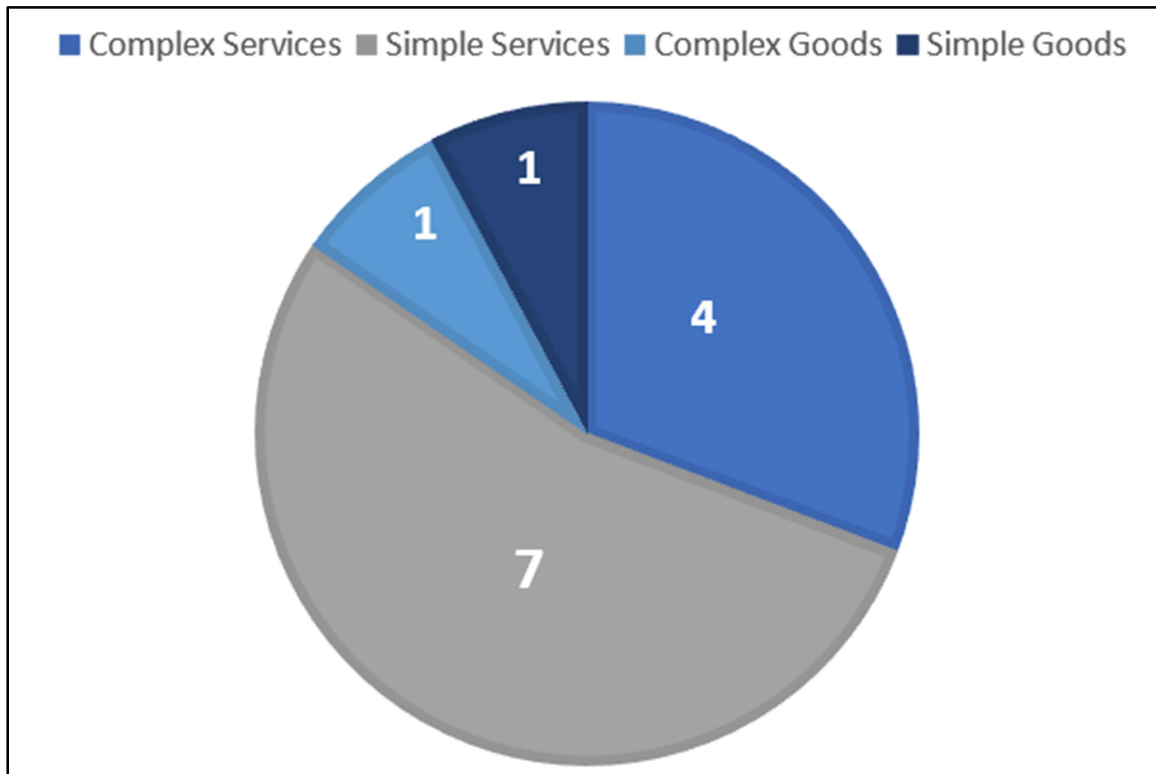


Figure 7. Frequency of Contract Cancellations by Sub-Sample
(Federal Procurement Data System)

The two sub-samples with the highest contract cancellation frequency were for service procurements. Because the number of contract cancellations captured in this sample was so small, this data only marginally supports the notion that LPTA, when used to procure services, yields greater dissatisfaction than when the DoD uses LPTA for goods. Therefore, when the DoD uses LPTA for service procurement, it is not rapidly equipping warfighters, and therefore, is compromising its ability to fulfill its mission.

Sub-Question #2b: To what extent is the DoD's usage of LPTA source selection associated with contractor non-performance (as measured by failure to re-award to a vendor after awarding an LPTA contract)?

Of the 373 individual awardees in the sample, 261 of the awardees were subsequently re-awarded a contract with the same service department (see Figure 8). This represents approximately 70% of the total sample. Meanwhile, 112 of the awardees were not re-awarded a contract with the same service department, which equates to roughly 30% of the total sample. Re-award rates for vendors who delivered a complex service or a complex good on an LPTA basis were higher than that of the total sample. Re-award rates were 75% and 77% for complex services and complex goods, respectively. Re-award rates were lower for simple services and simple goods, 68% and 69%, respectively.

