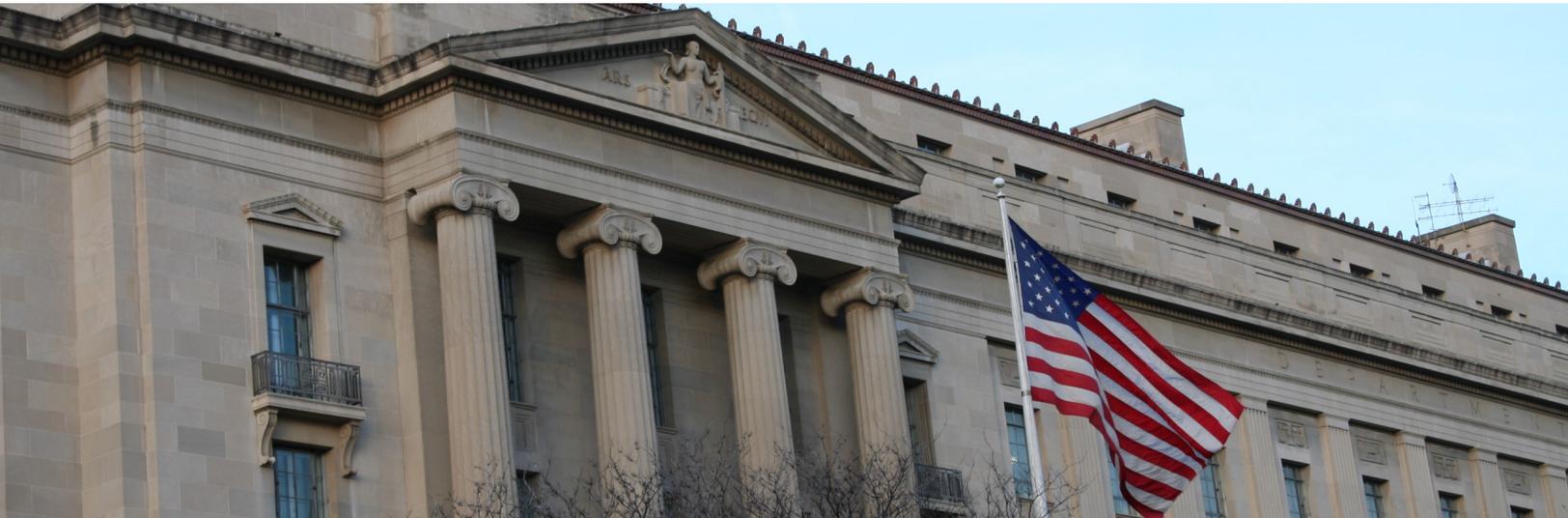




**Office of the Inspector General**  
U.S. Department of Justice

**OVERSIGHT ★ INTEGRITY ★ GUIDANCE**



**Audit of the Bureau of Alcohol, Tobacco,  
Firearms and Explosives' Administration of the  
National Integrated Ballistic Information  
Network and Its Sole-Source Contracts  
Awarded to Shearwater Systems, LLC**

**REDACTED FOR PUBLIC RELEASE**

Redactions were made to the full version of this report to protect company proprietary information. The redactions are contained in the body of the report and Shearwater Systems, LLC's response.

Audit Division 20-067

June 2020



# Executive Summary

*Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Administration of the National Integrated Ballistic Information Network and Its Sole-Source Contracts Awarded to Shearwater Systems, LLC*

## Objectives

The Department of Justice (DOJ) Office of the Inspector General (OIG) conducted an audit of two crime gun intelligence contracts awarded to Shearwater Systems, LLC (Shearwater) in 2012 and 2017 by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in support of the National Integrated Ballistic Information Network (NIBIN) program. NIBIN develops 3D images of ballistic evidence and identifies possible matches to evidence derived from other crime scenes. This helps law enforcement connect separate shooting incidents with those responsible.

The objectives of this audit were to assess: (1) ATF's acquisition planning, administration, and oversight of the contracts and task orders; and (2) Shearwater's performance and compliance with the terms and conditions of the contracts and task orders.

## Results in Brief

We determined that Shearwater generally achieved the contractual objectives of entering ballistic evidence in NIBIN and generating investigative leads. Our review found that ATF could enhance the NIBIN program by establishing additional performance measures and implementing its national database.

Additionally, we identified deficiencies related to ATF's administration, oversight, and monitoring of its Shearwater contracts. We found that ATF's acquisition planning process lacked thorough consideration and required documentation of quality assurance, performance-based acquisition methods, and labor cost drivers. Further, ATF did not train its personnel who regularly interacted with Shearwater workers on appropriate government-contractor relationships. We also found that ATF did not sufficiently review invoices, ensure that contract workers complied with contract security requirements, and ensure that Shearwater informed contract workers of their whistleblower rights.

## Recommendations

Our report contains 17 recommendations to assist ATF in improving its implementation and oversight of the NIBIN program and its contract administration, oversight, and monitoring. ATF agreed with 16 of the 17 recommendations and disagreed with one.

## Audit Results

In support of its evolving NIBIN program, ATF awarded a series of crime gun intelligence contracts to procure personnel to: (1) enter ballistic evidence into NIBIN, (2) correlate the evidence to other images in NIBIN to link one or more shooting incidents, (3) produce investigative lead reports that summarize the connected incidents, (4) train users on NIBIN equipment, and (5) provide administrative support.

Our audit focused on ATF's administration and oversight of contract numbers DJA-12-ICO-0016 and DJA-17-AHDQ-K-0981 awarded to Shearwater, with obligated amounts totaling approximately \$29 million. Shearwater contract workers are assigned to sites across the country, including Crime Gun Intelligence Centers, ATF's NIBIN National Correlation and Training Center in Huntsville, Alabama, ATF laboratories, and ATF Headquarters.

### ***The Shearwater Contracts and NIBIN Program Enhancements***

- We found that ATF could improve how it measures NIBIN site performance to better quantify the program's impact on ATF's overall mission. Additionally, although ATF has developed a national database to collect, analyze, refer, and track potential leads generated from NIBIN data, we found that ATF needs to continue to deploy the database to all NIBIN users, and evaluate how it could track performance measures that demonstrate NIBIN's impact on ATF's overall mission. Finally, the standardized lead report does not contain all of the information detailed in ATF's best practices document. As a result, law enforcement may not be getting the most critical information necessary to solve gun-related crimes.

***Acquisition Planning*** - We found ATF did not always take full advantage of acquisition planning to build a strong foundation for effectively managing the crime gun intelligence contracts awarded to Shearwater. Acquisition planning documents did not sufficiently demonstrate ATF's considerations in the following areas:

(1) determining whether the services were inherently governmental, (2) ensuring appropriate surveillance or oversight of contractor performance, (3) supporting receipt of fair market pricing, and (4) leveraging performance-based acquisition methods. We believe that unrealistic acquisition lead times and the lack of



# Executive Summary

*Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Administration of the National Integrated Ballistic Information Network and Its Sole-Source Contracts Awarded to Shearwater Systems, LLC*

coordination between ATF's contracting and program offices manifested in contract oversight shortcomings as the role of the contract workers evolved to keep pace with the reinvigorated NIBIN program.

**Contract Performance** - We identified instances of non-compliance with contract terms and conditions related to oversight and quality control. Specifically, we could not verify all Shearwater contract workers had received background investigations, signed non-disclosure agreements, or completed the proper security training as required by the contract because the COR did not maintain checklists. We also found ATF's invoice review needed improvement resulting in Shearwater improperly billing and ATF paying \$10,982 in unallowable labor costs. Further, Shearwater did not have an adequate quality control plan, and did not perform adequate quality assurance steps required in the contract. ATF also did not comply with several contract requirements related to oversight and administration of the contract.

**Whistleblower Protections** - ATF did not include the required whistleblower protection clauses in the Shearwater contracts. As such, Shearwater did not notify the contract workers of their whistleblower rights, which could have adversely affected contract worker knowledge of their rights and responsibilities to disclose wrongdoing. When we brought this issue to ATF's attention during this audit, ATF updated applicable contract terms retroactively and enhanced its policies and procedures to notify contracting officials to include, as appropriate, whistleblower protection clauses in future contracts.

**AUDIT OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND  
EXPLOSIVES' ADMINISTRATION OF THE NATIONAL  
INTEGRATED BALLISTIC INFORMATION NETWORK AND ITS  
SOLE-SOURCE CONTRACTS AWARDED TO SHEARWATER  
SYSTEMS, LLC**

**TABLE OF CONTENTS**

INTRODUCTION .....	1
National Integrated Ballistic Information Network .....	1
Crime Gun Intelligence Centers.....	3
Shearwater Systems, LLC .....	3
Office of Inspector General Audit Approach .....	4
AUDIT RESULTS.....	5
The Shearwater Contracts and NIBIN Program Enhancements .....	5
Identifying Investigative Leads in NIBIN.....	5
Measuring NIBIN Results .....	6
Implementing the National Database .....	7
Standardizing Lead Reports.....	8
ATF Acquisition Planning Process.....	8
Need for Comprehensive Acquisition Planning.....	9
Need for Comprehensive Written Acquisition Plans .....	11
Assessing for Inherently Governmental Functions .....	13
Need for a Robust Quality Assurance Surveillance Plan .....	15
Fair and Reasonable Pricing Support .....	18
Consider Performance-Based Acquisition Methods.....	21
Contract Performance .....	22
Contract Worker Security Requirements .....	22
Invoice Testing.....	24
Shearwater Quality Control Plan.....	25
Contract Compliance .....	26
Preserving Contract Worker Whistleblower Protections.....	28
CONCLUSION AND RECOMMENDATIONS .....	30
APPENDIX 1: OBJECTIVES, SCOPE, AND METHODOLOGY.....	33

APPENDIX 2: SCHEDULE OF DOLLAR-RELATED FINDINGS.....	38
APPENDIX 3: BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES' RESPONSE TO THE DRAFT AUDIT REPORT.....	39
APPENDIX 4: SHEARWATER SYSTEMS, LLC'S RESPONSE TO THE DRAFT AUDIT REPORT .....	47
APPENDIX 5: OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT.....	53

# **AUDIT OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES' ADMINISTRATION OF THE NATIONAL INTEGRATED BALLISTIC INFORMATION NETWORK AND ITS SOLE-SOURCE CONTRACTS AWARDED TO SHEARWATER SYSTEMS, LLC**

## **INTRODUCTION**

Protecting Americans from violent crime is a longstanding priority of the Department of Justice (DOJ). The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) seeks to reduce violent crime committed with firearms, including those attributed to: (1) illegal firearms trafficking and criminal use of firearms, (2) criminal groups and gangs, (3) criminal misuse of explosives, and (4) fire and arson. Within ATF's Office of Field Operations, the Firearms Operations Division (FOD) supports ATF's mission by focusing on methods to deter illegal firearms trafficking and reduce violent gun crime.

One of the tools ATF uses is the National Integrated Ballistic Information Network (NIBIN), which is designed to link casings collected from different crime scenes and identify potential shooters. To support NIBIN, ATF's Acquisition Branch awarded two time and materials (T&M) contracts under the Small Business Administration's (SBA) 8(a) Business Development Program (8(a)) to an Alaska Native Corporation, Shearwater Systems, LLC (Shearwater). The initial contract, DJA-12-ICO-0016 (2012 contract) included one base year with four 1-year option periods.<sup>1</sup> ATF obligated a total of slightly over \$11 million to the 2012 contract, which ended on September 29, 2017. With the subsequent contract, DJA-17-AHDQ-K-0981 (2017 contract), ATF sought continued support for NIBIN and Crime Gun Intelligence (CGI) Center operations as well as other technical and operational support. The 2017 contract was effective on September 30, 2017, and included one base year with two 1-year option periods with a ceiling of \$22 million. As of September 2019, ATF had obligated about \$17.7 million to this contract.

