



World Bank: South Asia Region Public Procurement Conference

“Oversight Mechanisms”

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Overview

- 1 What is GAO?
- 2 Overview of U.S. Procurement System
- 3 Contract Oversight
- 4 Bid protests



The diagram features a large dark blue circle at the top containing the text 'Branches of Federal Government'. Below this circle, three smaller light blue circles are arranged horizontally, each containing a white icon: a classical building with columns on the left, the U.S. Capitol dome in the center, and a building with a dome on the right. The background of the lower half of the slide is a solid light blue color.

Branches of Federal Government

Judicial Branch:

Court of Federal Claims will be referenced in Protest Discussion



Executive Branch:

Executive Office of the President,
Office of Management & Budget
Office of Federal Procurement Policy

Legislative Branch

(Congress):

Government Accountability Office is investigative arm of Congress, mostly conducts audits, but also does bid protests

What is GAO?



- Background: Established in 1921, GAO is an independent, nonpartisan agency that is part of the legislative branch.
- Mission: Support Congress and improve performance and accountability of the federal government.
- Work: Most work done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports; also done under the Comptroller General's authority.
- Authority: Broad authority to evaluate federal agency programs and investigate receipt, disbursement and use of public funds, with statutory right of access to agency records, including those considered pre-decisional.

Agency Organization





Sources of GAO Work

- Mandates from the Congress
- Requests from Congressional Committees
- Comptroller General's Initiative

Types of Products



- 96% of work requested or mandated by Congress
- 4% of work initiated under Comptroller General Authority
- Average of 875 products each year – reports, briefings, testimonies, and special publications
- 300 to 400 legal decisions each year

Results of GAO's Work

- Recommendations made: more than 2000 annually
- Recommendations implemented: about 75 percent
- Benefits from GAO work
 - \$63.4 billion in measurable financial benefits
 - A return of \$112 for every dollar invested in us
 - non-financial benefits that helped to change laws, such as improved services to the public; and promote sound management throughout government

Basic Principles of the U.S. Procurement System

- Integrity – both for contractors and federal employees
- Fair and open competition
- Transparency
 - Pre-award
 - Award
 - Post-award
- Value for money

How We Buy: Contracting Process



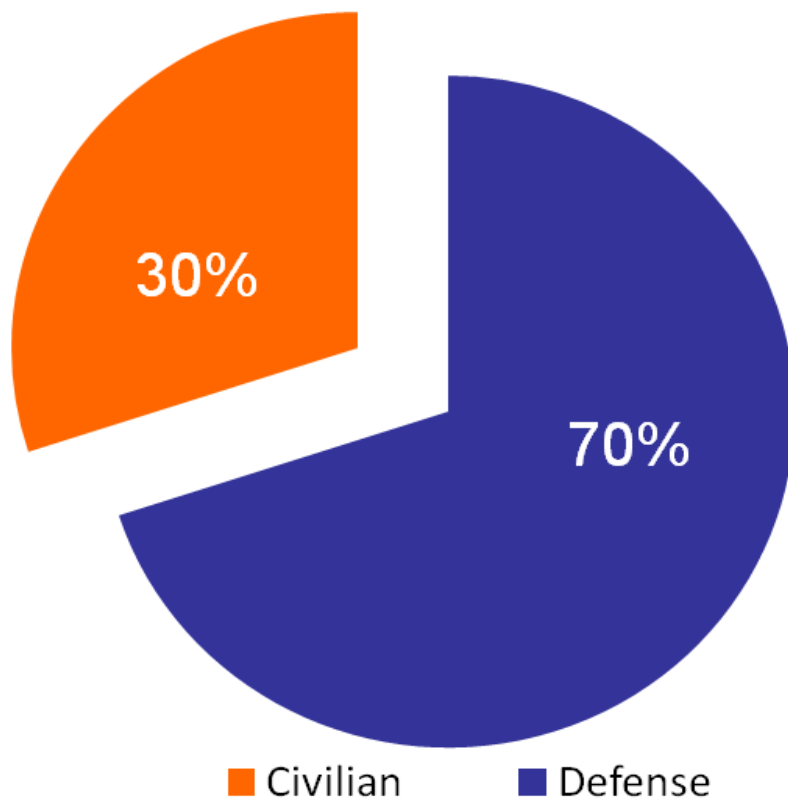
- Requirements analysis
- Procurement planning
- Solicitation preparation
- Evaluation of offers
- Negotiation and discussion
- Selection of awardees
- Contract administration
- Performance monitoring
- Termination and closeout