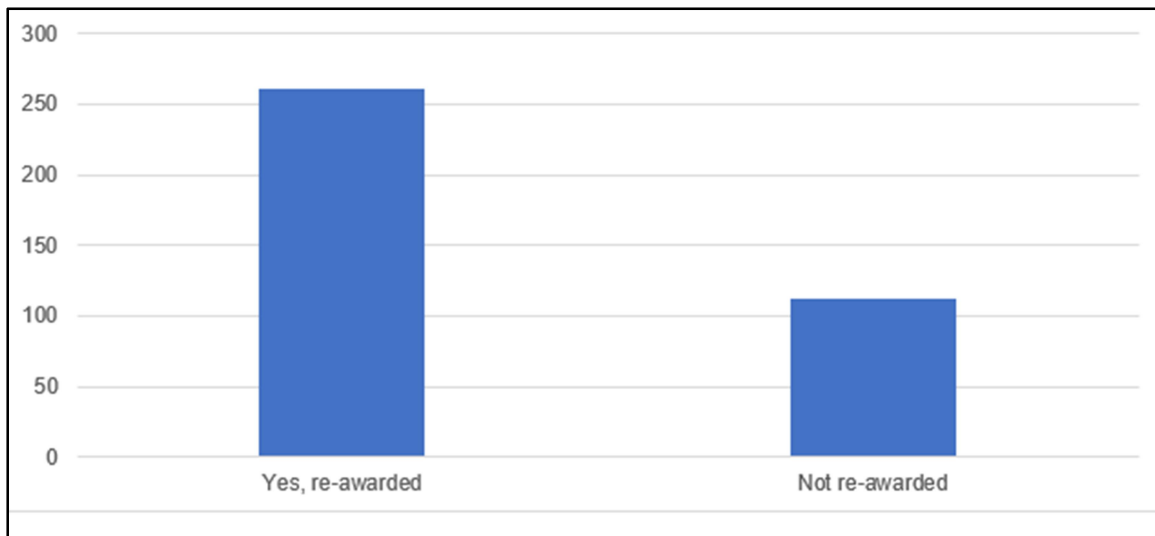


Figure 8. Frequency of Re-Award Post-LPTA Award
(Federal Procurement Data System)

These figures may overestimate the re-award and non-re-award rates because different contract awards were sometimes granted to the same awardee. Also, because the sample lacks information on contract re-awards for non-LPTA contracts, it is unclear whether these re-award rates are normal or abnormal. Objectively, however, the re-award rate for LPTA contracts appears to be moderate, and the re-award rates for vendors who delivered services under an LPTA-based contract were high. This could suggest that the DoD is satisfied with contractor performance after awarding on an LPTA basis.

In sum, the answers to the subsidiary questions are mixed. The data suggests that the answer to sub-question 1 is both yes and no because the DoD has increased its usage of LPTA over time for both complex and non-complex services, but it has generally used LPTA more to acquire simple goods and services. Further, the Department's LPTA usage is marginal when comparing the number of award notices that reference LPTA to those that do not. The answer to sub-question 2a is also mixed because the number of contract cancellations represents less than 3% of the entire sample. At the same time, however, 10 of the 13 contract cancellations were for service procurements. Finally, the answer to sub-question 2b is definitively yes. Seventy percent of the LPTA awardees in the sample were subsequently re-awarded a contract with the same service department. While it is unclear what contract re-award rates are for non-LPTA contracts, the re-award rates observed in this study are objectively high.