### **National Integrated Ballistic Information Network**

In 1999, ATF established the NIBIN to provide local, state, and federal law enforcement agencies with an automated ballistic imaging network.

Historically, NIBIN data was not processed until months after the incident, which minimized the likelihood that it would provide ATF with timely investigative leads. More recently, ATF determined that law enforcement could leverage NIBIN data as an intelligence tool by quickly capturing and comparing ballistic evidence from one violent crime against evidence derived from another, thus generating

---

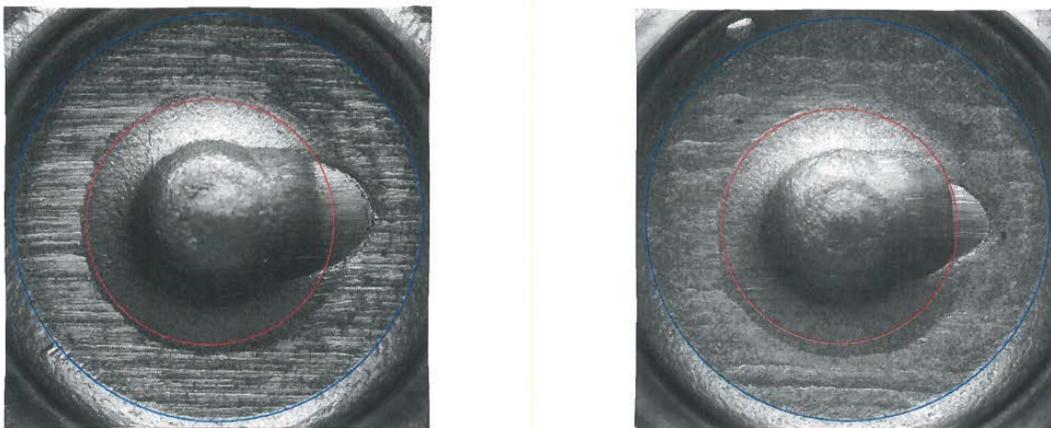
<sup>1</sup> The OIG recently reviewed ATF's administration and oversight of its small business contracts, which included Contract Numbers DJA-12-ITO-0105 and DJA-17-AHDQ-K-0981 awarded to Shearwater. U.S. Department of Justice Office of the Inspector General, [Audit of the Bureau, Alcohol Tobacco, Firearms, and Explosives Sole-Source Small Business Contracting](#), Audit Report 19-15, (March 2019).

actionable investigative leads to aid in solving and preventing crimes involving firearms.

When a gun is fired, it leaves unique marks on the ammunition or shell casing. No two firearms leave the same marks on a casing. NIBIN equipment takes 3D images of this ballistic evidence and identifies possible matches to evidence derived from other crime scenes, allowing law enforcement to connect separate shooting incidents and help identify those responsible. The images in Figure 1 below demonstrates a comparison of two cartridge casings that are unrelated.

**Figure 1**

**Example of Cartridge Case Comparison for Unrelated Shell Casings**



Note: The MPD concluded that these shell casings were fired from different weapons due to unrelated horizontal markings and distinctive impressions from the weapons' ejector pins.

Source: The MPD MatchPoint System<sup>2</sup>

While FOD oversees the overall NIBIN program, multiple funding streams and NIBIN partners support its operations, including: (1) ATF's contracts, such as those with Shearwater and an equipment and software manufacturer; (2) Office of Justice Programs (OJP) grants to establish local CGI Centers; and (3) state and local police departments. While ATF depends heavily on the contract workers furnished by Shearwater to review and process crime gun intelligence, we found that not all NIBIN partners use Shearwater contract workers. Rather, some state and local police departments rely on local resources to collect and submit evidence into NIBIN. As of May 2018, NIBIN partners have captured approximately 3.3 million pieces of ballistic evidence and confirmed over 110,000 hits or matches that can be used in investigations.

---

<sup>2</sup> See U.S. Department of Justice Office of the Inspector General, [Audit of the Office of Justice Programs Bureau of Justice Assistance National Crime Gun Intelligence Center Initiative Grant Awarded to the Milwaukee Police Department, Milwaukee, Wisconsin](#), Audit Report GR-50-19-006 (September 2019).

## **Crime Gun Intelligence Centers**

CGI Centers are an interagency collaboration focused on the immediate collection, management, and analysis of crime gun evidence, such as shell casings, in a real-time effort to identify shooters, disrupt criminal activity, and prevent future violence. CGI Centers rely on ongoing collaboration between ATF, law enforcement agencies, forensic laboratories, academic organizations, and prosecutors.

ATF manages or provides support staff to 25 CGI Centers across the country. Additionally, through the National Crime Gun Intelligence Center Initiative, OJP, with input and coordination from ATF, provided over \$15.8 million in grant funding to 20 cities to establish or enhance CGI Centers in their jurisdictions.

## **Shearwater Systems, LLC**

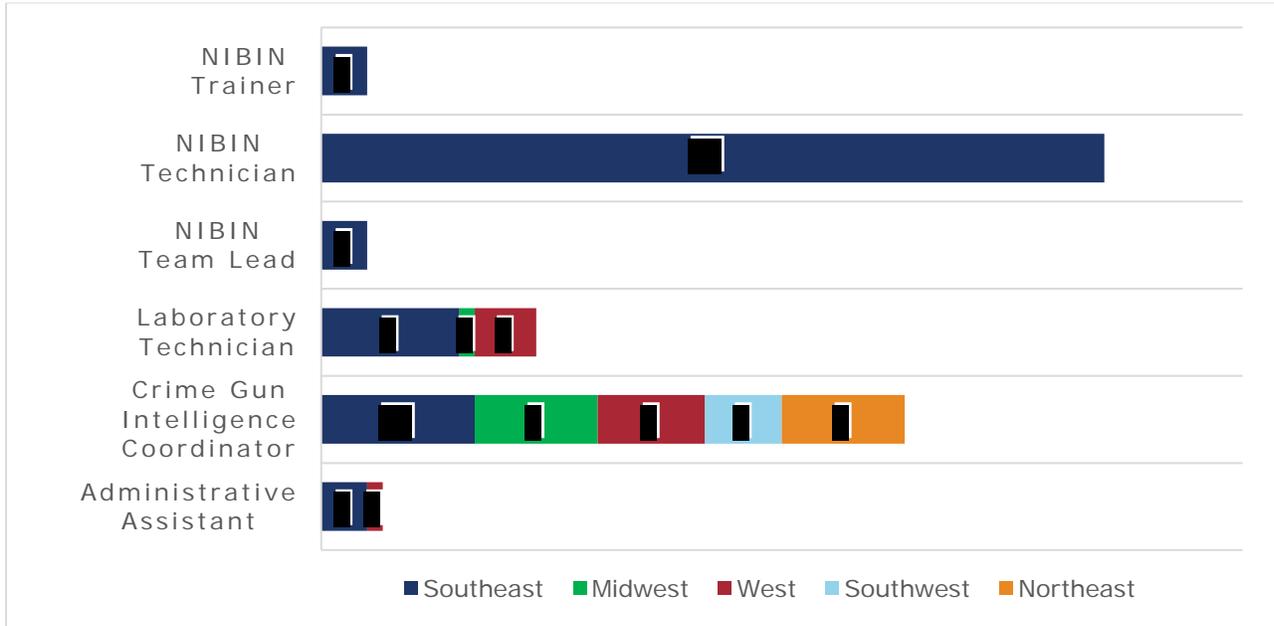
Shearwater is a subsidiary of Three Saints Bay, LLC, which is owned by Old Harbor Native Corporation. Shearwater's primary line of business is providing mission and facility support services to government and commercial entities. Shearwater became an 8(a) participant in August 2011 and will exit the program after the maximum 9 years in August 2020. Shearwater has a presence in 21 states as well as the District of Columbia.

Under the Shearwater contracts, the contract workers enter ballistic evidence into NIBIN, correlate the evidence to other images in NIBIN to link one or more shooting incidents, and produce investigative lead reports that summarize the connected incidents. Some workers also train users on NIBIN equipment and provide administrative support to FOD operations. Shearwater contract workers are assigned to CGI Centers across the country, ATF's NIBIN National Correlation and Training Center (NNCTC) in Huntsville, ATF laboratories, or ATF Headquarters. As of December 2018, Shearwater provided—either directly or through subcontracts— contract workers in multiple labor categories, as displayed in Figure 2.<sup>3</sup>

---

<sup>3</sup> Shearwater also has two subcontracts, which accounted for six of the workers as of December 2018.

**Figure 2**  
**Distribution of Contract Workers by Labor Category**



Source: ATF

**Office of Inspector General Audit Approach**

Considering the prominent role that the contract workers play in the current and future execution of NIBIN, namely entering and correlating ballistics evidence, our objectives were to assess: (1) ATF’s acquisition planning, administration, and oversight of the contracts and task orders, and (2) Shearwater’s performance and compliance with the contracts’ and task orders’ terms and conditions, including financial management, monitoring, reporting, and progress toward meeting the contract goals and objectives in support of NIBIN, as well as applicable laws and regulations.

To accomplish our objectives, we interviewed ATF officials and Shearwater personnel, tested compliance with contract requirements, and evaluated ATF’s management, oversight, and monitoring of the contracts. This work included reviewing how NIBIN could be used to facilitate gathering crime gun intelligence. Appendix 1 contains a more detailed description of our audit objectives, scope, and methodology.

# AUDIT RESULTS

## The Shearwater Contracts and NIBIN Program Enhancements

In the past, ATF used NIBIN as a purely forensic application in which ballistic evidence was not entered into NIBIN until months after the incident. In recent years, ATF has shifted to using NIBIN as an intelligence-gathering tool by entering ballistic evidence into NIBIN within 48 hours to generate real-time investigative leads. NIBIN compares and correlates ballistic evidence gathered across different violent crimes to connect separate shooting incidents. To gain an understanding of how the Shearwater contracts supported this transition, we assessed how CGI Centers operate and found ATF could improve how it measures NIBIN site performance to quantify NIBIN program's impact on ATF's overall mission. While ATF has developed a national database to collect, analyze, and refer potential leads generated from NIBIN data, ATF needs to continue to deploy the database to all NIBIN users, and evaluate how it could track NIBIN results effectively. Further, Shearwater lead reports contained inconsistent information. ATF developed a standardized lead report, which does not include solvability factors as outlined in ATF's best practices document. As a result, law enforcement may not be getting the most critical information necessary to solve gun-related crimes. Development of NIBIN program performance measures along with a standardized national database to input lead information would facilitate the ability of all NIBIN users, including Shearwater workers, to more efficiently enter and use evidence to generate investigative leads.

### *Identifying Investigative Leads in NIBIN*

The goal of providing actionable intelligence to investigators requires the expeditious entry of evidence into NIBIN to identify potential investigative leads. The process of developing actionable investigative leads includes the following steps:

- *Step 1. NIBIN Acquisition.* From the recovered shell casings of a crime scene, Shearwater contract workers, state and local law enforcement partners, or ATF personnel identify the best evidence to enter in the NIBIN system.<sup>4</sup> Evidence collectors then use 3D-imaging equipment called BrassTrax to capture the markings present on the casings, which are entered into NIBIN.
- *Step 2. NIBIN Correlation.* The NIBIN software, known as MatchPoint Plus, then compares and correlates the evidence from one crime against evidence derived from another to identify potential matches. Law

---

<sup>4</sup> Only crime gun evidence and fired ammunition components pursuant to a criminal investigation are entered into NIBIN. Therefore, NIBIN cannot capture or store ballistic information collected at the point of manufacture, importation, or sale; nor purchaser, date of manufacture, or sale information.

enforcement or Shearwater contract workers subsequently review potential matches to identify NIBIN leads.<sup>5</sup>

- Step 3. Develop Potential Investigative Leads. Law enforcement and Shearwater contract workers use NIBIN leads, along with firearm tracing results and local intelligence, to develop a synopsis of a potential lead for investigators to pursue. This linking of otherwise unassociated crimes gives investigators a better chance to identify and arrest shooters before they reoffend.