Criteria:

- Federal Acquisition Regulation (FAR)
- Agency supplements to the FAR, policies, and directives
- Internal controls standards

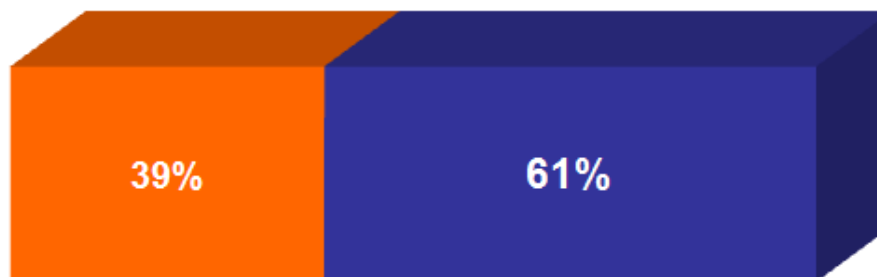
Federal Government: Civilian and Defense Contracts

Annual Contract Obligations

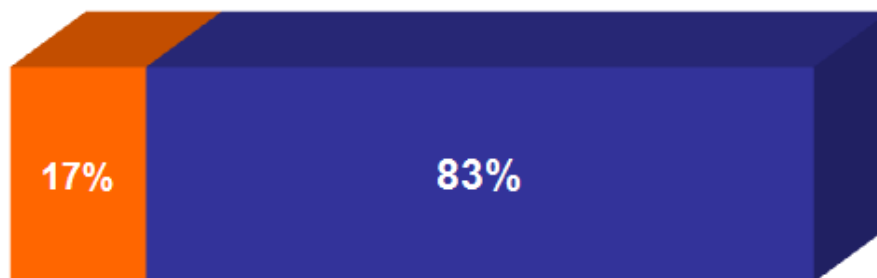


Federal Government: Products and Services

Comparison of Annual Contract Obligations



Services



Products

■ Civilian ■ Defense

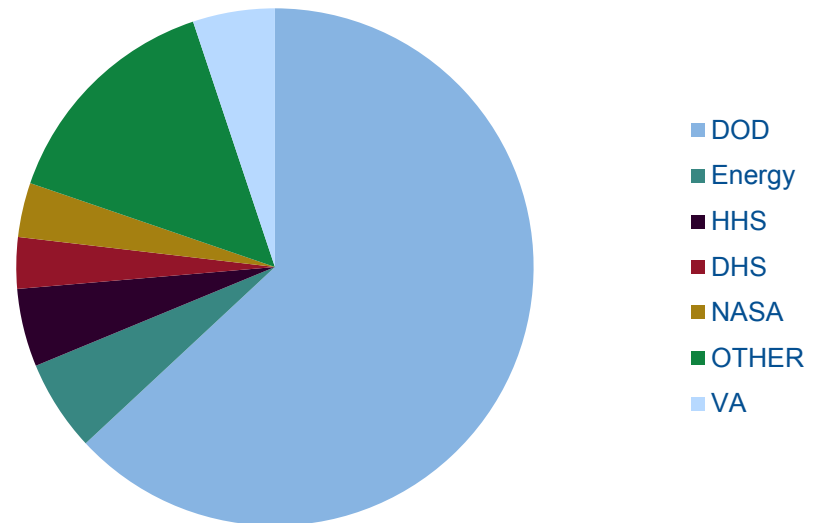
How much does DOD spend on contracts?

