

**GAO**

Report to the Subcommittee on  
Readiness and Management Support,  
Committee on Armed Services,  
U.S. Senate

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September 2006

# DOD CONTRACTING

## Efforts Needed to Address Air Force Commercial Acquisition Risk





Highlights of [GAO-06-995](#), a report to Subcommittee on Readiness and Management Support, Committee on Armed Services, U.S. Senate

## Why GAO Did This Study

The Department of Defense (DOD) has been urged by commissions, legislation, and a panel to make increased use of commercial acquisition to achieve certain benefits. To help ensure the increased use of commercial acquisition, the Office of the Secretary of Defense (OSD) established and the Air Force implemented two commercial acquisition goals to be achieved by the end of fiscal year 2005. In setting these goals, OSD expected that the increased use of commercial acquisition would provide DOD with greater access to commercial markets (products and service types) with increased competition, better prices, and new market entrants and/or technologies. The committee asked GAO to identify (1) the extent to which the Air Force has increased its use of commercial acquisition to obtain expected benefits and (2) the risks that are associated with this use.

## What GAO Recommends

GAO recommends that the Air Force collect information to be able to measure the benefits expected from commercial acquisition and, to reduce the potential for risk, limit sole-source acquisition of commercial products and services in concert with DOD guidance. In written comments, DOD agreed with the recommendations, in principle, and identified actions to address them.

[www.gao.gov/cgi-bin/getrpt?GAO-06-995](http://www.gao.gov/cgi-bin/getrpt?GAO-06-995).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine Schinasi at (202) 512-4841 or [schinasi@gao.gov](mailto:schinasi@gao.gov).

# DOD CONTRACTING

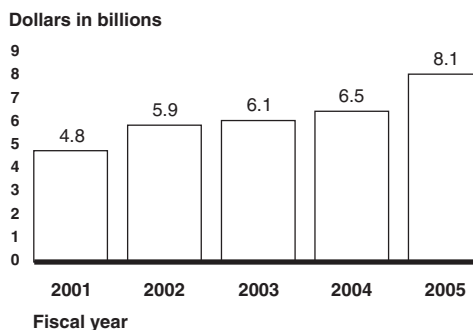
## Efforts Needed to Address Air Force Commercial Acquisition Risk

### What GAO Found

From 2001 to 2005, the Air Force increased spending using commercial acquisition from \$4.8 billion to over \$8 billion in an effort to provide greater access to commercial markets to increase competition, obtain better prices, and attract new market entrants (nontraditional contractors) and/or technologies (see fig. below). Even though the Air Force has significantly increased this spending, it has not measured the extent to which this increased use resulted in the benefits that were expected. For example, our analysis shows that for at least one of the expected benefits, attracting new market entrants, the expected benefit has not materialized. For the most part, traditional defense contractors received these contracts.

Government contracting officials face risks in using commercial acquisition. For example, improperly classifying an acquisition as a commercial acquisition can leave the Air Force vulnerable to accepting prices that may not be the best value for the department. A high-ranking DOD acquisition official testified that he is concerned about items and services being identified as commercial that are not sold in an existing marketplace because under these circumstances, the government lacks assurances that the price is reasonable. At times, Air Force officials have disagreed about the classification of some acquisitions as commercial. The Air Force's use of commercial acquisition has also been accompanied by an increased amount of dollars being awarded for sole-source contracts. Despite DOD policy to avoid sole-source commercial acquisitions because of increased risk, sole-source commercial acquisition dollars awarded by the Air Force have more than doubled from 2000 to 2005. Further, of the 20 larger Air Force commercial product awards in 2004, half were awarded as sole-source.

**Air Force Increases in Commercial Acquisition Spending, Fiscal Years 2001-2005**



Source: Air Force.

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## Abbreviations

AFMC	Air Force Materiel Command
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
IG	Inspector General
OSD	Office of the Secretary of Defense
RDT&E	Research, Development, Test and Evaluation

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United States Government Accountability Office  
Washington, DC 20548

September 29, 2006

The Honorable John Ensign  
Chairman  
The Honorable Daniel K. Akaka  
Ranking Minority Member  
Subcommittee on Readiness and Management Support  
Committee on Armed Services  
United States Senate

For decades, the Department of Defense (DOD) has been urged by commissions, panels, and legislation to make increased use of commercial acquisitions to take advantage of the efficiencies of the commercial marketplace. To help ensure the increased use of commercial acquisition,<sup>1</sup> the Office of the Secretary of Defense (OSD) established and the Air Force implemented two commercial acquisition goals to be achieved by the end of fiscal year 2005. These were to

- double the dollar value of commercial acquisition contract actions awarded in 1999 (for the Air Force this meant going from about \$3 billion to about \$6 billion) and
- strive to increase the number of commercial contract actions awarded to 50 percent of all Air Force contract actions.<sup>2</sup>

In setting these goals, OSD expected that the increased use of commercial acquisition would provide DOD with greater access to commercial markets (products and service types) with increased competition, better prices, and new market entrants and/or technologies. You asked us to examine the Air Force's efforts to meet these goals and identify any associated risks in commercial acquisition practices. Specifically, we determined (1) the extent to which the Air Force has increased its use of

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<sup>1</sup> We will use the term "commercial acquisition" throughout this report to refer to commercial item acquisition using Federal Acquisition Regulation Part 12—Acquisition of Commercial Items.

<sup>2</sup> A "contract action" is defined as any new contract award and/or new delivery order placed against a contract award with a value greater than \$25,000.

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commercial acquisition to obtain expected benefits and (2) the risks associated with Air Force use of commercial acquisition.

To conduct our work, we collected and reviewed information on Air Force use of commercial acquisition from fiscal year 2001 through fiscal year 2005. We also reviewed all Air Force contracts awarded in fiscal year 2004 for products over \$5 million using commercial acquisition.<sup>3</sup> We reviewed the files associated with these contracts at Air Force Materiel Command (AFMC) locations including (1) Wright-Patterson Air Force Base, Ohio; (2) Tinker Air Force Base, Oklahoma; (3) Robins Air Force Base, Georgia; and (4) Hanscom Air Force Base, Massachusetts. We held discussions with contracting officers and procurement management officials associated with each of the selected contracts. We also met with representatives of OSD and the Air Force to discuss various aspects of commercial acquisition that included goals, progress toward achieving goals, benefits expected, and associated risks. A more detailed discussion of our scope and methodology is in appendix I. We conducted our review from July 2005 to September 2006 in accordance with generally accepted government auditing standards.

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## Results in Brief

The Air Force has increased its spending using commercial acquisition from \$4.8 billion to over \$8 billion from fiscal year 2001 to fiscal year 2005. This increase responds to OSD's emphasis to expand commercial acquisition to provide the benefits of greater access to commercial markets so that DOD can increase competition, obtain better prices, and attract new market entrants (nontraditional contractors) and/or technologies. While the Air Force more than doubled its spending on commercial acquisition, it has not attempted to determine the extent that the increased use of commercial acquisition has resulted in the benefits expected. Our analysis indicates that for at least one of the expected benefits, attracting new market entrants, the expected benefit has not materialized. For the most part the Air Force's commercial acquisition was with traditional defense contractors.

Our work, that of DOD's Inspector General, and that of others has shown that government contracting officials face challenges in using commercial acquisition. For example, improperly classifying an acquisition as a

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<sup>3</sup> In fiscal year 2004, the Air Force awarded 20 commercial acquisition contracts each with a value of \$5 million or more.