To support using NIBIN as an investigative tool, ATF has set specific goals to assist state and local partners, including those workers processing information in NIBIN under the Shearwater contracts, in fulfilling these steps in a timely manner. These include: (1) acquiring all suitable ballistic evidence within 2 business days, (2) completing the correlation process within 2 business days of acquiring ballistic images, and (3) disseminating potential investigative leads to investigators within 24 hours of the correlation review.

### *Measuring NIBIN Results*

We found that ATF tracks various quantitative data related to NIBIN, but it has not established performance measures that show the impact to ATF's mission, such as the successful arrest and prosecution of shooters. ATF tracks various NIBIN statistics and outputs, such as the number of acquisitions and NIBIN leads from correlation, broken down by site, using a Monthly Activity Report spreadsheet. Additionally, as it relates to the NNCTC, which solely focuses on correlation review, FOD directly extracts acquisitions and leads from NIBIN, which FOD tracks in a spreadsheet on a monthly basis. ATF laboratory Section Chiefs track and report the number of acquisitions and NIBIN leads generated at ATF laboratories using a spreadsheet submitted to FOD on a weekly basis. These spreadsheets help FOD determine its labs' capabilities to support requests from external agencies and ATF field divisions. Lastly, each CGI Center use various spreadsheets or databases to track NIBIN investigative lead information and resulting investigative referrals.

In addition to the quantitative data, ATF uses a system called iNIBIN to collect success stories from the field. Law enforcement using NIBIN can voluntarily submit success factors to iNIBIN such as disruption of serial shooters, solving violent gun crime, identification of shooters, and public and officer safety. While iNIBIN tracks important success stories voluntarily submitted from the field, it does

---

<sup>5</sup> An ATF Firearms Examiner confirms NIBIN leads using microscopic comparison, which is then classified as a NIBIN hit.

not represent a complete set of data showing the total impact of the NIBIN program.<sup>6</sup>

Lastly, ATF is currently piloting Crime Gun Enforcement Teams (CGET), which are dedicated investigative groups that conduct follow up on CGI leads. There are five cities participating in the pilot program, and each quarter these teams provide performance metrics focusing on the number of suspected shooters arrested and the number of shootings solved. While this appears to collect important performance data, it is currently limited to the five participating cities.

Additionally, through our work with police departments that received OJP grants to establish CGI Centers, we learned that the police departments had trouble tracking outcomes directly attributed to the CGI Centers.<sup>7</sup> OJP officials stated that assisting grant award recipients in collecting meaningful data and measuring program success is an area of improvement for the National CGI Center Initiative grant program as a whole.

We concluded that ATF could improve how it measures NIBIN site performance to better quantify the program's impact on ATF's overall mission. Therefore, we recommend ATF continue to develop procedures and mechanisms to collect performance data that measures the success of the NIBIN program as it relates to ATF's overall mission, such as the successful arrest and prosecution of shooters.

### *Implementing the National Database*

Law enforcement and contract personnel enter potential investigative leads generated from NIBIN data into city-specific spreadsheets. A Shearwater contract worker told us this process limits the successes of solving cases nationwide, as these individual spreadsheets are not capable of linking NIBIN data between different jurisdictions.

To address this limitation, ATF began developing the NIBIN Enforcement Support System (NESS) in 2018 to help collect, analyze, refer, and track potential investigative leads generated from NIBIN data as well as other crime gun data nationwide. According to ATF, NESS will facilitate information sharing between ATF personnel and partners to provide nearly real-time intelligence to agents,

---

<sup>6</sup> Our work at CGI Centers also confirmed anecdotal NIBIN successes. Specifically, personnel working with the Milwaukee Police Department (MPD) stated grant funding significantly reduced the backlog of acquisitions entered into NIBIN. Prior to establishing its CGI Center, MPD sent cases to the state crime laboratory, which took 9 to 12 months to receive results. Using a coordinated effort between MPD officers, grant employees, and Shearwater contract workers, MPD's CGI Center processes ballistics evidence within 48 hours.

<sup>7</sup> For example, MPD implemented its own NIBIN Case Management Application to track suspects through the investigative process, including arrests and charges related to those individuals. However, MPD does not track convictions and sentencing data. To obtain that information, a request must be placed with the District Attorney's office. Additionally, the Los Angeles Police Department stated that it was difficult to track performance measures because the data varies between police departments.

investigators, and intelligence specialists in the field. In its first version, NESS was piloted by five ATF personnel from each field division. On August 15, 2019, ATF issued guidance that required ATF personnel to utilize NESS to track NIBIN and related crime data beginning September 1, 2019. ATF has begun a phased deployment of NESS to state and local law enforcement users with approximately 10 agencies currently participating. Further, NESS could be leveraged to capture important performance measures for the NIBIN program, such as the successful arrest and prosecution of shooters. Overall, a national database would facilitate the ability of all NIBIN users, including Shearwater workers, to more efficiently enter and use evidence to generate investigative leads. As a result, we recommend that ATF continue to deploy NESS to all NIBIN partners, and evaluate how NESS could be used to track performance measures that demonstrate the success of the NIBIN program and the program's impact on ATF's overall mission.

### *Standardizing Lead Reports*

Because ATF, Shearwater contract workers, and state and local law enforcement collaborate on NIBIN, standardized NIBIN processes and procedures are essential to its success. Although Shearwater contract workers develop leads for investigators using NIBIN, participating law enforcement agencies use different systems to enter and track NIBIN information and follow different protocols to produce investigative leads. For example, the Shearwater contract worker at MPD produces lead reports that include the solvability and priority of the case and suggested steps to further a case, whereas the Shearwater contract worker in Washington D.C. provides leads with firearm purchase information and associated network charts.

To help address this issue, ATF has developed Minimum Required Operating Standards (MROS), and has provided guidance for NIBIN participants: (1) Crime Gun Intelligence – Disrupting the Shooting Cycle: Best Practices for implementing successful crime gun intelligence programs, and (2) Crime Gun Intelligence Center Practices: Lessons Learned from the Field. The best practices document states that there are four critical aspects of a crime gun intelligence lead – geography, events, time, and solvability factors (GETS). Using GETS, crime gun intelligence is appropriately prioritized at the CGI Center analysis phase leading to referrals that have the highest possible potential for investigative success. However, including this information in the lead report is not a requirement. As a result, law enforcement may not be getting the most critical information necessary to solve gun-related crimes. A standardized lead report is included in NESS, which became available to all ATF personnel in September 2019. However, it does not include solvability factors as outlined in ATF's best practices document. Consequently, we recommend ATF enhance its standardized lead report in NESS to include solvability factors in order to provide consistent, valuable information to law enforcement that incorporates ATF guidance.

### **ATF Acquisition Planning Process**

Despite laws and regulations that require agencies to develop acquisition plans and strategies to help manage the risks and to meet the goals of supported

programs, we found that ATF did not always take full advantage of acquisition planning to build a strong foundation for effectively managing the crime gun intelligence contracts awarded to Shearwater. First, written acquisition plans prepared by ATF did little to describe the technical, management, and business considerations that are innate to procurements of this size and complexity.<sup>8</sup> Specifically, the planning documents did not demonstrate that ATF sufficiently: (1) assessed whether the prospective crime gun intelligence support services were inherently governmental; (2) designed a Quality Assurance Surveillance Plan (QASP) to guide oversight personnel; (3) adequately supported its cost estimates and assessed the appropriateness of its labor categories; or (4) considered performance-based acquisition methods. ATF's inattention to these seminal decision points may have affected ATF's ability to assess the reasonableness of the contractor's proposed rates and ensure appropriate monitoring of contractor performance. We believe that unrealistic acquisition lead times and the lack of coordinated planning between ATF's contracting and programing officials manifested in contract oversight shortcomings as the role of the contract workers evolved to keep pace with the reinvigorated NIBIN program.

#### *Need for Comprehensive Acquisition Planning*

Acquisition planning is the process by which those developing an acquisition work to ensure that the procurement will meet agency needs in the most effective, economical, and timely manner. Because acquisition planning involves developing an overall strategy for managing the acquisition, the FAR considers the Contracting Officer (CO), Contracting Officer's Representative (COR), and requesting Program Office personnel part of a multifaceted acquisition team responsible for:

- acquiring commercial items to the extent practicable,
- ensuring full and open competition to the maximum extent practicable,
- selecting the appropriate contract type, and
- providing the appropriate consideration of pre-existing contracts before awarding new contracts.<sup>9</sup>

FAR Subpart 7.104 advises that acquisition planning should begin as soon as the agency identifies a need (preferably well in advance of the fiscal year in which the contract award is necessary). To enhance the opportunity for competition and receive better pricing, the Program Office should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules. Depending on the contract's dollar value and complexity, ATF's Acquisition Manual provides 55 to 240 calendar days as the minimum lead times from the CO's receipt of a complete, approved procurement request through when ATF awards a contract.

---

<sup>8</sup> Technical, management, and business considerations include, but are not limited to, the type and amount of services procured, associated regulatory requirements, and proportional quality surveillance necessary to monitor the contract workers post-award.

<sup>9</sup> FAR Subpart 7.102, *Policy* and FAR Subpart 2.101, *Definitions*.

The 2012 and 2017 awards to Shearwater are complex high dollar contracts, yet ATF contracting officials told us that they planned, solicited, and awarded the 2012 contract in less than 20 days, which they believe resulted in limited research and a cursory statement of work. This did not provide a proper foundation for future iterations of these complex crime gun intelligence contracts. Despite ATF's knowledge that the short lead time for the previous contract was not optimal, ATF only budgeted 60 days for the larger 2017 contract because they believed the procured services were unchanged other than an increase in contract workers. While the 2017 lead times met the minimum standard of 55 days established in the ATF Acquisition Manual, we still question whether this was sufficient time for such a complex contract. Moreover, we discussed the lead times with the Acquisition Branch Chief and two other contracting officials and they told us that the lead time for the 2017 contract was not desirable. During these discussions, we noted that each official we spoke to interpreted differently the ATF Acquisition Manual's minimum calendar days and suggested that ATF may need to review the lead times for clarity and realism.

According to ATF's Acquisition Manual, the Acquisition Branch (Contracting Office) and the requesting Program Office are responsible for acquisition planning. The Program Office is responsible for identifying the need and providing the need-specific background information to the CO, who then determines the appropriate procurement strategy and lead times.<sup>10</sup> However, we found that for the 2017 contract, the lead time and coordination between the Program Office and the Contracting Office were insufficient.

Under the Federal Acquisition Regulation (FAR) and ATF Acquisition Manual, agency officials can determine the amount of planning necessary based on various circumstances. FAR Subpart 7.103(e) requires that the agency head, or his or her designee, prescribe procedures for when acquisition plans warrant greater detail and formality to account for complexity and cost. The ATF Acquisition Manual mimics this requirement, but lacks procedures or criteria for determining what constitutes a more complex contract for purposes of Subpart 7.103(e). We believe that the contracts with Shearwater were complex enough to warrant further consideration for an extended timeline given the increase in the number of contract workers, labor categories, and geographical coverage, as well as the NIBIN program's evolving strategic focus. Such consideration did not occur; to the contrary, we found that ATF's 2017 acquisition plan did not account for these factors and that ATF's written support for its acquisition planning was either incomplete or insufficient, as we discuss in Table 1 and throughout this section of the report.