- Department of Defense (DOD) spending on contracts in FY 2017 was **\$320 billion**

- By contrast,
 - Energy \$29 billion
 - HHS \$25 billion
 - NASA \$17 billion

- DOD accounted for 63% of contract spending

Contract Spending, Fiscal Year 2017
FPDS-NG



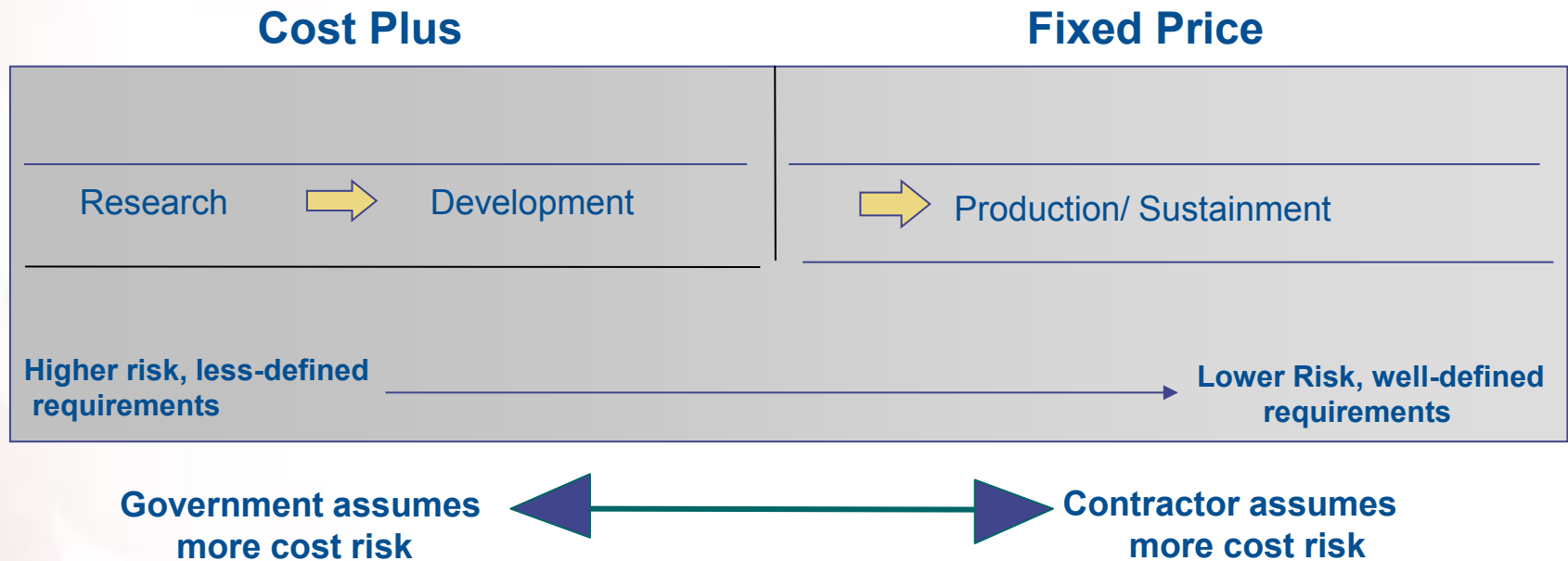
Key Players in Acquisitions



Key Players in Contract Oversight

- Agency Inspector Generals (most large agencies/departments)
- Defense Contract Audit Agency (DOD specific)
- Defense Contract Management Agencies (DOD specific)

Contract Type Risks



Reducing Risk with Contract Type

Type of Contract	Who Assumes Risk of Cost-over-runs?
Fixed Price	Contractor
Cost Reimbursement	US Government
Time-and-Materials (<i>least preferred</i>)	US Government
Indefinite Delivery Contract	Depends

Common Acquisition Issues

1. Programs are proposed and approved without adequate knowledge about requirements and resources needed to execute them.

Common Acquisition Issues

2. Managers rely on optimistic assumptions about requirements, technologies, cost, and schedule; not enough cost or schedule margin to account for risk.

Common Acquisition Issues

3. Requirements are poorly understood at program or change during a program.

Common Acquisition Issues

4. Programs have concurrent acquisition strategies – overlap in development, design, testing, and production – which increases risk.