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commercial acquisition leaves the Air Force vulnerable to accepting prices that may not be the best value for the department because under commercial acquisition regulations the government is prohibited from requesting cost or pricing data. A high-ranking DOD acquisition official recently testified before the Federal Acquisition Advisory Panel that he is concerned about items and services being identified as commercial that are not sold in an existing marketplace because under these circumstances the government lacks assurances that the price paid is reasonable.<sup>4</sup> Our review of Air Force contract files showed that Air Force officials disagreed about the classification of some acquisitions as commercial. The Air Force's use of commercial acquisition has also been accompanied by an increased amount of dollars being awarded sole-source. Similar to misclassifying acquisitions as commercial, the lack of market-based competition may result in the Air Force's acceptance of prices that may not be the best value for the department. Some Air Force contracting officials were concerned with whether they had sufficient data to ensure they were negotiating good deals, especially in a sole-source situation. OSD cites the general advantages of competition and in its policy urges contracting officials to avoid sole-source situations because sometimes contractors may attempt to exploit the lack of competitive markets and demand unreasonable prices. While OSD acknowledges some sole-source situations may be unavoidable, we found increasing sole-source spending on Air Force commercial contracts over the last 6 years. Of the 20 new commercial acquisition awards for products in fiscal year 2004, half were awarded sole-source.

We are making two recommendations to help ensure that the Air Force is able to measure the benefits expected of commercial acquisition and improve commercial acquisition by mitigating risks in certain circumstances. DOD agreed with the recommendations, in principle, and identified actions to address them.

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## Background

The definition of commercial acquisition has evolved over the last decade to mean the purchase of items customarily used by and sold (or offered) to the general public, including items with minor modifications of a type not customarily available in the commercial marketplace made to meet federal

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<sup>4</sup> This is a panel authorized by Section 1423 of the Services Acquisition Reform Act of 2003 (Div. A, Title XIV, National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, (2003)) with representation from acquisition experts in government, private industry, and academia.

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government requirements, or services of a type offered and sold competitively in substantial quantities in the commercial marketplace.<sup>5</sup>

The idea of increasing the government's use of commercial acquisition is not new. Figure 1 identifies key legislation and federal-level commissions that emphasized the use of and expected benefits of commercial acquisition over the last several decades.

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<sup>5</sup> See Federal Acquisition Regulation (FAR) 2.101. In part "Commercial item" means

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

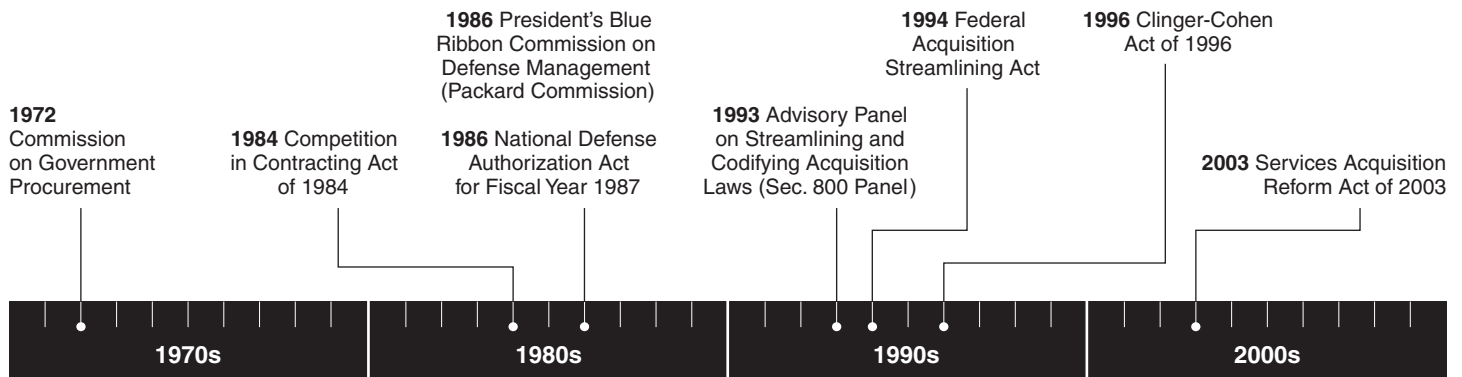
(4) Any combination of items meeting the requirements of (1), (2), (3) or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services in support of an item in (1) through (4) and the source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the federal government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices.



**Figure 1: Overview of Commercial Acquisition Legislative History**



**IMPACT ON COMMERCIAL ACQUISITION**

<p><b>Commission's recommendation:</b> Government should take greater advantage of the efficiencies of commercial marketplace.</p>	<p><b>1984 act:</b> Required promotion of the use of commercial products whenever practicable.</p> <p><b>Commission's recommendation:</b> DOD should expand the use of commercial products and commercial-style competition.</p> <p><b>1986 act:</b> Required DOD to acquire nondevelopmental items (commercial items) to the maximum extent practicable.</p>	<p><b>Panel's recommendation:</b> Called for the facilitation of government access to commercial technologies.</p> <p><b>1994 act:</b></p> <ul style="list-style-type: none"> <li>Expanded the commercial item definition to include nondevelopmental items, those not yet on the market, and "of a type" items and stand-alone services.</li> <li>Exempted commercial item procurements from requirement to submit certified cost or pricing data to the government under certain conditions.</li> <li>Provided preference for acquisition of commercial items and streamlined mechanisms for their procurement.</li> </ul> <p><b>1996 act:</b></p> <ul style="list-style-type: none"> <li>Exempts commercial item acquisitions from requirement to submit certified cost or pricing data and comply with cost accounting standards.</li> </ul>	<p><b>2003 act:</b> Allowed different types of contracts to be treated as commercial acquisition under certain circumstances.</p>
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Source: GAO analysis and presentation of data from selected commissions, panels, and legislation affecting commercial acquisition.  
 Note: Citations for the Commissions, Legislation, and Panel shown in figure 1 are listed in appendix VI.

The National Defense Authorization Act for Fiscal Year 1987 required DOD to submit a report to Congress on its progress toward meeting the requirement to acquire commercial items to the maximum extent

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practicable.<sup>6</sup> DOD's subsequent report to Congress in response to the act's requirement identified several impediments to the use of commercial acquisition, including a requirement that contractors provide cost or pricing data to the government. Identification of providing the government cost or pricing data as an impediment was in contrast to requirements in the Truth in Negotiations Act of 1962.<sup>7</sup> This act generally requires contractors to submit cost or pricing data to the government before the award of a negotiated contract and certify that the data are accurate, complete, and current as a way to provide information parity between the contractor and the government.<sup>8</sup> Because a primary maxim in contracting is that competition drives down prices, one of the purposes of the legislation was to provide the government with all the facts on the cost or pricing data the contractor used to prepare a proposal, including, as applicable here, when there is no competition. In that way, the government believed it would have the information necessary to protect itself from paying excessive prices.

In the late 1980s and early 1990s, however, concerns about impediments that might prevent commercial companies from doing business with the government continued. The concern about requiring cost or pricing data in commercial acquisition was a factor in passing several laws in the 1990s designed to streamline acquisition in general, and commercial acquisition specifically, by more broadly exempting commercial acquisitions from the cost or pricing data requirement (see fig. 1).

Although commercial acquisition regulations now preclude the government from obtaining cost or pricing data from contractors in commercial acquisitions, the government is permitted to obtain pricing information from sources other than the offering contractor. If this information proves inadequate, the government can require the offering contractor to provide additional information, known as information other than cost or pricing data, although the government must, to the maximum

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<sup>6</sup> Defense Acquisition Improvement Act of 1986, contained in the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, Div. A, Title IV, Section 907(b), (1986).

<sup>7</sup> Pub. L. No. 87-653, Sept. 10, 1962.

<sup>8</sup> The Truth in Negotiations Act (TINA) provided a limited exemption for the submission of cost or pricing data when a negotiated price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public, now known as commercial-off-the-shelf.

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extent practicable, limit the scope of the request to include only information in a form regularly maintained by the offering contractor.<sup>9</sup>

In early 2001, OSD reemphasized to the military departments and defense agencies that commercial acquisition should be used to the maximum extent possible to effectively provide the technological advantages needed to win future conflicts. OSD concluded that the military departments and agencies must uniformly look first to the commercial marketplace before developing new systems, upgrading legacy systems or procuring spare parts and support services. To help ensure the increased use of commercial acquisition, OSD established and the Air Force implemented two commercial acquisition goals to be achieved by the end of fiscal year 2005. These were to

- double the dollar value of commercial acquisition contract actions awarded in 1999 (for the Air Force this meant going from about \$3 billion to about \$6 billion) and
- strive to increase the number of commercial contract actions awarded to 50 percent of all Air Force contract actions.<sup>10</sup>

In setting these goals, OSD expected that the increased use of commercial acquisition would provide DOD with greater access to commercial markets (products and service types) with increased competition, better prices, and new market entrants and/or technologies. Additional expected benefits of commercial acquisition are listed in appendix II.