---

<sup>10</sup> ATF's Acquisition Manual defines acquisition lead time as the time from receipt of a complete, approved procurement request (PR) by the CO through contract award. A complete PR includes approval and certification of funds, required justifications, independent government cost estimates, statements of work (or other requirements documents), evaluation plan/criteria, and a surveillance plan (i.e. how the contract will be monitored). In addition to these requirements, PRs for service contracts must also include a written determination that none of the functions to be performed are inherently governmental.

**Table 1**  
**Written Considerations for Acquisition Planning**

Required Written Considerations	Criteria	2012 and 2017 Contracts	
		Completed	Sufficient Detail
Written Acquisition Plan	FAR Subparts 7.103(e) and 7.105	Yes	No
Written Assessment of Inherently Governmental Functions	FAR Subparts 2.101 and 7.503(e)	Yes	No
Quality Assurance Surveillance Plan Prepared in Conjunction with Statement Of Work	FAR Subparts 46.401 and 16.601(c)(1)	No <sup>a</sup>	-
Estimate of Fair Market Price (i.e., Independent Government Cost Estimate)	FAR Subparts 19.806, 19.807, and 15.4	Yes	No
Implementing Performance-based Acquisition Methods	FAR Subparts 7.105 and FAR Part 37	No	-

<sup>a</sup> ATF prepared one QASP for both contracts in April 2017 following an OIG inquiry.

Source: OIG Analysis, FAR, and ATF

Acquisition planning is a deliberative process and contracting officials need time to develop comprehensive, multifaceted acquisition plans to document agency needs and monitoring efforts. However, as stewards of government funds with authority to sign contracts, COs must hold the Program Office accountable for adequately defining the requirements in a timely manner. To allow sufficient time to plan and manage contracts like the Shearwater awards more effectively, we recommend that ATF assess its current lead time minimums for clarity and realism for such multi-year crime gun intelligence contracts; and formalize a procedure for its contracting officials to notify program officials of expiring contracts in a timely manner.

*Need for Comprehensive Written Acquisition Plans*

While the specific contents of acquisition plans vary depending on the nature, circumstances, and stage of an acquisition, the FAR requires written plans for all high-risk contracts that are not fixed-priced. ATF's Acquisition Manual further establishes a \$2.5 million threshold at which a written plan is required. FAR Subpart 7.105 lists written acquisition plan requirements, which include decision-making milestones and all technical, business, management and other significant considerations such as the acquisition background and objectives, source information, contract type, service descriptions, contractor versus government performance, and contract administration practices. The FAR also states that the acquisition team should review previous plans for similar acquisitions and discuss them with the key personnel involved. The acquisition team should review the plans at key dates specified in the plan, whenever significant changes occur throughout the acquisition, and at least annually.

We believe that ATF would have benefitted from a comprehensive re-evaluation of the 2012 acquisition plan because the 2017 contract requirements, as detailed in its statement of work (SOW), were vastly different from the 2012 contract's

requirements. However, ATF did not revise its approach for the 2017 plan despite these evolving requirements.

Specifically, the 2012 contract's initial SOW included contract workforce requirements for three labor categories under one functional area—CGI Coordinator—with 7 contract workers at 7 locations. At the conclusion of the 2012 contract in July 2017, the requirements had grown to 61 workers at over 19 locations, with about half of the workers located at the NNCTC. The 2017 SOW also expanded the services from one functional area, CGI Coordinator, to six, adding: Program Manager, NIBIN Technician, Administrative Assistant, Laboratory Technician, and optional Technical Writer. Within these functional areas, we identified over 20 labor categories on the 2017 SOW.<sup>11</sup> The 2017 contract requirements also called for an estimated 103 contract workers. Yet, we found the contents of the 2017 acquisition plan mirrored those of the 2012 version with minimal changes.

While ATF contracting officials acknowledged the increase in the number of contract workers and program funding, they told us they did not revise the acquisition approach in the 2017 contract because they viewed the procurement as generally the same and did not believe it added value to update the acquisition plan. Indeed, an ATF contracting official referred to acquisition planning as a “paper exercise.” Because contracting officials thought it too risky to award the repeat procurement to another contractor given the established relationship with Shearwater, the CO awarded a sole-source, 3-year, \$22 million contract – the maximum limit requiring no justification – to Shearwater as the incumbent 8(a) contractor.

As a result of its insufficient assessment of the program's growing needs, ATF reached the 2017 contract ceiling after only 2 years into the performance period, necessitating the award of a bridge contract in September 2019 as a short-term resolution to obtain services during the interim period until a new contract can be awarded.<sup>12</sup> While contracting officials told us that the NIBIN funding that supports the contract fluctuates, we believe ATF could have avoided using a bridge contract had its program and contracting offices truly leveraged the acquisition planning process as a roadmap to guide the acquisition.

---

<sup>11</sup> For example, the 2017 SOW included the following labor categories under the NIBIN Technician functional area: NIBIN Technician I; NIBIN Technician II – Team Lead; NIBIN Technician III – Trainer; NIBIN Technician IV - Firearms and Toolmark Examiner; and NIBIN Technician – Administrative Assistant.

<sup>12</sup> ATF awarded a 1-year, sole-source, \$20 million 8(a) bridge contract to Eagle Harbor, which is owned by Shearwater's parent company and was one of two subcontractors on the 2017 contract. The cognizant SBA official for this area stated that he presented the bridge contract as an option to allow ATF time to adequately plan for a subsequent competitive 8(a) contract. (continued next page)

Although the FAR provides no formal definition of a bridge contract, FAR Subpart 52.217-8 informally refers to it as an extension to an existing contract beyond the period of performance or a new, short-term contract awarded on a sole-source basis to avoid a lapse of service caused by a delay in awarding a follow-on contract.

As a shared responsibility of the Program Office and contracting officials, acquisition planning helps ensure effective contract management. We determined that a lack of comprehensive planning led to shortcomings as the role of the contract workers evolved to keep pace with the reinvigorated NIBIN program. Before awarding the next contract, we recommend that ATF reassess its needs and develop a comprehensive acquisition plan that adequately addresses all significant acquisition considerations in FAR Subpart 7.105.

### *Assessing for Inherently Governmental Functions*

Whenever a contractor performs functions closely associated with inherently governmental functions, contracting agencies must ensure that such functions do not expand into those reserved for government personnel. FAR Subpart 7.503(c) explicitly lists the direct conduct of criminal investigations, and direction and control of intelligence operations as expressly governmental functions. FAR Subpart 7.503(d) also includes functions that approach inherently governmental as attending conferences on behalf of an agency, conducting agency training courses, and participating in any situation where it might be assumed that a contractor is an agency employee or representative. Furthermore, the FAR requires that acquisition planning documents for a contract with a close nexus between what a contractor will do and inherently governmental functions must include a written assessment, from an agency head or his or her designee, regarding how the agency will ensure its own accountability and control the contractor's discretionary authority and decision-making ability. We believe that ATF needs to improve its acquisition planning to include a thorough analysis of contract services to ensure that contracted workers are not performing inherently governmental functions.

Our review of SOWs and interviews with ATF and Shearwater personnel identified contract workers performing services that supported criminal investigations, which are inherently governmental functions.<sup>13</sup> For example, Laboratory Technicians and CGI Coordinators acquired and entered shell-casing evidence into NIBIN, and thus handled evidence as part of the chain of custody. NIBIN Technicians at the NNCTC correlated ballistic images for at least 50 NIBIN sites to identify unconfirmed hits. Experienced CGI Coordinators reported developing investigative leads from NIBIN hits and additional intelligence sources and also acted as ATF liaisons, performed training, and attended conferences in support of ATF personnel.

Despite both contracts procuring services that supported inherently governmental functions, ATF only included a short and conclusory statement in its contract files that the services were not inherently governmental. ATF did not include the FAR-required written assessment stating how it would ensure its own accountability and control the contractor's discretionary authority and decision-making ability. Thus, ATF planning documents did not sufficiently detail how ATF

---

<sup>13</sup> DOJ Instruction 1301.02.01, *Acquisition Policy Oversight Inherently Governmental and Critical Functions, Appendix A* (April 19, 2019).

would oversee contract workers providing services in support of inherently governmental functions.

In April 2019, DOJ issued a policy requiring program officials to affirmatively determine whether the contemplated contracted task or duty may approach an inherently governmental function.<sup>14</sup> This policy requires that, before issuing a solicitation, the CO must state in the contract file that, among other items, the contracted function is closely associated with an inherently governmental function and the contracting agency will oversee contractor performance to mitigate conflicts and the provision of unauthorized personal services.<sup>15</sup>

In an effort to comply with the April 2019 DOJ policy, ATF issued its own policy in June 2019 to require that its program officials complete a Determination & Findings (D&F) form for each proposed contract over the Simplified Acquisition Threshold (SAT) with the purpose of ensuring that none of the functions would be inherently governmental.<sup>16</sup> Furthermore, COs must document concurrence before issuing a solicitation. While this procedure may accentuate ATF efforts to assess inherently governmental functions before awarding a contract, the template for the D&F form does not include either: (1) a section for describing the methods by which officials identified activity closely associated with inherently governmental functions, or (2) a section for any comments or additional documentation from program or contracting officials. Further, by signing the D&F form, the requesting program official asserts that other agency employees charged with supervising or directing contract workers will understand, and commit to complying with the related DOJ policy. Yet, there are no instructions regarding how these actions should be accomplished or documented. We are concerned that the design of the template for the D&F form may hinder the acquisition team from considering the unique circumstances of each acquisition when determining whether the prospective services involve inherently governmental functions, and thus, the level of oversight the acquisition requires.

Since 2012, ATF has reported results of its strategic repositioning of NIBIN as a lead-generating rather than forensic tool, and in light of that shift and considering Shearwater contract workers focus on supporting and helping to generate investigative leads, we believe that enhanced guidance on assessing inherently governmental functions would benefit ATF acquisition planning and facilitate ATF in overseeing contract workers performing services closely related to such functions. We therefore recommend that ATF enhance its policies related to documenting

---

<sup>14</sup> DOJ Instruction 1301.02.01, *Acquisition Policy Oversight Inherently Governmental and Critical Functions* (April 19, 2019).

<sup>15</sup> According to FAR Subpart 2.101 and FAR Subpart 37.104, a personal services contract is one that, by its express terms or as administered, makes the contract personnel appear to be, in effect, government employees and involves the relative continuous supervision and control of contract personnel by a Government employee. The FAR further states that agencies shall not award personal services contracts unless specifically authorized by statute.

<sup>16</sup> FAR Subpart 2.101, *Definitions*, states that SATs are not to exceed \$150,000 for acquisitions of supplies and services. As of February 16, 2018, the SAT ceiling was raised to \$250,000.

assessments of inherently governmental functions (and those closely associated with such functions) to include all FAR and DOJ requirements, while allowing program and contracting officials to consider circumstances unique to each acquisition.

#### *Need for a Robust Quality Assurance Surveillance Plan*

Contracting agencies must perform quality assurance to determine whether, at a minimum, the procured services conform to contract quality requirements. A quality assurance surveillance plan (QASP) prepared in conjunction with the SOW specifies all work requiring surveillance (i.e., monitoring and evaluation) and the method of surveillance.<sup>17</sup> A well-designed QASP specifies the timing, location, and extent of surveillance activities, to guide government oversight personnel in performing their contract monitoring roles and responsibilities.