Subsidiary Findings: Data Issues

A subsidiary but salient theme emerged through this research concerning the dearth of concrete, publicly accessible data on the DoD's use of LPTA. As discussed within the methodology section, monitoring the DoD's usage of LPTA through platforms such as FBO and FPDS presents its own challenges because data is oftentimes unclear and is subject to variability. Because many contracting officers and contracting personnel are entering information into FBO, researchers must assume that contracting personnel are doing so with different rates of thoroughness and accuracy (Staff member, Personal communication, November 3, 2017).

Assumptions about the accuracy of data entered into FPDS seem to be warranted in light of a 2003 GAO report highlighting incomplete data and accuracy issues within FPDS. Specifically, the GAO wrote,

FPDS has been the federal government's central database of information on federal procurement actions since 1978. Congress and executive branch agencies rely on FPDS to assess the impact that governmentwide acquisition policies and processes are having on the system generally, as well as with respect to specific geographical areas, markets, and socio-economic goals. Yet despite the importance of the data, we continue to find that FPDS data are inaccurate and incomplete. Although we have not fully assessed the extent of reporting errors, we have found sufficient problems to warrant concern about the current reliability of FPDS information. (Woods, 2003, p. 1)

In 2009, the GAO reported that the accuracy of FPDS has improved due to the rise in electronic data submissions. The GAO noted that "the quality of some FPDS-NG data remains a concern" (Woods, 2009).

FPDS does not track data on source selection procedures. FBO is one of the only public interfaces that allows the public to use a general search filter to specifically identify large amounts of LPTA contract award announcements. Even still, the reliability of the results is questionable. Oftentimes, when closely evaluating a single contract resulting from an LPTA search in FBO, the evaluation criteria portion of the solicitation, including the LPTA criteria, was crossed out without explanation. This made it unclear to the researcher whether the award was granted on an LPTA basis or not.

Another issue concerning LPTA data was the dearth of contract cancellation information. Having such information could allow researchers and government officials to have a much better understanding about whether LPTA contracts yield successful results for the government. However, locating contract cancellation data in either FBO or FPDS is exceedingly difficult. In 2016, the GAO noted that "the FAR does not require contracting officials to publicize notices of canceled solicitations"; however, "officials may post cancelations [at will] on FBO" (Woods, 2016). This indicates that the data collected for this report significantly underestimates the number of contract cancellations. Similarly, the GAO wrote, "No information was available [in FPDS] on canceled solicitations as only awarded contract actions are recorded in the system" (Woods, 2016). FPDS does have a feature that allows users to track the value of obligated dollars associated with contract terminations. Further, FPDS allows users to track these values by termination category (i.e., Legal Contract Cancellation, Terminate for Cause, Terminate for Convenience [Complete or Partial], and Terminate for Default [Complete or Partial]). Aside from this, though, FPDS does not offer a simple, mechanized way to track cancellations by contract. The only apparent way to find information on contract cancellations in FPDS (i.e., the method used in this research project) is to manually open each of the "modifications" associated with a



contract to check for termination. This method can be challenging, however, because some contracts have 400 or more modifications, creating an undue time and resource burden for the researcher or user.

Recommendations

The FBO-FPDS data query revealed that the DoD's LPTA usage for complex and non-complex products and services has risen significantly since 2011. The overall number of LPTA contracts since 2002 has been marginal, and the DoD's LPTA usage for simple goods and services has generally exceeded LPTA usage for complex goods and services. Ten out of the 13 contract terminations identified were for service procurements, and 67% of the awardees who were granted an LPTA contract were subsequently re-awarded a contract by the same DoD service department. The lack of reliable data in FBO and FPDS not only calls some of these results into question, but it also underscores the need for greater attention on improving the DoD's data collection and monitoring.