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## The Air Force Has Increased Commercial Acquisition Spending

As its overall spending has increased, the Air Force has increased spending using commercial acquisition, from \$4.8 billion in fiscal year 2001 to over \$8 billion in fiscal year 2005 (see fig. 2). The Air Force also has had some success in achieving commercial acquisition goals; for example, it has doubled the amount spent using commercial acquisition since fiscal year 1999 (see fig. 3). However, it has not achieved the goal of making 50 percent of all contract actions commercial (see fig. 4). Nonetheless, the Air Force did not establish measures nor did it collect information to determine if the benefits expected from commercial acquisition were

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<sup>9</sup> FAR 15.402 and 15.403-3.

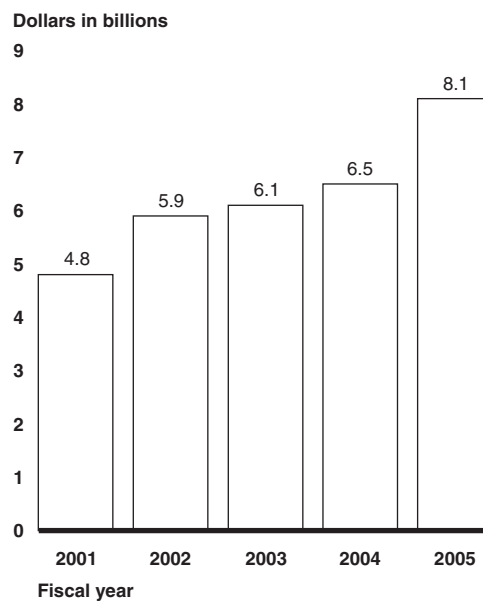
<sup>10</sup> A contract action being defined as any new contract award and/or new delivery order placed against a contract awarded with a value greater than \$25,000.

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being achieved. As a result, it is unclear if or how the Air Force has benefited from increased use of commercial acquisition. The Air Force has used commercial acquisition to buy a broad range of goods and services, including major systems. For example, the Air Force used commercial acquisition to buy the Joint Primary Aircraft Training System and a range of goods and services such as radio and communication equipment, aircraft components, and repair services. However, our analysis indicates that for at least one of the expected benefits, attracting new market entrants, the expected benefit has not materialized. The majority of Air Force commercial contracts in fiscal years 2003-2004 were made to traditional defense contractors.

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**Figure 2: Air Force Increases in Commercial Acquisition Spending, Fiscal Years 2001-2005**



Source: Air Force.

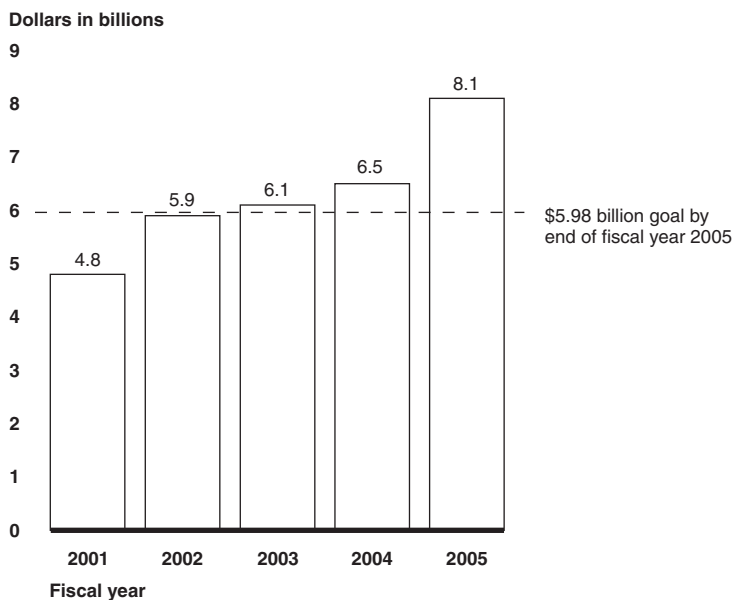
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## Goals Measure Use of Commercial Acquisition

The Air Force was able to achieve its goal of doubling spending using commercial acquisition by the end of fiscal year 2003 and has exceeded that goal through fiscal year 2005 (see fig. 3).

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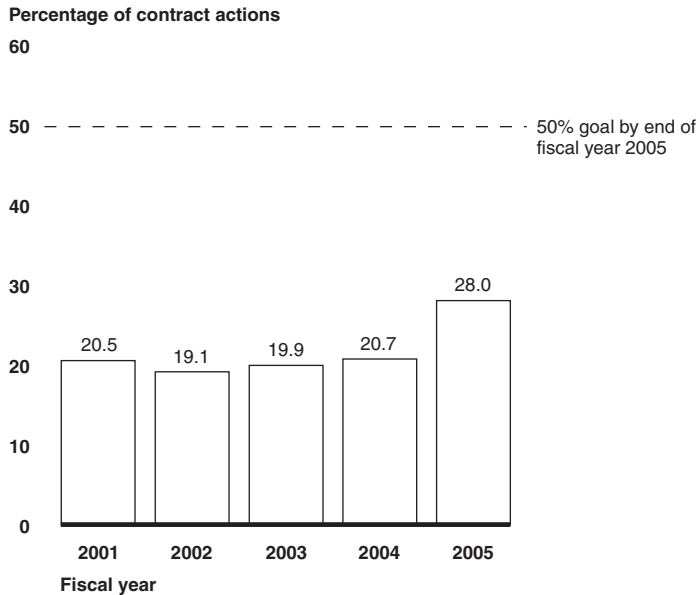
**Figure 3: Air Force Progress in Meeting Commercial Acquisition Dollar Goal, Fiscal Years 2001-2005**



Source: Air Force.

However, the Air Force did not increase commercial contract actions awarded to 50 percent of all awards (see fig. 4).

**Figure 4: Air Force Progress toward Commercial Acquisition Contract Award Goal, Fiscal Years 2001-2005**



Source: Air Force.

These goals expired at the end of fiscal year 2005 and were not extended or renewed at the time this report was published. An Office of Under Secretary of Defense, Defense Procurement and Acquisition Policy, senior procurement analyst noted that he believed the goals have essentially been met and that the current law stating that nondevelopmental items (commercial items) are to be used to the maximum extent practicable<sup>11</sup> is sufficient.

## Benefits Expected from Commercial Acquisition Have Not Been Measured

OSD has indicated that the increased use of commercial acquisition should bring about the benefits of greater access to commercial markets, including increased competition, getting better prices, and access to new market entrants (contractors) and/or technologies. Although the Air Force has increased the use of commercial acquisition, neither OSD nor the Air Force has attempted to measure if the benefits expected from this increased use are being achieved. The Air Force has stated that the

<sup>11</sup> Defense Acquisition Improvement Act of 1986, contained in the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, Div. A, Title IV, Section 907(a), (1986).

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appropriateness of the application of the FAR commercial item definition determines its use of the authority, not whether any benefits would be gained.

A study sponsored by the Air Force and conducted by the RAND Corporation, a nonprofit research organization, in 2005 looked at Air Force commercial acquisition and found that the data needed to determine if the expected benefits of commercial acquisition were being realized were not available.<sup>12</sup> The report concluded that this lack of data has made it difficult to measure whether this type of acquisition provides the benefits claimed or what challenges exist. With respect to anticipated cost and schedule savings, RAND reported that DOD provided no direction for tracking these expected benefits, and as a result, such data are not collected by either DOD or contractors. RAND also reported that DOD does not develop estimates of the benefits expected from using commercial acquisition versus other types of acquisitions prior to commencing contract award activities. RAND did not comment on the cost of quantifying commercial acquisition benefits.