As described in FAR Subpart 16.601(c)(1), because a T&M contract bases payment on the specified price per labor hour, services procured under such contracts must be managed carefully to control costs. We requested ATF's QASPs for its 2012 and 2017 contracts. The COR did not provide a QASP for the 2012 contract, but furnished a QASP, dated April 2017, for the 2017 contract. The QASP did not coincide with the preparation of either contract's SOW (in September 2012 and August 2017, respectively), as required by the FAR. ATF prepared the 2017 QASP months before the SOW rather than designing the QASP's monitoring and evaluation methodology to ensure that the requirements outlined in the SOW were met. For T&M contracts, planning for appropriate government surveillance is essential to ensuring efficient performance management and cost control. We believe that after preparing the SOW and before awarding the 2012 and 2017 contracts, ATF should have prepared a QASP to encompass ATF's monitoring plan for its growing contractor workforce, which estimated over a hundred contract workers at various government and local law enforcement sites across the country. For a contract of this size and scope, we believe that a properly developed QASP would have been a valuable guide for all officials involved to ensure effective performance oversight.

#### Assigning and Supporting Oversight Roles and Responsibilities

While the April 2017 QASP communicated the COR's intent to use several oversight methods, including regularly scheduled conference calls with the contractor, Monthly Status Reports, technical status meetings, and site point of contacts (POC), we found that the QASP lacked details regarding the roles and responsibilities of key oversight officials and specific monitoring requirements at each site.

According to an OMB memorandum on the Federal Acquisition Certification for CORs (FAC-COR), other individuals, such as Government Technical Representatives and Task Monitors, can assist the designated COR with contract

---

<sup>17</sup> FAR Subpart 46.4, *Government Contract Quality Assurance*.

administration requirements.<sup>18</sup> Individuals assisting the designated COR require various levels of training and experience depending on the type of contract. Moreover, employees in a blended workforce need to be aware of how to monitor contract worker performance without inadvertently fostering the appearance of an employer-employee relationship indicative of unallowable personal services.<sup>19</sup> However, the COR is ultimately responsible for the duties designated by the CO. Under this QASP, all Shearwater contract workers were to be assigned to a site POC (also referred to as a Government Technical Representative, Government Technical Evaluator, or Quality Assurance Representative), who was often an ATF Supervisory Agent or Firearms Examiner.

The designated COR reported enlisting 35 Government Technical Representatives as POCs to work with contract workers at the various sites to help monitor performance, assist with Monthly Status Reports, and account for ATF property. However, neither the CO nor the designated COR notified most of these site POCs of their designation and the site POCs did not receive: (1) training on their role and responsibilities, (2) a copy of the contracts or SOWs, or (3) training on inherently governmental functions or personal services.<sup>20</sup>

An important characteristic of a personal services contract is when government employees continuously supervise contract workers. While we did not identify site POCs exercising relatively continuous government supervision of a substantial number of contract workers, we noted some specific concerns regarding how ATF POCs interacted with and directed the effort of specific contract workers:

- The FOD Division Chief assigns, reviews, and approves all work products of an experienced CGI Coordinator, including work performed outside of this individual's duties under the contracts, such as preparing strategic planning documents, presentations, and CGI trainings to ATF field offices and other agencies. The Division Chief unknowingly served as a Government Technical Representative as he did not receive the proper notification or training to ensure appropriate interactions with the contract worker.
- Six Laboratory Technicians at ATF's Ammendale, Maryland and Atlanta, Georgia laboratories stated they received technical direction and work priorities from ATF personnel without input from the COR or Shearwater's supervisory personnel. Some of these ATF personnel were unknowingly serving and designated as Government Technical Representatives.

Additionally, two former contract workers became ATF IBIS Specialists and continued to perform similar duties at the same ATF laboratories they worked at as

---

<sup>18</sup> OMB Memorandum *Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)*, September 6, 2011.

<sup>19</sup> FAR Subpart 37.104(a)-(c).

<sup>20</sup> A previous OIG audit found that an ATF employee performed COR duties without written delegation of procurement authority or an appointment memorandum. U.S. Department of Justice, Office of the Inspector General, [Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Sole-Source Small Business Contracting](#), Audit Report 19-15 (March 2019).

contract workers. Government employees performing the same or similar duties as contract workers is another indicator of a personal services contract.

Without being notified of their designation or instructed on their duties as Government Technical Representatives, ATF personnel risked exceeding their contractual authority (as well as ATF's statutory authority regarding personal services) by directing contract workers to perform work that is out of scope. Additionally, when government personnel do not understand the limitations of their authority, they risk making unauthorized commitments for which they and the COR can be held liable.<sup>21</sup>

Considering these risks, we believe that all ATF employees serving as site-POCs require guidance and training on their responsibilities to include how to interact appropriately with contract workers. We therefore recommend that ATF evaluate and update its policies and procedures to ensure that its contract personnel: (1) create timely QASPs in conjunction with the SOW and (2) ensure that ATF employees assisting with contract monitoring and thus serve as Government Technical Representatives know of and receive appropriate training to effectuate their roles and responsibilities.

#### Including Biannual Reviews and Site Visits

ATF's Acquisition Manual states that the Program Office and the COR should perform biannual reviews on contracts to safeguard against improper contractor relationships and maintain proper working relationships with contract workers. The April 2017 QASP failed to include this requirement and we found that neither the Program Office nor the COR completed biannual reviews. An Acquisition Branch official stated that ATF considered removing this requirement from its Acquisition Manual because COR training and certification sufficiently addresses preventative measures and maintaining proper contractor relationships. However, we believe that incorporating biannual reviews in future QASPs may further assist ATF with maintaining appropriate contractor relationships.

Although the acquisition plans for the 2012 and 2017 contracts state that the COR will manage contract performance through meetings and site visits, such site visits were not included in the April 2017 QASP and the COR consequentially did not conduct site visits or inspections to further appraise the service quality. While the FAR does not specifically require that all contracts undergo sites visits, we believe that the site visits stipulated in the acquisition plans would have been useful given the growth and complexity of the contracts and the instances of non-compliance identified in the *Contractor Performance* section of this report. Therefore, we recommend ATF incorporate into the QASP the required biannual reviews and site visits in support of the COR's monitoring activities.

---

<sup>21</sup> FAR Subpart 1.602-2(d)(7)(v) and COR Appointment Memoranda.

## *Fair and Reasonable Pricing Support*

The FAR requires that COs estimate the fair market price of the work to be performed on 8(a) contracts and price the contract in accordance with FAR Subpart 15.4.<sup>22</sup> The FAR also states that the CO should use cost or price analysis and consider commercial prices for similar services, in-house cost estimates, and data submitted by the SBA, 8(a) contractor, or obtained from another government agency.<sup>23</sup> In addition, during pre-award analysis agencies should also consider federal labor laws that set minimum wage, overtime, and recordkeeping standards.

### Independent Government Cost Estimate

The FAR requires that awarding agencies estimate the contract price to demonstrate that the contracted price was fair and reasonable.<sup>24</sup> While ATF developed an Independent Government Cost Estimate (IGCE) before Shearwater received either contract, the IGCEs lacked sufficient detail to support the CO's basis and rationale for determining that contract pricing was fair and reasonable.

For the 2012 contract, the IGCE included an average direct labor estimate for a CGI Coordinator Level III of \$ [REDACTED] per hour (compared to Shearwater's proposed \$ [REDACTED] per hour) and projected a 3-percent rate increase for each option year. ATF also included an amount for travel and training at each site. However, the contract file contained no support or rationale for the average direct labor estimate, rate increase, or travel and training amounts. Without further explanation for the basis of the rates, such as price indices, occupational and locational wage data, or the training and travel estimates for similar work, we could not confirm how ATF determined that the pricing that it estimated for CGI Coordinators was fair and reasonable. Ultimately, the CO accepted Shearwater's proposal estimates as reasonable because the proposed price was less than the IGCE.

For the 2017 contract, ATF based the IGCE on pricing data (bill rates) from the previous 2012 Shearwater and other ATF contracts. However, because the 2012 contract's IGCE lacked a rationale or basis for its estimates, and because of the expanded scope of the 2017 contract, we do not believe relying on 2012 negotiated contract prices provided a sufficient baseline for the 2017 contract's pricing. Moreover, the IGCE did not explain the basis for the rates or factors used to set rate increases, nor did it demonstrate that it was independently developed. For the CGI Coordinator positions in particular, the Program Office merely applied a 2.1 percent rate increase over the rates ATF paid on the 2012 contract. Because this information was lacking from the IGCE, we discussed this with the COR, who

---

<sup>22</sup> FAR Subpart 19.806, *Pricing the 8(a) Contract* references FAR Subpart 15.4, *Contract Pricing*, which directs the CO to obtain data necessary to establish a fair and reasonable price. For the services procured via the Shearwater contracts, typically no additional data is required if the price is based on adequate price competition. Otherwise, such as in a sole-source procurement, data related to prices (e.g., established catalog or market prices, sales to non-governmental and governmental entities) or cost data may be necessary to support the price reasonableness determination.

<sup>23</sup> FAR Subpart 19.807, *Estimating Fair Market Price*.

<sup>24</sup> *Ibid.*

told us that the IGCE was based on: (1) the 2012 negotiated contract rates, (2) rates from ATF contracts with similar requirements, (3) the Consumer Price Index, (4) job announcements for similar positions, and (5) an online tool that provides wage rates on other federal contracts. Additionally, included in the 2017 contract files was a request from the CO to the COR for research on the contract wage rates to support the determination of fair and reasonable pricing. While the COR provided market research for rates for the Laboratory Technician and Administrative Assistant position, we did not identify support for rates associated for the new Technical Writer positions added on the 2017 contract or updated research on rates for the CGI Coordinator or NIBIN Technician positions.

ATF could have better supported its fair market price estimate for both contracts by detailing the basis and rationale for labor rates, thereby assisting the CO in determining a fair and reasonable price. Therefore, to enhance its support for fair and reasonable pricing, we recommend that ATF develop policies and procedures that provide guidance on how to prepare IGCEs with the adequate basis and rationale necessary to support the CO's determination of fair and reasonable pricing.

#### Applicability of Service Contract Labor Standards

The U.S. Department of Labor (DOL) Wage and Hour Division (WHD) enforces the Service Contract Labor Standards (SCLS), which requires that employees working on federal service contracts in excess of \$2,500 not be paid less than the wages and fringe benefits required by law.<sup>25</sup> The SCLS serves to prevent contractors from being able to underbid each other by reducing wages or fringe benefits for service employees, although it contains exemptions for individuals employed in a bona fide executive, administrative, or professional capacity.<sup>26</sup> Because ATF believed the Shearwater contract workers to be exempt from SCLS requirements, ATF did not apply the SCLS clauses requiring minimum wages and fringe benefits to the 2012 or 2017 contracts.

Of the three exemptions, the professional capacity (or professional exemption) has among the most stringent applicability requirements. Under the C.F.R., "in a bona fide professional capacity" means the employee is compensated on a salary or fee basis, and primarily performs work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, excluding knowledge acquired through apprenticeships and on-the-job training.<sup>27</sup> Further, the professional exemption does not apply to investigators, inspectors, and similar employees engaged in preventing or detecting crimes, conducting investigations or inspections for violations of law,

---

<sup>25</sup> FAR Subpart 22.1002-2 "*Wage Determinations Based on Prevailing Rates.*"

<sup>26</sup> 29 C.F.R. §§ 541.0, the SCLS exempt certain executive, administrative, professional, information technology, and sales employees from federal minimum wage and overtime requirements.

<sup>27</sup> 29 C.F.R. § 541.300, *General Rule for Professional Employees*, and 541.3(a)(1), *Scope of the Section 13(a)(1) exemptions.*

preparing investigative reports, or other similar work.<sup>28</sup> Incorrect application of the SCLS may affect the government's pre-award contract price analysis and negotiated rates that should be considered during acquisition planning.