Based on the information gleaned through the FBO-FPDS data query, as well as the subsidiary findings, the need for data collection and data management reform is evident. While anecdotal information and qualitative literature on the DoD's LPTA usage acknowledges that the Department's use of LPTA has been inappropriate, testing or corroborating those findings is virtually impossible due to the lack of concrete, reliable data on the DoD's source selection practices. Therefore, I recommend that the United States Congress, DoD, Office of Defense Procurement Acquisition Policy (DPAP), and Defense Acquisition Regulation Council (DAR Council) work jointly to take the following actions:

- **Recommendation 1: Update the DFARS to require defense contracting officers to enter information on cancelled contracts into FPDS.**
- **Recommendation 2: Update the DFARS to require defense contracting officers to enter information on source selection methods into FPDS.**

Because the FAR does not require agencies to track contract termination data, it is likely that this report has severely underestimated the number of contract terminations associated with LPTA-based awards. Therefore, Congress must mandate regulations—and DPAP and the DAR Council must help implement those regulations—that require DoD contracting officers to record and monitor contract terminations (and the associated reasons) in FPDS. Additionally, the FAR does not require agencies to track source selection data. Concrete source selection data is needed in order to better understand the DoD's source selection practices. Having such data would allow the DoD to definitively test or corroborate the wealth of anecdotal information suggesting that the Department's use of LPTA has been inappropriate, and whether its usage of LPTA has supported the DoD's mission and acquisition interests. Any ongoing or further LPTA reform efforts will continue to be of questionable value until the information in FBO or FPDS is more reliable.

In its 2003 report on FPDS data, the GAO aptly wrote, "Reliable information is critical to informed decision making and to oversight of the procurement system" (Woods, 2003, p. 1). Effecting necessary change is impossible without access to the right metrics and accurate data. The lack of clear and consistent data on the DoD's source selection practices, including contract cancellations, point to a transparency crisis. Having such data could help policymakers better understand the context around the DoD's LPTA usage and the extent to which the DoD has misused LPTA, if at all.



Conclusion

Further research is needed to further confirm or supplement the data findings presented in this report. One way to do this would be to interview defense acquisition experts to identify more examples of LPTA misuse and to continue to build a consensus around how the DoD could improve its LPTA practices. Another step that could improve the validity of the data used in this report would be to locate the solicitations of the contracts gathered from FBO to verify that they were awarded on an LPTA basis.

The DoD is currently facing a transparency crisis with respect to its source selection practices. Scholars, members of Congress, and members of the defense industrial base acknowledge that the DoD's use of LPTA is harmful toward industry and threatens to undermine the Department's mission. Concurrently, however, there is very little data to support their findings. Consequently, defense acquisition stakeholders are not on the same page regarding the breadth and depth of the LPTA problem. Mandating more and better data collection could improve our collective understanding of the DoD's use of LPTA, and it could help mitigate the potential negative effects of LPTA on the DoD and industry.

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Appendix: FBO Data Collection Steps

The steps I took to collect data from FBO were as follows:

1. Open the “Advanced Search” form on FBO.
2. Select “Archived” under the “Documents to Search” field.
3. Select “Award Notice” under the “Opportunity/Procurement Type” field.
4. Select “Specific Agency/Office/Locations” under the “Agency/Office/Locations” field.
5. Select the Department of the Air Force, Department of the Navy, and Department of the Army under the “Specific Agencies/Offices” field.
6. Type “LPTA” into the “Keywords or SOL#” field.
7. Select the relevant, pre-determined Product and Service Codes (PSCs).
8. Select a search date range in the “Posted Date Range” field. The date range selected for all searches was from the earliest record through December 31, 2017.
9. Click “Search.”
10. Repeat steps #1–#9 and change PSCs.

Disclaimer

This 2018 student paper was prepared in partial completion of the graduation requirements for the Master of Public Policy Program at the Sanford School of Public Policy at Duke University. The research, analysis, and policy alternatives and recommendations contained in this paper are the work of the student who authored the document, and do not represent the official or unofficial views of the Sanford School of Public Policy or of Duke University. Without the specific permission of its author, this paper may not be used or cited for any purpose other than to inform the client organization about the subject matter. The author relied in many instances on data provided by the client and related organizations and makes no independent representations as to the accuracy of the data.





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