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### Traditional Contractors Still Performing Most Commercial Air Force Contracts

While the Air Force has used commercial acquisition to buy a broad range of goods and services, including major systems, it continues to do business mainly with traditional contractors. By increasing the use of commercial acquisition, OSD hoped the Air Force would be able to draw nontraditional contractors into defense contracting and gain greater access to new commercially developed technologies. Nontraditional contractors were expected to offer more efficient business practices and new technologies to meet government requirements. OSD commercial acquisition guidance emphasizes the need to incorporate commercial items into defense systems because the commercial sector often drives critical technologies. Even with this increased emphasis on commercial acquisition, the Air Force has primarily continued to award its commercial contracts to traditional defense contractors.

To determine the extent to which the Air Force attracted nontraditional contractors using commercial acquisition, we reviewed acquisition data on the 98 contractors who received large (over \$5 million) commercial contracts in fiscal years 2003 and 2004. We found that 87 of the

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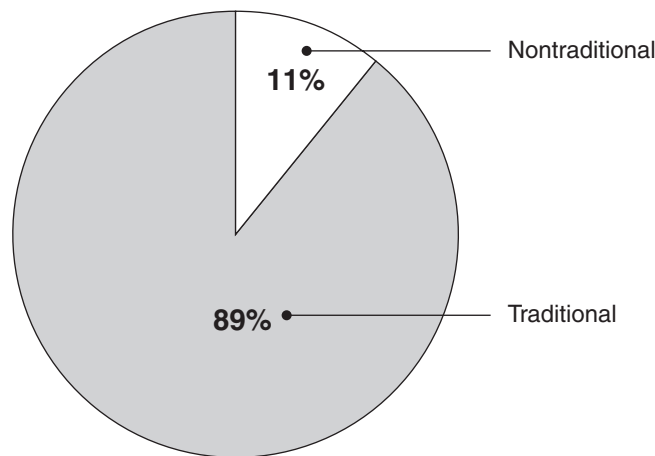
<sup>12</sup>RAND, *Price-Based Acquisition: Issues and Challenges for Defense Department Procurement of Weapon Systems*, (Santa Monica, California: 2005).

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98 contractors, or 89 percent, were included on DOD's Top 100 or Air Force Top 50 contractor lists<sup>13</sup> or had previously received contracts with DOD<sup>14</sup> since fiscal year 1996.<sup>15</sup> Only 11 contractors had not previously received a contract or were not on either list (see fig. 5).

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**Figure 5: Nontraditional and Traditional Air Force Commercial Acquisition Contractors, Fiscal Years 2003-2004**



Source: GAO analysis of DOD data.

Further, 7 of the 11 contractors that had not previously received large dollar contracts from DOD performed more routine services like transportation, housekeeping, or architect and engineering services. A list of the traditional and nontraditional contractors is included as appendix III.

In a 2005 commercial acquisition study, RAND concluded that there is very little evidence that the use of commercial acquisition has encouraged

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<sup>13</sup> These lists, compiled by DOD's Statistical Information Analysis Division, present summary data on the companies receiving the largest dollar volume of DOD and Air Force prime contract awards. We used only those lists describing contractors' standings for fiscal year 2004.

<sup>14</sup> We limited our evaluation to contractors that had done business with the Army, Navy, and Air Force.

<sup>15</sup> Fiscal year 1996 marks the first year for which DOD's procurement database (DD 350) utilized the commercial item designation.



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greater numbers of civilian (non-DOD) commercial contractors to compete for DOD contracts for major military-unique items.<sup>16</sup>

In general, we found that commercial acquisition was used to buy a variety of goods and services. These include but are not limited to aircraft engines and structural components, telecommunication services, maintenance and repair of equipment, program management/support services, and housekeeping services.

We also found three major Air Force acquisition programs for which commercial actions constituted at least 75 percent of contract dollars obligated. The three major acquisition programs are

- the latest version of the Air Force C-130 cargo aircraft;
- the Joint Primary Aircraft Training System, including a new trainer aircraft, the ground-based training system, and a training management system; and
- the National Airspace System to modernize DOD air traffic control facilities in parallel with the Federal Aviation Administration (FAA) to ensure safe operation of aircraft in accordance with statutes and DOD/FAA agreements, according to an Air Force official.

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## Air Force Use of Commercial Acquisition in Certain Situations Increases Risk

Our work, that of DOD's Inspector General, and that of others has shown that government contracting officials face challenges using commercial acquisition. For example, improperly classifying an acquisition as a commercial acquisition leaves the Air Force vulnerable to accepting prices that may not be the best value for the department because under commercial acquisition regulations, the government is precluded from requesting cost or pricing information. Our review of Air Force contract files and DOD Inspector General reports showed that Air Force officials disagreed about the designation of some acquisitions as commercial. Furthermore, the director of Defense Procurement and Acquisition Policy recently testified before the Federal Acquisition Advisory Panel that he is concerned about some items and services being identified as commercial that are not sold in an existing marketplace because there are no

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<sup>16</sup> RAND, *Price-Based Acquisition: Issues and Challenges for Defense Department Procurement of Weapon Systems*, (Santa Monica, CA: 2005).

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assurances that the price is reasonable. The Air Force use of commercial acquisition has been accompanied by an increased amount of dollars being awarded sole-source. Similar to misclassifying acquisitions as commercial, the lack of market-based competition may result in the Air Force's acceptance of prices that may not be the best value for the department. OSD cites the general advantages of competition and in its policy urges contracting officials to avoid sole-source situations because sometimes contractors may attempt to exploit the lack of competitive markets and demand unreasonable prices. While OSD acknowledges some sole-source situations may be unavoidable, we found increasing sole-source spending on Air Force commercial contracts over the last 6 years. Also, of the 20 new commercial awards for products over \$5 million in fiscal year 2004, half were awarded sole-source, with traditional contractors receiving most of those sole-source awards.

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## Challenges and Risks Using Commercial Acquisition

Misclassification of items as commercial can leave the Air Force vulnerable to accepting prices that are not the best value for the department. Our review of Air Force contract files included two cases where there were internal Air Force disagreements regarding determinations of commerciality. The items in question were a C-130E and a C-130H aircraft. During our review, some Air Force officials also expressed concern, especially in sole-source situations, about their ability to determine whether the prices being charged are reasonable. A major difference between a Federal Acquisition Regulation (FAR) Part 15 "Contracting by Negotiation" and Part 12 "Acquisition of Commercial Items" is that under Part 12 the government is prohibited from obtaining cost or pricing data. Under FAR Part 15, the government is generally required to obtain cost or pricing data (unless certain exceptions apply) from contractors to help determine if it is getting a good price.

DOD's Inspector General has recently issued reports asserting that three Air Force acquisitions were inappropriately designated as commercial.<sup>17</sup> The Inspector General concluded that three Air Force acquisitions—the C-130J cargo aircraft, the KC-767A tanker aircraft, and F-16 simulator services—should not have been planned or purchased as commercial

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<sup>17</sup> Inspector General, DOD, *Acquisition: Contracting for and Performance of the C-130J Aircraft*, D-2004-102, July 23, 2004; *Management Accountability Review of the Boeing KC-767A Tanker Program*, OIG-2004-171, May 13, 2005; and *Acquisition: Procurement Procedures Used for F-16 Mission Training Center Simulator Services*, D-2006-065, March 24, 2006, (Washington, D.C.).

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acquisitions because they were unique to the military. For example, the Inspector General reported in March 2006 that the Air Force had improperly used commercial acquisition to buy F-16 simulator services because contracting officials misinterpreted the definition of commercial services. As a result, the Air Force placed itself at a disadvantage, restricting its ability to determine whether the price charged was reasonable. By using commercial acquisition, the Air Force was precluded from requesting certified cost or pricing data for a service in which the department is the sole customer. On the basis of the Inspector General's report, the Air Force agreed, and has begun, to change its contracting approach from a commercial acquisition to a noncommercial acquisition.