These non-exempt, investigative duties largely mirror what CGI Coordinators and NIBIN Technicians told us they performed under the contracts. Specifically, Shearwater contract workers stated that they evaluated and compiled intelligence from NIBIN unconfirmed hits and distributed the leads to investigators. Additionally, neither the CGI Coordinators nor the NIBIN Technicians appear to qualify for the professional exemption because these contract workers are paid by labor hour and not on a salary basis and, based on our review of the labor categories in the contracts and SOWs, we do not believe that the education qualifications for these positions require a "prolonged course of specialized intellectual instruction" or constitute "knowledge of an advanced type."

We reviewed the contracts and their task orders for the mandatory SCLS clauses and discussed the applicability of the SCLS with ATF contracting officials. ATF contracting officials told us they believed that the CGI Coordinators and NIBIN Technicians qualified as "professionals" and thus were exempt from SCLS protections and benefits. Contracting officials also stated that because these positions had unique job titles that were not listed in the DOL Wage Determination, they determined that the SCLS did not apply.<sup>29</sup> The FAR advises agencies to consult technical experts, which we believe includes the DOL WHD and ATF's Office of Chief Counsel, regarding the applicability of the exemptions from labor laws, to ensure cost realism.<sup>30</sup> However, the contracting officials did not seek such input in reaching their determination.

An employer who claims an exemption from the SCLS has the burden of showing that such an exemption applies.<sup>31</sup> Shearwater officials stated that ATF contracting officials initially told them that the SCLS was not applicable to either contracts' labor categories because the positions qualified for the professional exemption. However, after receiving the 2012 contract, Shearwater classified nearly all of its [REDACTED] ATF contract workers as non-exempt from the SCLS.<sup>32</sup> Therefore, we recommend that ATF enhance its pre-award analysis to include consultation with the DOL WHD and ATF's Office of Chief Counsel for concurrence on SCLS decisions and factor the results into the IGCE as a basis to assess fair and reasonable pricing.

---

<sup>28</sup> 29 C.F.R. § 541.3(b)(1) (2019).

<sup>29</sup> 29 C.F.R. § 541.2. According to DOL, a job title alone is insufficient to establish the exempt status of an employee.

<sup>30</sup> FAR Subpart 22.1003-7, *Questions Concerning Applicability of the Service Contract Labor Standards Statute* and FAR 15.404-1, *Proposal analysis techniques*.

<sup>31</sup> 29 C.F.R. § 779.101 (2019).

<sup>32</sup> We verified the contract workers' classifications (i.e., employee or independent contractor) and SCLS status (i.e., exempt or non-exempt) by reviewing employment agreements representative of each labor category.

### *Consider Performance-Based Acquisition Methods*

Contracting agencies must consider using Performance-Based Acquisition (PBA) methods while planning for service contracts to help orient such contracts toward mission results and foster innovation in contractor performance.<sup>33</sup> Therefore, acquisition plans for service contracts must describe the strategies for implementing PBA or offer a rationale for not using those methods. FAR Subpart 37.601 details the hallmarks of PBA: (1) a performance work statement (PWS) that describes the results to be achieved, rather than detailing how the work is to be accomplished, as in a traditional SOW; (2) measureable performance standards—considering quality, timeliness, and quantity—and a method for assessing contractor performance against those standards; and (3) incentives that correspond to performance standards, where appropriate.

Despite FAR requirements, acquisition plans for the contracts did not demonstrate that ATF considered using PBA. The CO for the 2017 contract explained that he did not consider using PBA because, based on the contract's requirements, he was unsure whether there were measurable standards that would permit structuring the contract in such a way. According to the CO, a quantifiable measure, such as the number of investigative leads generated, may not have captured performance accurately because a contract worker's review of evidence may not result in a lead. The resulting SOWs therefore focused more on tasks that lacked clear measures or performance outcomes. For example, the SOW for CGI Coordinators listed vague duties such as to summarize, report, and share information, or to provide liaison support outside of the office. The SOW did not indicate what constituted successful performance.

Even if ATF ultimately did not believe that PBA was appropriate for the Shearwater contracts, it should have documented the rationale to support this conclusion to, at a minimum, comport with FAR requirements.<sup>34</sup> We recommend that ATF implement procedures to ensure that acquisition planning considers PBA strategies or documents a rationale for not using those methods in its acquisition plans. Such strategies may include incorporating measurable performance standards in requirements documents (i.e., SOW or PWS) that align with performance outcomes, and developing a process to collect data on contractor performance used to support NIBIN program results.

---

<sup>33</sup> FAR Subpart 7.105.

<sup>34</sup> Acquisition planning that affirmatively considered PBA would have provided ATF with an opportunity for it to query NIBIN data; extract information on individual users (including contract workers), sites, and a range of other measures; and set a baseline to gauge empirically the quality of contract worker performance and assess the contracts' overall contributions to the NIBIN program. Following our discussions on this topic, ATF contracting officials stated that they would consider PBA in planning future FOD support services. In fact, the acquisition team personnel, from both the Contract and Program Offices, attended a July 2019 training on PBA topics, including PWS development and contract monitoring. We believe this training demonstrates ATF's efforts to adhere to the FAR requirement to consider PBA in its procurements.

## Contract Performance

While Shearwater generally achieved the objectives set forth in its contracts by assisting with the entry of evidence, data analysis, and summarization of investigative lead reports through ATF's NIBIN, we identified various instances of non-compliance with contract terms and conditions related to oversight and quality control. Specifically, because the COR did not maintain proper documentation we were not able to verify all Shearwater contract workers received background investigations, signed non-disclosure agreements, or completed the proper security training as required by the contracts. Also, Shearwater improperly billed and ATF paid unallowable labor and local travel costs.

### *Contract Worker Security Requirements*

Given the sensitive nature of the work performed in CGI Centers and use of ballistic evidence in criminal investigations, contract workers must be carefully screened and contract terms fully enforced. Both contracts required contract workers to complete various security prerequisites. We judgmentally selected 39 contract workers (including one subcontractor) to test ATF and Shearwater's compliance with these requirements. Table 2, summarizes the results of our testing of ATF and Shearwater compliance with contract worker security requirements, and each requirement is discussed more fully below.

**Table 2**

### **Compliance with Contract Worker Security Requirements**

	Background Investigation	Non-Disclosure	Operations Security Training	Certification Statement	Annual Computer Security Awareness
Yes	34	0	0	20	20
No	5 <sup>a</sup>	39	39	19	19

<sup>a</sup> One of these 5 contract workers who started work under the contract without a background investigation also lacked the required 5-year background re-investigation.

Source: ATF

The terms of the contracts required that Shearwater contract workers complete a background investigation prior to gaining access to ATF information or facilities.<sup>35</sup> Additionally, a government-wide policy requires that contractors be re-investigated every 5 years. As security liaison between ATF's Intake and Investigations Branch, the COR was required to track contract workers' security clearances and maintain complete, up-to-date, well-organized documents regarding the status of security clearances and waivers. We found that for 5 of the 39 selected contract workers, the ATF did not maintain documentation to demonstrate

---

<sup>35</sup> According to the COR checklist contract workers need to obtain either a background investigation or waiver prior to gaining access to ATF information or facilities.

compliance with these requirements. Two of the 39 selected contract workers did not have completed background investigations or waivers prior to their start dates.

From our sample of 39 contract workers, we also found that for 4 contract workers ATF did not conduct the required re-investigations.<sup>36</sup> According to ATF officials, as of July 2019, ATF had a significant backlog of ATF employee and contract worker re-investigations. ATF's Personnel Security Division reported that it has nearly eliminated the re-investigation backlog for ATF employees and has begun addressing contract workers based on risk level and number of years since their last investigation.

The contracts required that contract workers, prior to working on the contract, sign a non-disclosure agreement, which prohibited the loss, misuse, or unauthorized disclosure of sensitive information. The non-disclosure agreement stated that disclosure of information could compromise the security of ATF's operations or adversely cause harm to ATF's mission and assets. We found that ATF did not provide documentation to support that the 39 selected contract workers signed non-disclosure agreements prior to starting work, as required. However, of the 39 contract workers, we received 4 non-disclosure statements which were all signed after the worker's start date. Further, the COR is required to complete an on-boarding checklists for each new contract worker once approved by the Intake and Investigations Branch. According to the checklist, the COR is supposed to ensure that contract workers sign the non-disclosure agreement to gain access to sensitive (but unclassified) information within 10 days of the contract worker's start date. Therefore, the COR checklist does not ensure compliance with the contract requirement that non-disclosure agreements be signed prior to the worker's start date. Because ATF officials further confirmed that the COR did not consistently maintain on-boarding checklists, we could not obtain or otherwise verify whether the COR completed the checklists for these contract workers. ATF officials explained it has changed its procedures to ensure the on-boarding checklists are being collected and maintained in the contractor files going forward.<sup>37</sup>

The contract required that all contract workers complete ATF Operations Security training and annual Computer Security Awareness Training (CSAT). ATF did not provide documentation to support that any of the 39 selected contract workers completed the required Operations Security training. ATF stated that contract workers instead completed annual CSAT. ATF officials stated that in accordance with ATF's Rules of Behavior, Operations Security training and CSAT are actually the same training and there is only one certification. However, ATF's Rules of Behavior does not support this statement, and therefore, completion of the annual CSAT does not fulfill the specific contract requirement for Operations Security training.

---

<sup>36</sup> One contract worker did not have a background investigation prior to starting under the contract and also did not have the required re-investigation completed.

<sup>37</sup> ATF provided evidence that the majority of contract workers received nondisclosure statement awareness training. However, that training alone does not fulfill the contract requirement.

The contract required that each contract worker acknowledge he or she has read and will comply with ATF's Information System Security Directives. To comply with this contract requirement, ATF told us that all contract workers are required to acknowledge that they have read, understood, and will comply with the stated Rules of Behavior regarding access to and use of ATF computing devices and other support systems. Contract workers document their acknowledgement by signing the Certification Statement, which is recorded as a part of the mandatory annual CSAT. Therefore, if contract workers did not complete annual CSAT, they also did not complete the required Certification Statement. The contracts required in addition to receiving the Operations Security Training, all contract workers were required to complete annual CSAT. As part of the on-boarding checklist, the COR was supposed to ensure contract workers with access to ATF IT systems completed the annual CSAT training. However, for 19 of the 39 selected contract workers, we did not receive documentation to verify that the contract workers completed annual CSAT and signed the required Certification Statement for all years of employment. As previously discussed, ATF officials stated that on-boarding checklists were not consistently maintained and as a result, we could not verify whether the COR completed the checklists for these contract workers.

Overall, the deficiencies with contract worker security requirements raise concerns regarding ATF's management of this contract with regard to the security of ATF's operations and its efforts to safeguard its mission and assets. Therefore, we recommend ATF develop procedures to ensure all contract workers complete background investigations and sign non-disclosure agreements prior to working on a contract and complete the required certifications and security trainings.

### *Invoice Testing*

The CO delegated the responsibility of reviewing and approving Shearwater invoices to the COR to ensure that each invoice accurately reflected work completed and delivered and certify acceptance under the contract. If, in the COR's opinion, any charge on an invoice should be disallowed, the COR was to notify the CO, Shearwater, and ATF's Financial Management Division (FMD) within 5 days of receipt and seek a proper, corrected invoice from Shearwater. To test compliance with contract terms and conditions, as well as applicable regulations, we judgmentally selected 7 invoices, totaling approximately \$3.5 million. Three selected invoices totaling about \$880,000 were from the 2012 contract, four invoices totaling approximately \$2.6 million were from the 2017 contract.

In our draft report we noted that under the T&M contracts, Shearwater applied a general and administrative (G&A) rate of [REDACTED] or [REDACTED] percent to travel expenses and other direct costs (ODC) on the seven sampled invoices that totaled \$4,317. ATF officials stated that the contracts permitted Shearwater to charge G&A to travel expenses and ODC. However, the contracts did not include a negotiated G&A rate. In response to the draft report, ATF and Shearwater provided additional information not made available to us previously to support that ATF approved Shearwater's G&A rates. Therefore, we updated our report and removed the reported questioned costs to reflect that the \$4,317 is supported.