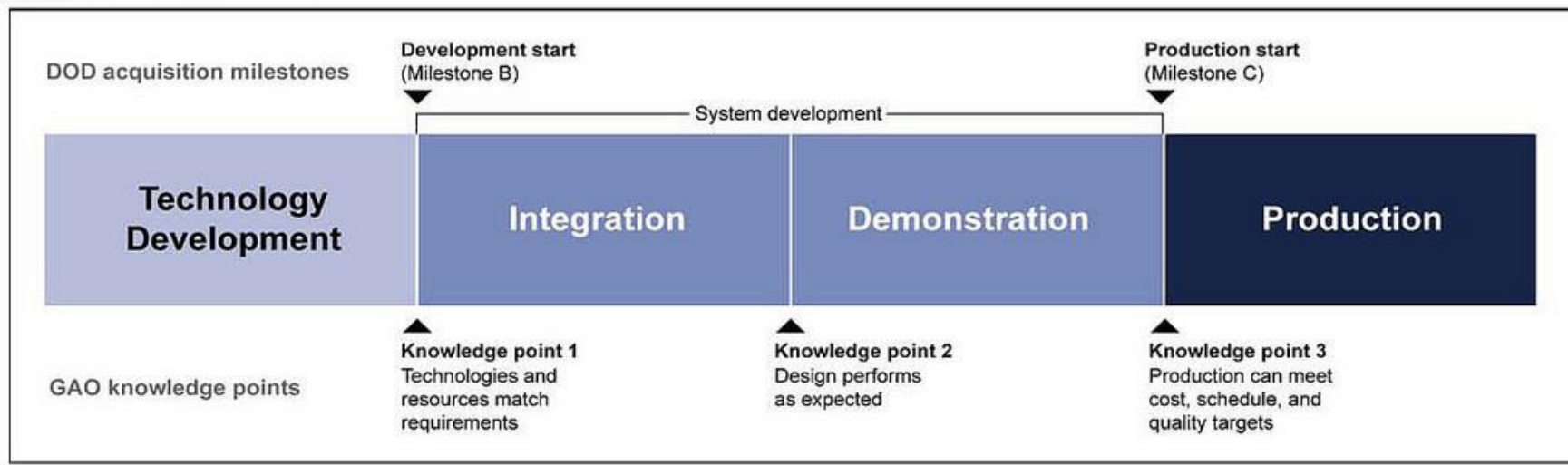
Common Acquisition Issues

5. Short-term versus long-term mentality among decision-makers.

Common Acquisition Issues

6. Lengthy programs leave them susceptible to changing leadership priorities, changing threats, personnel turnover, funding instability, etc.

What We Buy: Acquisition Cycle



Source: GAO.

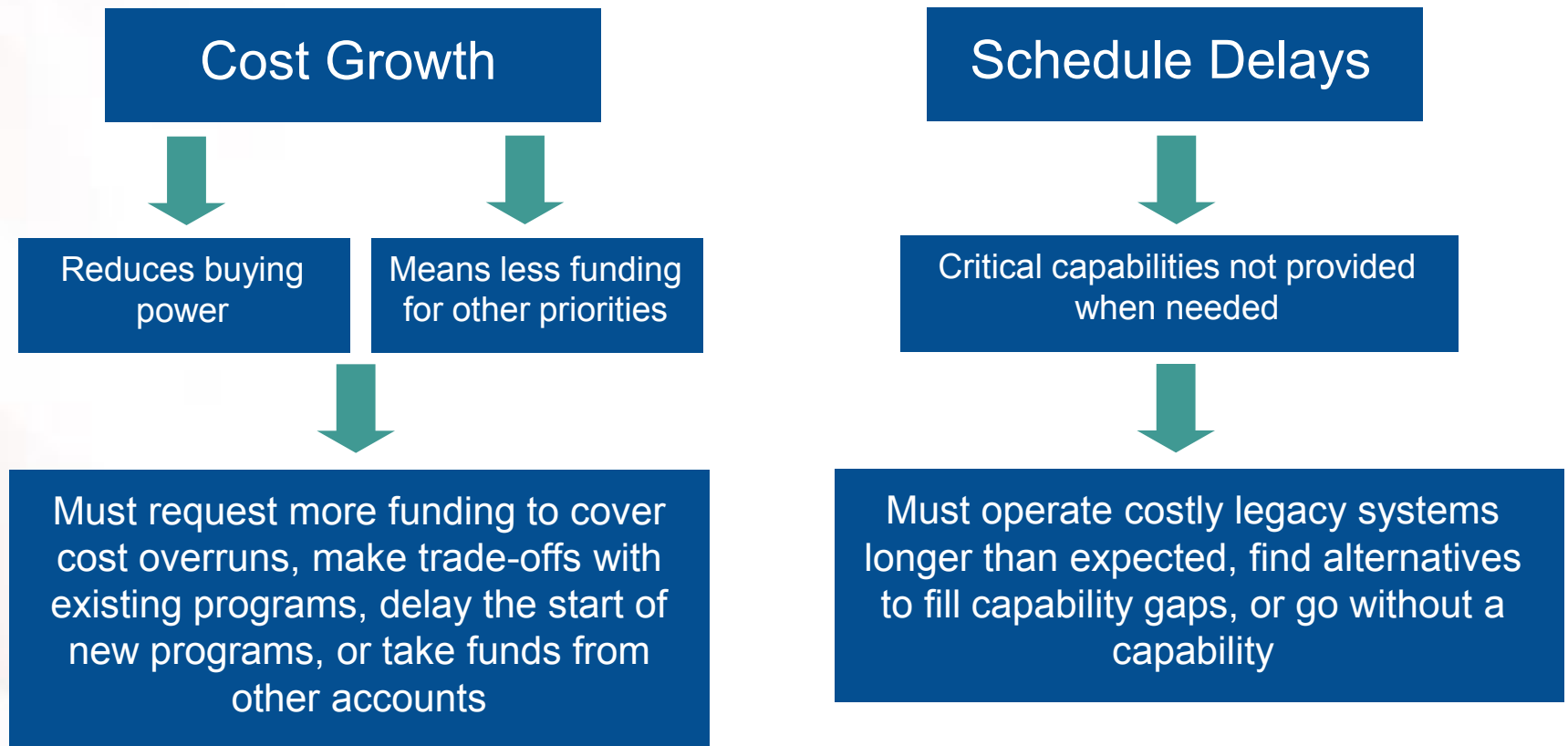
Audit criteria:

- GAO best practices
- DODI 5000.02 (acquisition policy)

Example of GAO Report Findings: Joint Strike Fighter

- \$336 billion program for family of stealthy strike fighter aircraft for the Navy, Air Force, Marine Corps, and U.S. allies. Program is DOD's most costly and ambitious aircraft acquisition.
- Experienced 45 percent cost growth since its baseline at development start
- Program passed milestones without adequate knowledge and employed a highly concurrent acquisition strategy.
 - Critical technologies were not mature at Milestone B
 - Design was not stable at critical design review, due in part to weight
 - Entered production without demonstrating manufacturing readiness and experienced production inefficiencies
 - Significant software development and testing still to go

Consequences of Poor Acquisition Outcomes



Bid Protests at GAO

- GAO's bid protest function began in 1920s and was codified in the Competition in Contracting Act of 1984
- GAO is to provide for the *independent, expeditious, and inexpensive* resolution of protests
- GAO's bid protest decisions establish a uniform body of law relied on by Congress, the courts, contracting agencies, and the public

Key Elements in the Architecture of the System

- What is a protest?
- Who is allowed to protest?
- Which body of government decides protests?
- Scope of the protest forum's jurisdiction?
- When must the protest be filed?
- What happens to procurement while protest is pending?
 - Interim relief: whether the procurement is put "on hold" while the protest is pending
- Too many incentives or disincentives to protest?
- Forum's power provide meaningful relief?

Time of Protests

- Contractors can protest during all three phases of contracting

Phase 1: Pre-award	Phase 2: Award	Phase 3: Post-Award
<ul style="list-style-type: none"> Solicitations Cancellations of solicitations <p><i>Example: improperly restricts competition</i></p>	<p>Award or proposed contract award</p> <p><i>Example: selection was unreasonable or inconsistent with the solicitation award criteria</i></p>	<p>Termination or cancellation of contract award</p>

- Issues with Contract Administration are called Disputes – not Protests

What evidence is considered by GAO?

- Agency must provide a report responding to the protest within 30 days
 - Protesters must file comments responding to the agency report within 10 days
- GAO may issue a protective order (essentially, a non-disclosure agreement) that allows outside lawyers to review sensitive government or firm documents/information
- GAO may request additional briefings
- GAO may conduct hearings

When must GAO issue its decision?