Other recent efforts to improve the government's use of commercial acquisition include efforts by a high-level panel to consider changes to potentially clarify the definition of commercial acquisition as well as efforts by Air Force officials seeking similar regulatory changes.

The Federal Acquisition Advisory Panel is examining, among other things, commercial acquisition practices. The Acquisition Advisory Panel is also reviewing preliminary recommendations to modify the commercial item definition found in federal regulation. The panel noted, in a briefing on its Web page, that in the private sector, competition in efficient markets is a principle relied on to a great extent to assure price reasonableness. The panel cites three government commercial acquisition practices related to the commercial item definition that depart from private-sector practices: First, commercial acquisition procedures are used for sole-source contracts; second, items are acquired commercially even when the government is the predominant or only buyer; and third, the "commercial item" definition is broad enough to admit items for which an efficient market does not exist to ensure price reasonableness.

DOD's Defense Procurement and Acquisition Policy Director recently addressed the Acquisition Advisory Panel and identified concerns that some acquisitions are being designated commercial that are not commercial.<sup>18</sup> The Director expressed his view that a commercial item is one in which a marketplace exists, meaning the item has been sold to commercial companies (not just DOD). The Director stated that if someone is selling "to us (the government) and only to us, that's not a

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<sup>18</sup> Transcript of proceedings of a public meeting before the Acquisition Advisory Panel, June 14, 2006.

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commercial price.” In addition, the Director testified that DOD intends to create a tool, a decision matrix, that will enable contracting officials to identify the right contracting mechanism after completing their market research. The purpose is to have DOD and the military services use commercial acquisition effectively and correctly, in a consistent way.

OSD guidance specifically states that commercial acquisition was not intended to allow military-unique items to be purchased commercially. Misclassification of items as commercial can leave the Air Force vulnerable to accepting prices that are not the best value for the department. When an item is designated as commercial, the Air Force should be able to determine if the price is reasonable on the basis of prices in the commercial market. If the Air Force designates an item as being commercial when it is not readily available in the commercial market, this limits its ability to assess the reasonableness of the contractor’s price because it might, especially in sole-source situations, have less information on prices to make its decision.

Restrictions on the use of commercial acquisition to procure military unique major weapons systems were recently established in the Fiscal Year 2006 DOD Authorization Act.<sup>19</sup> The act requires that to use commercial acquisition procedures for major weapon systems, the Secretary of Defense must now (1) determine the procurement meets the definition of “commercial item,” (2) determine that national security objectives necessitate the purchase of the system as a commercial item, and (3) give Congress at least 30 days notice before purchasing a major acquisition program using commercial acquisition. To implement this requirement, an interim Defense Federal Acquisition Regulation Supplement (DFARS) rule is pending publication.<sup>20</sup> The Air Force intends to implement the DFARS rule by requiring requests for Secretary of Defense approval of major weapon systems to be purchased as commercial items, include a description of the benefits associated with increased competition, better prices, and new market entrants and/or technologies.

When we discussed the purchase of major weapon systems using commercial acquisition with top DOD officials, they informed us there are

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<sup>19</sup> National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163 section 803 (2006).

<sup>20</sup> DFARS Case 2006-D012, Procurement of Major Weapon Systems as Commercial Items.

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plans to transition both the C-130J and the Joint Primary Aircraft Training System (JPATS) contracts, as well as a future contract for F-16 fighter aircraft simulator services, from commercial to noncommercial contracts. Further, a top DOD acquisition official said that in the future DOD will more carefully scrutinize the use of commercial acquisition, especially on major acquisition programs.

Further, Air Force contracting officials have submitted proposals as cases to the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council seeking clarification of the definitions of “commercial item” and “cost or pricing data” related to commercial acquisition. While one case was closed, it highlights continued efforts to appropriately classify items as commercial. For example, the Air Force proposed a change to the DFARS,<sup>21</sup> which was subsequently referred by Defense Acquisition Regulation Council as a case for the Federal Acquisition Regulation,<sup>22</sup> to tighten the commercial item definition. The definition found in federal regulation states in part: “commercial item means any item, other than real property, that is of a type customarily used by the general public.” In an attachment to the 2001 memo instituting the commercial acquisition goals, OSD cautioned that the phrase “of a type” is not intended to allow the use of commercial acquisition to acquire sole-source, military-unique items that are not closely related to items already in the marketplace.

A second FAR case attempts to address confusion about what qualifies as cost or pricing data in relation to commercial acquisition.<sup>23</sup> The case, if made final, will clarify that the government can ask contractors for cost or pricing data, just not certified cost or pricing data.

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<sup>21</sup> DFARS Case 2004-D019 was closed and proposed as FAR case 2005-043.

<sup>22</sup> FAR Case 2005-043 closed with no further action because the Federal Acquisition Regulation Civilian Agency Acquisition Council decided that the proposed change was not necessary. The council concluded there was insufficient rationale to adopt the DOD-proposed definition or otherwise clarify the meaning “of a type” as it relates to commercial items.

<sup>23</sup> FAR Case 2005-036.

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## Commercial Contract Awards Made in a Sole-Source Environment Can Increase Risk

OSD emphasis on increasing the use of commercial acquisition includes guidance on limiting use of commercial acquisition for sole-source procurements. This guidance advises contracting officials to avoid sole-source commercial acquisitions, in part because sometimes contractors may attempt to exploit the lack of competition and demand unreasonable prices. When such situations are unavoidable, OSD advocates use of other price analysis tools outlined in federal regulation to mitigate risk.

The FAR provides that adequate price competition on contracts is generally sufficient to determine price reasonableness. Adequate price competition means (1) the government receiving at least two offers submitted by responsible offerors, competing independently, that satisfy the government requirement; (2) there was a reasonable expectation of competition; or (3) a proposed price is clearly reasonable based on price analysis.<sup>24</sup> In the event price competition is not sufficient, the government can seek additional information beginning with government and additional sources other than the offeror, and last from the offeror if necessary.<sup>25</sup>

There are circumstances when an acquisition, including one for commercial items, can be awarded without competition. These include instances in which (1) there is only one responsible source and there are no other supplies or services that will satisfy agency requirements, such as when a contractor has exclusive data rights and copyrights; (2) the government has an unusual and compelling urgent need for a product or service; or (3) the acquisition is required by statute or international agreement. Such awards, for other than full and open competition must be justified and approved in writing.<sup>26</sup>

Despite guidance directing the Air Force to avoid sole-source situations, from fiscal years 2000 through 2005, sole-source spending on Air Force commercial acquisition contracts more than doubled. Specifically, sole-source dollars as a percentage of total commercial acquisition dollars for awards over \$5 million have increased from 12 percent in fiscal year 2000 to 26 percent in fiscal year 2005. This recent trend appears inconsistent with OSD guidance to avoid sole-source commercial acquisition situations.

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<sup>24</sup> FAR 15.403-1(c).

<sup>25</sup> FAR 15.402.

<sup>26</sup> FAR 6.303.

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Our review found that of all 20 fiscal year 2004 commercial product acquisition awards over \$5 million, 10 of the Air Force's were made on a sole-source basis. Altogether, fiscal year 2004 obligations on the 20 contracts totaled \$329 million. Obligations on the 10 sole-source awards totaled \$172 million, or 52 percent (additional observations from our review of the 20 contracts are found in app. IV).<sup>27</sup> Furthermore, at least one of the expected benefits of commercial acquisition—attracting new market entrants—has not materialized through the Air Force's use of sole-source commercial acquisitions for products in fiscal year 2004. Specifically, traditional defense contractors were used on 8 of the 10 fiscal year 2004 sole-source product awards.

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## Conclusions

By establishing goals that only measure use and not the benefits expected, the Air Force is unable to determine if it has benefited from increased use of commercial acquisition. The benefits to the government of commercial acquisition have not been demonstrated. Little evidence has been collected on the claimed benefits such as cost savings, better pricing, increased access to commercial vendors, and greater numbers of commercial firms to compete for Air Force contracts.