Additionally, under the 2017 contract, Shearwater workers cannot receive reimbursement for local travel within a 50-mile radius of their primary worksite. For four of the seven invoices we tested, we found that Shearwater billed and ATF paid for local travel that was less than 50 miles. Specifically, we identified 10 instances, totaling \$809, of local travel that was less than 50 miles.

Through our audit work, we also identified a contract worker that was classified as a CGI Coordinator, but was performing duties associated with a Technical Writer. We discuss this non-compliance in further detail in our *Contract Compliance* section. Shearwater billed an hourly rate of \$ [REDACTED] for this contract worker as a CGI Coordinator, but the hourly rate for a Technical Writer was \$ [REDACTED], a difference of \$ [REDACTED] per hour. Therefore, Shearwater invoiced and ATF paid \$10,982 in unallowable labor costs for services charged at a rate above the rate associated with the level of work performed by the contract worker. We recommend ATF remedy \$10,982 in unallowable labor costs.

Overall, we found that Shearwater did not have policies related to invoice preparation and that ATF's policies for review were not adequate to identify these unallowable expenses. Therefore, we recommend ATF enhance its policies and procedures related to invoice review to ensure that it does not pay unallowable costs.

#### *Shearwater Quality Control Plan*

Because substandard contractor work could negatively impact the success of ATF's mission to reduce violent crime committed with firearms, the contracts required that Shearwater establish, maintain, and manage a Quality Control Plan (QCP) to ensure adequate performance. Specifically, the contract required that the QCP include inspections, validation, evaluation, corrective action, and procedures necessary to affect quality control of all performance under the contract. We found that Shearwater had a QCP to guide contract monitoring, but it did not contain sufficient detail. Rather, Shearwater's QCP described itself as a top-level document, and although it referenced more detailed, project-level management directives, Shearwater officials acknowledged that they do not have the detailed project-level management directives or policies. As such, we evaluated Shearwater's QCP to assess whether it contained the elements required by the contract.

Shearwater's QCP provided several potential monitoring methods and techniques, but had no specific policies or procedures related to inspections, validation, evaluation, or corrective action as required by the contract to ensure the quality of services. For example, we found that at the NNCTC and ATF laboratory, Shearwater contract workers performed peer reviews of correlation reviews. However, this informal peer review process is not part of the QCP and does not extend to all contract workers.

In an effort to prevent quality deficiencies, Shearwater's QCP included employee accountability, which required all employees be made aware of their QCP responsibilities. Shearwater's QCP also discussed an inspection program of all

services, corrective actions, continuous improvement methods, and maintenance of records, led by the Program Manager. However, the QCP lacked specific inspection policies and procedures. The QCP only provided examples of potential Program Manager inspections, for instance the Program Manager could meet with employees to assess the timeliness and quality of their work. We found that Shearwater did not have policies and procedures related to quality control or performance evaluations. Contract workers told us they received limited feedback regarding the quality of their work. In some locations, contract workers reported never meeting the Shearwater Program Manager. The majority of interviewed contract workers were also unaware of Shearwater's QCP. Given Shearwater's inadequate quality control procedures, conducting performance evaluations could be a valuable way to identify and communicate quality deficiencies.

Because Shearwater contract workers help identify evidence in support of criminal investigations, it is critical that Shearwater develop sufficient quality assurance procedures, as required in the contracts, and adequately ensure the services performed under the contract comply with quality and timeliness requirements. Maintaining a sufficient QCP is particularly important in light of ATF's own QASP deficiencies, discussed in the *Need for a Robust Quality Assurance Surveillance Plan* section of this report. Therefore, we recommend ATF develop procedures to ensure contractors implement appropriate quality control plans and procedures, including quality control program awareness and associated training for contract personnel.

### *Contract Compliance*

The contracts required that Shearwater submit a Monthly Status Report that captured the number of hours worked each day and the services provided by hour for each contract worker. The COR used the Monthly Status Report to track and ensure the work performed by contract workers was within the scope of the contract. We reviewed 4 months of Monthly Status Reports for each contract under our review. We found that Shearwater generally achieved the objectives set forth in its contracts by assisting with the entry of evidence, data analysis, and summarization of investigative lead reports through ATF's NIBIN. However, we found that 33 of 515 (6.4 percent) Monthly Status Reports did not contain sufficient detail on the services provided. We also identified Monthly Status Reports where contract workers reported involvement with test-firing weapons, which was outside the scope of their position description, according to the contracts. Additionally, as noted above, we identified one contract worker classified as a CGI Coordinator, but his actual duties were more commensurate with the duties associated with the Technical Writer position. A CGI Coordinator's main duties relate to timely entry and analysis of crime gun data, which can only be performed at a NIBIN site. However, this contract worker's primary duties included developing policy and assisting with presentations and training, did not work at a NIBIN site, and did not have access to NIBIN equipment such as BrassTrax and MatchPoint Plus. Therefore, we determined that this contract worker should have been classified as a Technical Writer. In our *Invoice Testing* section, we identified unallowable costs associated with the difference in hourly rate associated with the two positions.

The 2017 contract stated monthly technical status meetings should: (1) be held with ATF's COR; (2) establish priorities; and (3) coordinate resolution of problems or opportunities. We requested the monthly technical status meeting minutes for the last 12 months of the contract. ATF provided weekly status reports for 2018 that provided updates on hiring of contract workers but did not indicate that these meetings were held with the COR, included establishing any sort of projected priorities, and demonstrated problem resolution or identify opportunities. Therefore, we determined ATF did not properly complete this task, as required under the terms of the contract.

The 2017 contract also required Shearwater and ATF to convene a month before the end of each option year, to discuss work efforts for the following year. The contractor was to provide the minutes of these meetings, including attendance, issues discussed, decisions made, and action items assigned, to the COR within 5 days following the meeting. However, neither Shearwater nor ATF could provide any evidence that it conducted a yearly technical status meeting prior to exercising the first option year.

Further, under the 2017 contract, Shearwater was required to notify and request written approval from the CO within 30 days if it changed key personnel, such as its Program Manager. During our initial interviews, we determined that the Program Manager identified in the contract had been promoted to President and a new Operations Manager had been hired. We asked Shearwater if it informed and obtained written approval from ATF when the Program Manager changed. Shearwater officials stated the new employee was not the Program Manager, but rather the Operations Manager. However, based on our understanding and interpretation of the Operations Manager's responsibilities, it appears he assists and completes many of the Program Manager duties as described in the contract. For example, many Shearwater contract workers described the employee as their direct supervisor. Additionally, these contract workers stated that the Operations Manager was responsible for approving timesheets, pay adjustments, performance feedback, and directing work, all of which mirror the responsibilities of the Program Manager, as described in the SOW. Shearwater further explained that as the NIBIN program grew, it was necessary to hire the Operations Manager to assist the Program Manager with all of the duties required in the contract. Shearwater notified ATF of the hiring of the Operations Manager; however, Shearwater was unable to provide evidence of a written approval from ATF as required in the contract.

The 2017 contract required that Shearwater certify to the CO that it returned all government equipment and purged departing contract workers' laptops of government information. Similar to the on-boarding checklists discussed previously, the COR is required to maintain separation checklists for each contract worker. We requested to review these checklists and ATF officials told us that these documents were not consistently maintained. Further, because ATF completed the separation checklists and they were not signed by the departing workers, we were unable to verify whether Shearwater certified that the workers returned government equipment and purged their laptops of government information.

Overall, these instances of non-compliance with various contract requirements further demonstrate ATF's inadequate contract oversight discussed throughout the report. Consequently, we recommend that ATF develop policies or procedures to enhance its oversight of contractor compliance with contract terms and conditions, including monitoring, to ensure work is performed within the scope of the contract, ATF approves key personnel changes, and required separation checklists and procedures are completed.

### **Preserving Contract Worker Whistleblower Protections**

We found that ATF did not notify Shearwater that it must inform its workers of their whistleblower rights, as required. Whistleblowers perform an important service to DOJ and the public when they report what they reasonably believe to be evidence of wrongdoing. Whether whistleblowers are federal employees, contractors, subcontractors, or grantees, federal law protects these individuals against reprisal. Specifically, 41 U.S.C. § 4712 provides that a contract employee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing certain information that the employee reasonably believes would evidence waste, mismanagement, abuse of authority, or other violations of law, rule or regulation related to a contract.<sup>38</sup>

Recognizing this protection, DOJ Procurement Guidance Document (PGD) 16-05 requires that COs insert FAR Subpart 52.203-17, *Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights* (required FAR clause), into all new contracts. The clause states that the contract workers are subject to the 41 U.S.C. § 4712 whistleblower protections and requires the contractor to inform its workers in writing of their whistleblower rights and include the required FAR language into applicable subcontracts.

Additionally, for all new as well as existing contracts, PGD 16-05 requires the COs to: (1) provide contractors with the "Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees" document (Whistleblower Information Document); (2) direct contractors and subcontractors to distribute the Whistleblower Information Document to their workers; and (3) direct the contractor to provide an affirmative response notifying DOJ of successful distribution of the Whistleblower Information Document to its employees, which the COs must preserve in the contract file.

We reviewed all of the modifications to the 2012 contract issued after the August 2016 effective date of PGD 16-05, and found no evidence that ATF adhered to the requirements for existing contracts, and provided the Whistleblower Information Document to Shearwater for distribution to its workers. Likewise, the 2017 contract, awarded in September 2017, also did not include the required FAR

---

<sup>38</sup> The statute specifies that to be protected from reprisal, the whistleblower must make the disclosure to any of the seven persons or bodies listed in 41 U.S.C. § 4712(a)(2), which includes the cognizant Inspector General. See also FAR Subpart 3.9, *Whistleblower Protections for Contractor Employees* (April 2014) and DOJ Procurement Guidance Document (PGD) 16-05 (August 2016).

clause or evidence that Shearwater received the Whistleblower Information and distributed it to its workers.

ATF COs told us that they were unaware of the PGD 16-05 requirements. According to one CO, ATF acquisition personnel follow a checklist that contains the requirements applicable to each contract type, and the contract worker whistleblower rights information was not included in this checklist. As a result, neither ATF nor Shearwater informed contract workers of their whistleblower rights and protections, potentially undermining the ability of the contract workers to report waste, abuse, or other violations of laws and regulations. In addition, ATF potentially missed the opportunity to gain vital information from contractor workers to prevent the wrongdoing that they may have otherwise disclosed.

We discussed this issue with ATF in April 2019. The CO subsequently modified the 2017 contract to include the required FAR clause and provided the documentation to the OIG. The CO further provided the whistleblower rights information to Shearwater for distribution to its contract workers, and obtained an affirmative response that Shearwater had distributed the information. The OIG verified that Shearwater disseminated the information to its contract workers. In August 2019, ATF updated its Policy Acquisition Checklist for COs to include this requirement in all future contracts exceeding the Simplified Acquisition Threshold. ATF officials further stated that they would modify 74 remaining contracts to include the FAR-required whistleblower protection clause by December 2019. Therefore, we recommend that ATF provide evidence that all 74 contracts have been modified to include the whistleblower provision.

## CONCLUSION AND RECOMMENDATIONS

Our review of ATF's administration of the Shearwater contracts identified potential areas of improvement related to performance tracking and standardization applicable not only to the contracts, but also to the overall NIBIN program. Specifically, ATF could enhance NIBIN's transition to an intelligence-gathering tool by further establishing meaningful performance measures, specifically with regard to tracking successful arrests and prosecutions consistently across different jurisdictions, to demonstrate NIBIN's effect on ATF's overall mission. ATF should also continue to deploy its national database to all NIBIN users, and evaluate how the database could track performance that best demonstrates NIBIN success. Lastly, ATF should enhance its standardized lead report to include solvability factors in order to enhance the consistency and relevancy of information to law enforcement.