- GAO must issue a decision in all protests within 100 calendar days
- Approximately half of all GAO protests are decided within the first 30 days (dismissal, voluntary agency corrective action)

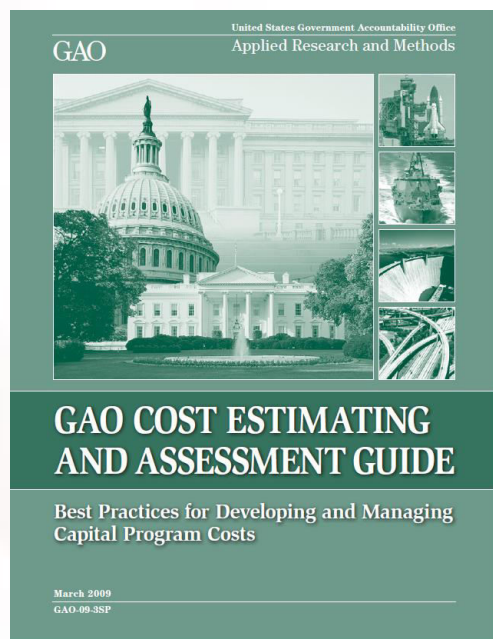


GAO's Bid Protest Cases by the Numbers

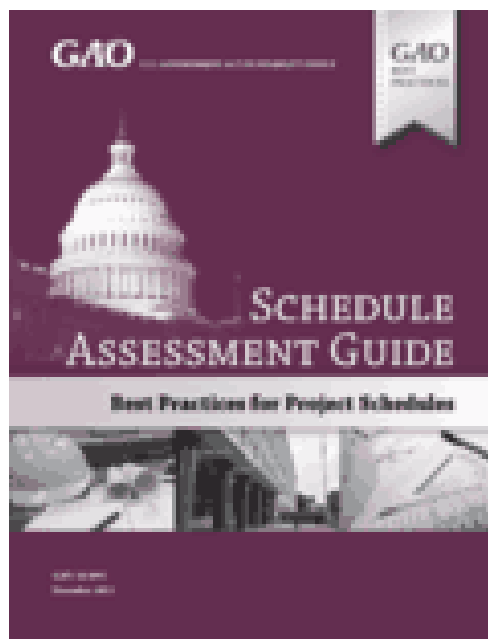
Category	2017
Cases Filed	2596
Cases Closed	2672
Merit (Sustain + Deny) Decisions	581
Number of Sustains	99
Sustain Rate	17 percent
Effectiveness Rate	47 percent
Alternative Dispute Resolution (ADR) (cases used)	81
ADR Success Rate	90 percent
Hearings	1.70 percent (17 cases)

Tools for Decision Makers and Program Managers

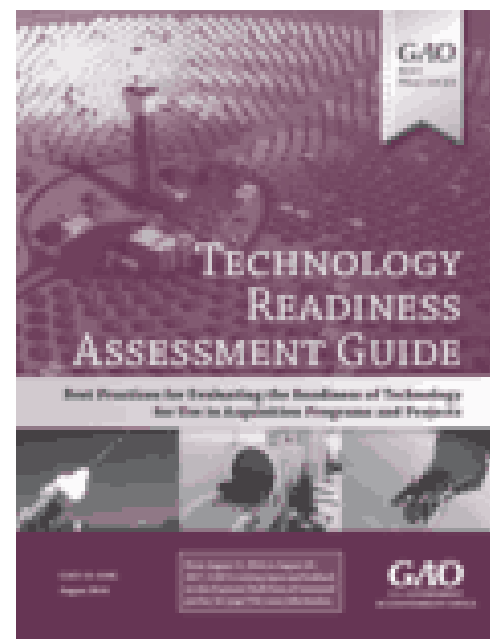
- Resources for Federal Managers:
http://www.gao.gov/resources/federal_managers/overview



[GAO-09-3SP](#)



[GAO-12-120G](#)



[GAO-16-410G](#)

Where can I find out more?

- GAO website: www.gao.gov
- Watchblog: <http://blog.gao.gov/>
- Podcasts: <http://www.gao.gov/podcast/watchdog.html>
- Facebook: <https://www.facebook.com/usgao>
- Twitter: <https://twitter.com/usgao>