Not only is it unclear whether commercial acquisition is bringing benefits to the Air Force, the Air Force may be increasing risk without knowing if the added risk is balanced by progress toward achieving benefits that may have the potential to demonstrate considerable savings. While recognizing that the Air Force may need to make some sole-source purchases using commercial acquisition, the trend of increasing sole-source spending appears contradictory to OSD guidance to limit situations where contractors may attempt to exploit the lack of competitive markets and demand unreasonable prices. When sole-source situations are necessary, contracting officials should be able to identify the benefits of using commercial acquisition for individual procurements that would otherwise be unattainable.

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## Recommendations for Executive Action

To help ensure that the Air Force is able to measure the benefits expected from commercial acquisition, we recommend collecting information that would allow evaluating the extent of cost savings, increased access to

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<sup>27</sup> Including fiscal year 2005 obligations on those same contracts, sole-source actions account for 39 percent of total obligated dollars.

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commercial markets, and greater access to nontraditional contractors. For example, the Air Force could measure the number of nontraditional contractors it reaches using commercial acquisition.

To help improve commercial acquisition and reduce the potential for risk by limiting situations where commercial acquisition contracts are being awarded sole-source, we also recommend that the Secretary of the Air Force strive to limit the acquisition of commercial products and services in sole-source environments in concert with OSD guidance. However, in the cases where it is necessary to award sole-source, the Secretary should collect the information necessary to evaluate the benefit(s) of awarding commercial verses a noncommercial contract.

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## Agency Comments and Our Evaluation

DOD provided written comments on a draft of this report. DOD agreed with the recommendations, in principle, and described the actions it will take to address our recommendations. The comments are discussed below and are reprinted in appendix VII.

DOD partially agreed with our recommendation to measure the benefits expected from commercial acquisition by collecting information to evaluate the extent of cost savings, increased access to commercial markets, and greater access to nontraditional contractors. DOD stated that it agrees in principle it would be worthwhile to know whether the expected benefits from commercial acquisition are materializing and that it will examine ways to collect information on the number of nontraditional contractors it is reaching through commercial acquisition. However, DOD noted that the collection of information for the expected benefits would be expensive. We believe DOD is taking the first step necessary to evaluate whether it has benefited from the increased use of commercial acquisition. We encourage such efforts, and would expect that if DOD collects information on nontraditional contractors it reaches using commercial acquisition and it is still unable to evaluate whether significant benefits exist from using commercial acquisition, DOD will recognize the need to collect additional information.

DOD's comments included an attachment reflecting the Air Force views on our draft report. We incorporated those views where appropriate.

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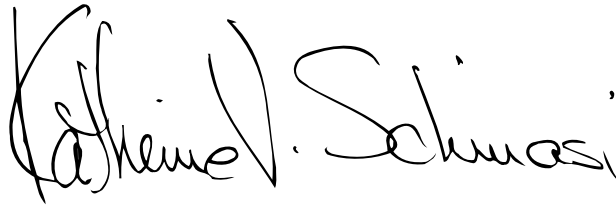
We will send copies of this report to the Secretary of Defense, the Secretary of the Air Force, appropriate congressional committees, and other interested parties. We will also make copies available to others on



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request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or by e-mail at [schinasik@gao.gov](mailto:schinasik@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of the report. Other key contributors to this report were David E. Cooper, Director, Penny Berrier Augustine, Assistant Director, Lily Chin, Keith Hudson, Julia Kennon, Andrew Redd, Don Springman, Marie Ahearn, and Robert Swierczek.

A handwritten signature in black ink that reads "Katherine V. Schinasi". The signature is written in a cursive style with a large initial "K" and "S".

Katherine V. Schinasi, Managing Director  
Acquisition and Sourcing Management

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# Appendix I: Scope and Methodology

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To conduct our work, we reviewed federal acquisition and commercial acquisition regulations, as well as the Office of Secretary of Defense (OSD), Air Force, and Air Force Materiel Command (AFMC) guidance pertaining to commercial acquisition. We also reviewed OSD and Air Force commercial acquisition goals since 2001 as well as expected benefits and risks associated with commercial acquisition. We met or held discussions with representatives of OSD and the Air Force to discuss various aspects of commercial acquisition including goals, progress toward achieving goals, benefits expected, and associated risks. In addition we met with Department of Defense (DOD) Inspector General officials to discuss audit report findings related to commercial acquisition.

To understand the more recent determinations of commercial acquisition, we reviewed all 20 large (over \$5 million) Air Force commercial contracts awarded for products in fiscal year 2004. We reviewed the contract files associated with these contracts at locations of AFMC including (1) Wright-Patterson Air Force Base, Ohio; (2) Tinker Air Force Base, Oklahoma; (3) Robins Air Force Base, Georgia; and (4) Hanscom Air Force Base, Massachusetts. We also reviewed a commercial contract (including two major modifications) for a major acquisition program called the Joint Primary Aircraft Training System. We held discussions with contracting officers and procurement management officials associated with the selected contracts.

To examine the extent that Air Force commercial contracts were awarded to new market entrants, we utilized data from DOD's procurement database (DD 350) for contract actions from fiscal year 1996 through fiscal year 2004, which was the last full year of data available at the time we performed our analysis. Query results were limited to contract actions greater than \$5 million, as the Federal Acquisition Regulation (FAR) allowed actions below that threshold to employ simplified acquisition procedures.<sup>1</sup>

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<sup>1</sup> FAR 13.500.

To determine the Air Force new market entrant contractors,<sup>2</sup> we took the contractors with contract actions in fiscal years 2003 and 2004 and determined whether they had received any previous DOD military department contracts from fiscal year 1996 through fiscal year 2002.<sup>3</sup> We considered contractors who had not received contracts during this period new to DOD. We also examined Federal Supply/Service Class codes to determine the nature of work performed by Air Force contractors.

To determine the extent to which the Air Force competed its commercial contracts, we reviewed data the Air Force provided summarizing its sole-source commercial acquisitions from fiscal year 2000 through fiscal year 2005. We defined “sole-source” as those actions either not competed or not available for competition, according to DOD classification codes. Again, the data were for acquisitions over \$5 million.

For our analysis of the use of commercial acquisition in Air Force major acquisition programs, we included the Major Defense Acquisition Programs listed on OSD’s Selected Acquisition Report summary tables for fiscal years 2001 through 2005, except programs designated RDT&E (Research, Development, Test, and Evaluation). We also included joint programs from GAO’s 2006 Assessment of Selected Major Weapon Programs for which the Air Force was mentioned as the lead buyer. We queried the DD 350 database to determine commercial and total contract obligations on these major acquisition programs over the period constituting fiscal year 2004 through fiscal year 2005.

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<sup>2</sup> Contractors were identified and grouped by parent companies as of fiscal year 2004. Parent companies were determined by matching Data Universal Numbering System (DUNS) numbers or by matching company names in DOD’s DD 350 procurement database. When possible, company names were matched with names on DOD’s Statistical Information Analysis Division fiscal year 2004 Top 100 DOD parent companies and subsidiaries list. In some cases where subsidiary lists were not available, companies with the same DUNS number but different names (and vice versa) were counted as one company. We considered all companies with distinct names and DUNS numbers as separate entities.

<sup>3</sup> We did not consider as new any contractors appearing on DOD’s Statistical Information Analysis Division (SIAD) fiscal year 2004 DOD Top 100 and Air Force Top 50 contractor lists, but we did include them in our total number of contractors receiving awards in fiscal years 2003 or 2004 if they received awards in either of those years. The DOD Top 100 and Air Force Top 50 lists are compiled by DOD’s Statistical Information Analysis Division. The lists represent those contractors receiving the largest dollar volume of DOD prime contract awards. We used only those lists describing contractors’ standings for fiscal year 2004.

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We conducted our review from July 2005 to September 2006 in accordance with generally accepted government auditing standards.

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# Appendix II: Additional Benefits Expected from Using Commercial Acquisition

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## Expected Benefits to the Government

The government expected to benefit from the use of commercial acquisition instead of noncommercial acquisition. Several of the benefits expected include the government being able to

- rely on the contractor's quality assurance processes and warranties in lieu of government inspections,<sup>1</sup>
- decrease the amount of time it normally takes to award a contract,<sup>2</sup>
- employ a streamlined contract clause structure,<sup>3</sup> and
- use simplified acquisition procedures on high dollar amount contracts in certain circumstances.<sup>4</sup>

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## Expected Benefits to Contractors

There are also several advantages to contractors of using commercial acquisition when doing business with the government. Generally contractors are

- not required to submit cost or pricing data to the government,<sup>5</sup>
- not required to adhere to cost accounting standards on firm fixed-price contracts,<sup>6</sup>
- not required to disclose more technical data to the government than they would customarily disclose to the public,<sup>7</sup>
- able to propose more than one product that will meet the government's need,<sup>8</sup> and

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<sup>1</sup> Federal Acquisition Regulation (FAR) 12.208, 12.402 and 12.404(b).

<sup>2</sup> FAR 12.204(b), 12.205(c).

<sup>3</sup> FAR 12.301(d),(e) and (f) and 12.302

<sup>4</sup> FAR 13.500(e).

<sup>5</sup> FAR 15.403-1(b)(3).

<sup>6</sup> FAR 12.214.

<sup>7</sup> FAR 12.211.

<sup>8</sup> FAR 12.205(b).

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**Appendix II: Additional Benefits Expected  
from Using Commercial Acquisition**

- 
- able to submit existing product literature in lieu of unique technical proposals.<sup>9</sup>

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<sup>9</sup> FAR 12.205(a).

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# Appendix III: Traditional and Nontraditional Air Force Contractor Analysis, Fiscal Years 1996-2004

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To examine the extent that Air Force commercial contracts were awarded to nontraditional contractors or new market entrants, we used data from DOD's procurement database (DD 350) for contract actions from fiscal year 1996 through fiscal year 2004—the last full year of available data at the time of analysis. Query results were limited to Air Force contract actions greater than \$5 million.

We identified 98 contractors who received commercial Air Force awards in either fiscal year 2003 or fiscal year 2004. Forty-six of those 98 contractors also received large-dollar commercial awards in prior years back through fiscal year 2000 or were included on DOD Top 100 or Air Force Top 50 contractor lists.<sup>1</sup> We considered them traditional contractors. For the remaining 52 contractors who did not receive large-dollar awards during that period (and who were not on DOD top 100 or Air Force top 50 contractor lists), we used DOD's DD 350 procurement database to determine if they had performed any contracts above \$25,000 for the Army, Navy, or Air Force military departments, from fiscal year 1996 through fiscal year 2002. Of the 52 contractors, 41 had received military department awards during this period and were therefore considered traditional contractors. We considered the 11 contractors who did not perform military department contracts during this period to be new to DOD. Table 1 lists the 87 total traditional contractors and the 11 new contractors according to our analysis.

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<sup>1</sup> These lists, compiled by DOD's Statistical Information Analysis Division, present summary data on companies receiving the largest dollar volume of DOD and Air Force prime contract awards. We used only those lists describing contractors' standings for fiscal year 2004.

**Appendix III: Traditional and Nontraditional  
Air Force Contractor Analysis, Fiscal Years  
1996-2004**

**Table 1: Listing of Traditional Air Force Contractors, Fiscal Years 2003-2004**

1	ABB Automation	45	Intergraph
2	ACS Defense	46	International Business Machine
3	Adacel Systems	47	ITT Industries ITT Gilfi
4	Aeroflex Wichita	48	Jacobs Engineering Group
5	Aerovironment	49	King Aerospace
6	AIL Systems	50	Kovatch
7	Akima	51	L3 Communications
8	Alaska Industrial Resources	52	Lockheed Martin
9	Alutiiq Security Technology	53	Logtec
10	American Management Systems	54	Lynden Air Cargo LLC
11	ARINC	55	Madison Research
12	ASAP Software	56	Messier Bugatti
13	ATAP	57	Motorola
14	BAE Systems Enterprise Systems	58	MRA Systems
15	Balance Industries	59	MTC Technologies
16	Beta Fluid Systems LLC	60	NMC Wollard
17	Booz Allen Hamilton	61	Northrop Grumman
18	California Industrial Facilities	62	Oklahoma Gas and Electric
19	Cardio Theater Holdings	63	Point Blank Body Armor
20	CDW Government	64	Raytheon Company
21	CFM International	65	Redcom Laboratories
22	Channing Bete	66	Rockwell Collins
23	Chugach Alaska	67	Rohde Schwarz
24	CPI Aerostructures	68	Rollsroyce
25	Dell Computer	69	Science Applications International
26	Digicon	70	Siemens Dematic
27	Digital Support	71	Steelcase
28	Digitalnet Government Solution	72	Stinar
29	Dynamics Research	73	Sytex
30	E. F. Johnson	74	T Square Logistics Services
31	Equipto Electronics	75	Telos
32	Evergreen Helicopters of Alaska	76	Teradyne
33	Fluke	77	Texas Commission for the Blind
34	FMC	78	Boeing
35	General Dynamics	79	The Carlyle Group
36	General Electric	80	The Rendon Group



**Appendix III: Traditional and Nontraditional  
Air Force Contractor Analysis, Fiscal Years  
1996-2004**

37	Global Ground Support	81	Titan
38	Goodrich	82	TMP Worldwide Advertising
39	Government Scientific Source	83	Tokyo Electric Power
40	GTSI	84	United Technologies
41	Hillstrom, David M	85	Westover Consultants
42	Honeywell International	86	Work Services
43	Industries for the Blind	87	XS International
44	Integrated Information Technology		

Source: GAO analysis of DOD data.

**Table 2: Nontraditional Air Force Contractors (New Market Entrants), Fiscal Years 2003-2004, and Description of Contracted Item or Service**

<b>Description of item or service</b>	<b>Contractor</b>
Aircraft and airframe structural comps	Flight Refuelling Limited Merlin Express, Inc. (Also M7 Aerospace)
Transportation of things	Ukrainian Avia Transport Co.
Architect and Engineering—General	Geosierra, LLC
Maintenance, repair, and rebuilding of equipment	KNI Midwest Mechanical Contractors
Housekeeping services	AA Food Services, Inc. Austin Associates USProtect Corp. Wasatch Energy LLC Worldwide Security Services

Source: GAO analysis of DOD data.

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# Appendix IV: Observations from Review of 20 Air Force Contracts Using Commercial Acquisition

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We reviewed 20 larger Air Force commercial contracts awarded in fiscal year 2004. We reviewed the contract files associated with these contracts at locations of the Air Force Materiel Command including (1) Wright-Patterson Air Force Base, Ohio; (2) Tinker Air Force Base, Oklahoma; (3) Robins Air Force Base, Georgia; and (4) Hanscom Air Force Base, Massachusetts. We held discussions with contracting officers and procurement management officials associated with most of the selected contracts.

In three instances, parts for the C-5 military transport aircraft were procured under a system in which contractors produced a prototype or unique first article because these replacement parts did not already exist. These first articles were then subject to successful testing before the contractor was given approval to produce the remaining articles. As part of each contract, the government paid for the manufacturers to construct the unique first article and the various machine tooling they needed to produce the articles.

In two other cases, there were internal Air Force disagreements regarding determinations of commerciality. The items in question were C-130E and C-130H aircraft procured by foreign governments from a sole-source contractor, with the U.S. government (via the Air Force) acting as an intermediary.

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# Appendix V: Use of Commercial Acquisition in Air Force Major Acquisition Programs

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Overall, 9.5 percent (\$2.6 billion) of all Air Force contract dollars to major acquisitions were obligated under commercial acquisition from fiscal year 2004 through fiscal year 2005.<sup>1</sup> We considered programs listed on OSD's Selected Acquisition Report summary tables from fiscal year 2001 through fiscal year 2005 (except research and development programs) to be major acquisition programs. We also included joint programs from GAO's 2006 *Defense Acquisitions: Assessments of Selected Major Weapon Programs* (GAO-06-391) for which the Air Force was listed as the lead buyer.<sup>2</sup> We found three major acquisitions with Air Force involvement for which commercial actions constituted at least 75 percent of contract dollars obligated, and these acquisitions are shaded in table 3.<sup>3</sup> Excluding these three acquisitions, commercial expenditures for the remaining 25 major acquisition programs with Air Force involvement constituted less than 1 percent of total program dollars spent.

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<sup>1</sup> We identified 33 major acquisition programs, but DD 350 records or data were available on only 28 of those programs.

<sup>2</sup> Major acquisition programs were coded in the DD 350 database as Major Defense Acquisition Programs (MDAPs) beginning in fiscal year 2004. Prior to that, the DD 350 database did not distinguish some specific MDAPs such as the B-2 RMP (Radar Modernization Program) from the overall weapon system of which it is a part (i.e., the B-2 Spirit bomber). For this reason, we limited our data to fiscal years 2004 and 2005.

<sup>3</sup> Our determination that 75 percent of a program's contract dollars were obligated under commercial acquisition is based solely on data for fiscal years 2004 and 2005. In some cases a program may have dedicated a larger percentage of its contract dollars to commercial acquisition in previous years. For example, \$685 million of the \$690 million obligated in fiscal years 2001-2003 for the Wideband Gapfiller was commercial. The DD 350 database does not, however, group contract data collected for these years under the program name Wideband Gapfiller.

**Appendix V: Use of Commercial Acquisition in  
Air Force Major Acquisition Programs**

**Table 3: Commercial Contract Actions in Air Force Major Acquisition Programs, Fiscal Years 2004-2005**

<b>Major acquisition program</b>	<b>2004</b>	<b>2005</b>	<b>Total commercial major acquisition program dollars 2004-2005</b>	<b>Commercial dollars as a percentage of total major acquisition program dollars 2004-2005</b>
AEHF	○	○	0	0.0%
AMRAAM	●	●	\$1,275,000	0.2%
AWACS RSIP (E-3)	●	●	\$2,160,000	5.5%
B1-B CMUP	●	●	\$3,323,000	1.8%
B1-CMUP Computer Upgrade	No record	No record	No record	No record
B-2 RMP	○	○	0	0.0%
C-130 AMP	○	●	\$1,083,000	0.3%
C-130J	†	†	\$1,776,055,000	94.7%
C-17A	●	●	\$31,365,000	0.4%
C-5 RERP	●	●	\$6,210,000	0.9%
EELV	○	○	0	0.0%
F-22	●	●	\$179,000	0.0%
GBS	○	○	0	0.0%
Global Hawk	●	●	\$581,000	0.1%
JASSM	●	●	\$72,000	0.0%
JDAM	●	○	\$118,000	0.0%
JPATS	†	†	\$613,917,000	79.8%
F-35 (JSF)	○	○	0	0.0%
JSTARS	●	●	\$16,884,000	2.9%
JTRS AMF	No record	No record	No record	No record
Minuteman III GRP	○	○	0	0.0%
Minuteman III PRP	●	●	\$91,316,000	13.0%
NAS	○	†	\$2,370,000	92.0%
NAVSTAR GPS	●	●	\$32,395,000	2.8%
NPOESS	●	○	\$90,000	0.0%
MP RTIP	○	○	0	0.0%
MPS	No record	No record	No record	No record
MQ-9 Predator B	No data	No data	No data	No data
SBIRS (High)	○	○	0	0.0%
SDB	●	●	\$546,000	0.3%

**Appendix V: Use of Commercial Acquisition in  
Air Force Major Acquisition Programs**

<b>Major acquisition program</b>	<b>2004</b>	<b>2005</b>	<b>Total commercial major acquisition program dollars 2004-2005</b>	<b>Commercial dollars as a percentage of total major acquisition program dollars 2004-2005</b>
TITAN IV	○	○	0	0.0%
TSAT	No record	No record	No record	No record
Wideband Gapfiller	●	●	\$4,281,000	6.8%

Source: GAO analysis of DOD and Air Force data.

Legend:

- No commercial actions
- Commercial actions
- † Commercial actions account for at least 75 percent of dollars obligated

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# Appendix VI: Citations for Commissions, Legislation, and Panel Shown in Figure 1

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1972—Commission on Government Procurement—See *Report of the Commission on Government Procurement*, Vol. 3, Pt. D, “Acquisition of Commercial Products,” (Dec. 1972).

1984—Competition in Contracting Act of 1984—Pub. L. No. 98-369, Div. B, Title VII.

1986—President’s Blue Ribbon Commission on Defense Management (Packard Commission)—*A Quest for Excellence: Final Report to the President by the President’s Blue Ribbon Commission on Defense Management* (June 1986), 60-64.

1986—National Defense Authorization Act for Fiscal Year 1987—Pub. L. No. 99-661, Div. A, Title IV, Sec. 907(a) (1986).

1993—Advisory Panel on Streamlining and Codifying Acquisition Laws (Sec. 800 Panel)—Established Pursuant to Section 800 of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510 (1990); *Streamlining Defense Acquisition Laws: Report of the Acquisition Law Advisory Panel to the U.S. Congress*, Intro. I-9 (1993).

1994—Federal Acquisition Streamlining Act—Pub. L. No. 103-355, Section 1202 and Title VIII (1994).

1996—Clinger-Cohen Act of 1996—Pub. L. No. 104-106, Div. D (1996), formerly the Federal Acquisition Reform Act of 1996 and renamed in Treasury, Postal Service and General Government Appropriations Act, 1997, contained in Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, Section 808 (1996).

2003—Services Acquisition Reform Act of 2003—Pub. L. No. 108-136, Title XIV, Section 1431, 1432 (2003).

# Appendix VII: Comments from the Department of Defense



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

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U.S. Government Accountability Office  
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Washington, D.C. 20548

Dear Ms. Schinasi:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-06-995, 'DOD CONTRACTING: Efforts Needed to Address Air Force Commercial Acquisition Risk,' dated August 1, 2006, (GAO Code 120461).

The Department appreciates the opportunity to comment on the draft report. Our comments to the draft report recommendations are enclosed as well as comments from the Office of the Assistant Secretary of the Air Force.

Sincerely,

  
For: Shay D. Assad  
Director, Defense Procurement and  
Acquisition Policy

Enclosures:  
As stated



GAO DRAFT REPORT DATED AUGUST 1, 2006  
GAO-06-995 (GAO CODE 120461)

"DOD CONTRACTING: EFFORTS NEEDED TO ADDRESS  
AIR FORCE COMMERCIAL ACQUISITION RISK"

DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATION

**RECOMMENDATION 1:** The GAO recommended that the Secretary of the Air Force collect information that would allow evaluating the extent of cost savings, increased access to commercial markets, and greater access to non-traditional contractors to ensure that the Air Force is able to measure the benefits expected from commercial acquisition. (p. 19/GAO Draft Report)

**DOD RESPONSE:** Partially concur. We agree in principle that it would be worthwhile to know whether the expected benefits from commercial acquisition are materializing. However, the suggested collection of information, which would be expensive to establish for the breadth of the Air Force mission, would not influence individual acquisition decisions. We will examine ways to collect information on the number of non-traditional contractors we are reaching through commercial acquisitions.

**RECOMMENDATION 2:** The GAO recommended that the Secretary of the Air Force strive to limit the acquisition of commercial products and services in sole source environments in concert with the OSD guidance. If it is necessary to award sole source, collect the information necessary to evaluate the benefits of awarding a commercial versus a noncommercial contract. (p. 20/GAO Draft Report)

**DOD RESPONSE:** Concur. the Air Force will identify benefits associated with Major Defense Acquisition Programs that are to be acquired as commercial items as explained in the attached memorandum from Office of the Assistant Secretary to the Air Force.



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