With regard to ATF's administration and oversight of the Shearwater contracts, we found ATF did not demonstrate that it took advantage of acquisition planning strategies needed to assess the reasonableness of proposed rates and effectively manage and guide award performance. We believe that unrealistic acquisition lead times and the lack of coordinated planning between ATF's contracting and programing officials manifested in contract oversight shortcomings as the role of contract workers evolved to keep pace with the reinvigorated NIBIN program. As a result, ATF could not: (1) show that the procured intelligence support services were not inherently governmental, (2) support cost estimates and the appropriateness of its labor categories, or (3) document that it considered performance-based acquisition methods.

Further ATF did not develop an adequate QASP because it lacked detail related to oversight roles and monitoring requirements. We found that ATF's lack of contract oversight resulted in various instances of non-compliance with contract terms and conditions. For example, we found that ATF's invoice review was inadequate, resulting in Shearwater improperly billing and ATF paying unallowable travel and labor expenses. We also found that ATF did not ensure all contract workers had background investigations, signed non-disclosure statements, and proper security training. Finally, Shearwater did not implement an adequate QCP complete with inspections, validation, evaluation, corrective action, and procedures necessary to ensure adequate performance.

Finally, we found that ATF's contracting officials did not include required whistleblower protection clauses in the Shearwater contracts. As such, Shearwater did not notify the contract workers of their whistleblower rights, which could have adversely affected contract workers' knowledge of their rights and responsibilities to disclose wrongdoings they may have observed. Once we brought this issue to ATF's attention, ATF updated applicable contract terms retroactively and enhanced its policies and procedures to notify contracting officials to include, as appropriate, whistleblower protection clauses in future contracts.

We recommend that ATF:

1. Continue to develop procedures and mechanisms to collect performance data that measures the success of the NIBIN program as it relates to ATF's overall mission, such as the successful arrest and prosecution of shooters.
2. Continue to deploy NESS to all NIBIN partners, and evaluate how NESS could be used to track performance measures that demonstrate the success of the NIBIN program and the program's impact on ATF's overall mission.
3. Enhance its standardized lead report in NESS to include solvability factors in order to provide consistent, valuable information to law enforcement that incorporates ATF guidance.
4. Assess its current lead time minimums for clarity and realism for such multi-year crime gun intelligence contracts; and formalize a procedure for its contracting officials to notify program officials of expiring contracts in a timely manner.
5. Reassess its needs and develop a comprehensive acquisition plan that adequately addresses all significant acquisition considerations in FAR Subpart 7.105.
6. Enhance its policies related to documenting assessments of inherently governmental functions (and those closely associated with such functions) to include all FAR and DOJ requirements, while allowing program and contracting officials to consider circumstances unique to each acquisition.
7. Evaluate and update its policies and procedures to ensure that its contract personnel: (1) create timely QASPs in conjunction with the SOW and (2) ensure that ATF employees assisting with contract monitoring and thus serve as Government Technical Representatives know of and receive appropriate training to effectuate their roles and responsibilities.
8. Incorporate into the QASP the required biannual reviews and site visits in support of the COR's monitoring activities.
9. Develop policies and procedures that provide guidance on how to prepare IGCEs with the adequate basis and rationale necessary to support the CO's determination of fair and reasonable pricing.
10. Enhance its pre-award analysis to include consultation with the DOL WHD and ATF's Office of Chief Counsel for concurrence on SCLS decisions and factor the results into the IGCE as a basis to assess fair and reasonable pricing.
11. Implement procedures to ensure that acquisition planning considers PBA strategies or documents a rationale for not using those methods in its acquisition plans.

12. Develop procedures to ensure all contract workers complete background investigations and sign non-disclosure agreements prior to working on a contract and complete the required certifications and security trainings.
13. (This recommendation was removed from the final report based on information ATF and Shearwater provided in response to the draft report.)
14. Remedy \$10,982 in unallowable labor costs.
15. Enhance its policies and procedures related to invoice review to ensure that it does not pay unallowable costs.
16. Develop procedures to ensure contractors implement appropriate quality control plans and procedures, including quality control program awareness and associated training for contract personnel.
17. Develop policies or procedures to enhance its oversight of contractor compliance with contract terms and conditions, including monitoring to ensure work is performed within the scope of the contract, ATF approves key personnel changes, and required separation checklists and procedures are completed.
18. Provide evidence that all 74 contracts have been modified to include the required FAR Subpart 52.203-17 whistleblower provision.

### OBJECTIVES, SCOPE, AND METHODOLOGY

#### Objectives

The objectives of the audit were to assess: (1) The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) acquisition planning, administration, and oversight of the contracts and task orders; and (2) Shearwater Systems, LLC's (Shearwater) performance and compliance with the contracts' and task orders' terms and conditions, including financial management, monitoring, reporting, and progress toward meeting the contracts goals and objectives in support of the NIBIN program, as well as applicable laws and regulations.

#### Scope and Methodology

This was an audit of two ATF crime gun intelligence support contracts, DJA-12-ICO-0016 and DJA-17-AHDQ-K-0981, awarded to Shearwater. From September 30, 2012 through September 30, 2019, ATF obligated to the contracts over \$11 million and about \$17.7 million, respectively.

To accomplish the audit objectives, we analyzed the contract files, which contained documents supporting pertinent decisions made during the contracts' solicitation and planning phases. These documents included, but were not limited to the pre-award offer and acceptance letters exchanged with the Small Business Administration (SBA), the contracts and task orders, Contracting Officer's Representative (COR) appointment memoranda, Price Negotiation Memoranda, Independent Government Cost Estimates, statements of work, quality assurance and surveillance plans, contractor handbook and code of ethics documents, invoices, resumes, personnel, security and travel documents, and contractor performance evaluations.

#### *Interviews*

We conducted 55 interviews of key officials, supervisors, and contract workers from ATF, Shearwater, and the SBA in the Washington, D.C. Metropolitan Area and 12 other locations across the United States. We interviewed the following ATF personnel: the former Acquisition Branch Chief, two Contracting Officers, one Contract Specialist, one COR, the Division Chief of the Firearms Operations Division, and the Deputy Division Chief of the NIBIN Site Operations Branch and NIBIN National Correlation & Training Center. We also interviewed one NIBIN Branch Chief, two NIBIN Section Chiefs, four Crime Gun Intelligence Center Group Supervisors, one IBIS Specialist, one Program Analyst, one Program Manager, and one Supervisor Firearms Branch Examiner. Additionally, we consulted the SBA Business Opportunity Specialist who signed the acceptance letter for the bridge contract authorizing ATF to award the contract to a Shearwater sister company.

We also interviewed the President of Shearwater and the Operations Manager. We interviewed contract personnel on-site in the Washington, D.C. area

and Denver. We interviewed a total of 34 of [REDACTED] active contract workers ([REDACTED] percent) who, as of December 12, 2018, were charging costs to the contract. Specifically, we interviewed 3 Administrative Assistants, 8 Crime Gun Intelligence Coordinators, 6 Laboratory Technicians, 14 NIBIN Technicians, and 3 NIBIN Trainers located at police departments or ATF sites.

### *Acquisition Planning, Administration, and Oversight*

To assess the adequacy of ATF's acquisition planning, administration and oversight of the contracts, we reviewed the partnership agreement between DOJ and the SBA to gain an understanding of the responsibilities of each entity. We reviewed FAR, ATF and DOJ policies and procedures, DOL, and OMB memoranda that establish pre-solicitation, solicitation, and award and contract administration in addition to Shearwater's policies and procedures.

Contracting and program officials provided insight on events surrounding the pre-award and administration of the contracts, as well as roles and responsibilities during the contract life cycle. We analyzed all SOWs associated with the contracts to gain an understanding of the contract requirements and updates to labor categories during the performance periods. We identified key written considerations for acquisition planning, which we evaluated as follows:

- written acquisition plan,
- assessment of inherently governmental functions,
- quality assurance surveillance plan,
- support for fair and reasonable pricing, and
- performance-based acquisition methods.

We designed procedures to gain an understanding of the nature and extent of the crime gun intelligence services provided under the contracts. We reviewed contract clauses, contracting officials' files, announcements for federal employment opportunities similar to those performed under the contracts, ATF's mission statement, strategic planning documents, and program area descriptions.

### *Compliance and Performance*

The contracts identified specific personnel requirements related to security and experience. To assess ATF's and Shearwater's compliance with these requirements, we judgmentally selected a sample of 39 of [REDACTED] contract workers. We requested evidence of a valid background investigation, signed non-disclosure and certification statements, evidence of completion of operations security training and annual computer security awareness training, and evidence of the required job experience. Using professional judgement, we selected a non-statistical sample of seven invoices totaling approximately \$3.5 million. We selected three invoices from contract DJA-12-ICO-0016 and four invoices from contract DJA-17-AHDQ-K-0981. We reviewed each of the selected invoices for compliance with contract terms and applicable laws and regulations, and reconciled the invoiced hours to timesheets.

We also reconciled select timesheets to the monthly reports and traced travel and other direct costs to supporting documentation.

We reviewed the contract agreement, contract modifications, and accompanying SOW for each of the contracts under our review to identify the various contract terms, conditions, award deliverables, and other requirements. We also reviewed the COR designation letters to determine other deliverables that are required under each contract. We then interviewed ATF and Shearwater personnel, and reviewed Monthly Status Reports, meeting minutes, invoices, and other relevant documentation to determine if Shearwater was compliant with the requirements under the contracts. Overall, we identified non-compliance with various contract requirements, which are discussed in the Audit Results section of this report. In our judgment, the areas of non-compliance we identified further demonstrates ATF's inadequate contract oversight.

#### *Statement on Compliance with Generally Accepted Government Auditing Standards*

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### *Internal Controls*

In this audit we performed testing, as appropriate, of internal controls significant within the context of our audit objectives. A deficiency in internal control design exists when a necessary control is missing or is not properly designed so that even if the control operates as designed, the control objective would not be met. A deficiency in implementation exists when a control is properly designed but not implemented correctly in the internal control system. A deficiency in operating effectiveness exists when a properly designed control does not operate as designed or the person performing the control does not have the necessary competence or authority to perform the control effectively.<sup>39</sup>

As noted in the Audit Results section of this report, we identified deficiencies in ATF internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect ATF's ability to oversee and monitor contracts. This determination was based on several concerns identified including:

---

<sup>39</sup> Our evaluation of ATF's and Shearwater's internal controls was not made for the purpose of providing assurance on its internal control structure as a whole. ATF and Shearwater management are responsible for the establishment and maintenance of internal controls. Because we are not expressing an opinion on ATF's and Shearwater's internal control structure as a whole, this statement is intended solely for the information and use ATF and Shearwater. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

- allowing contractors to work under the contract without valid background investigations, signed non-disclosure statements, and proper security training;
- inadequate invoice review;
- unallowable costs paid by ATF;
- insufficient quality assurance procedures; and
- incomplete contract deliverables.

### *Compliance with Laws and Regulations*

In this audit we also tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that ATF's and Shearwater's management complied with federal laws and regulations for which noncompliance, in our judgement, could have a material effect on the results of our audit. Our audit included examining, on a test basis, ATF's and Shearwater's compliance with the following laws and regulations that could have a material effect on ATF's and Shearwater's operations:

- FAR Subpart 1.6, *Career Development, Contracting Authority, and Responsibilities*;
- FAR Subpart 2.101, *Definitions*;
- FAR Subpart 3.9, *Whistleblower Protections for Contractor Employees*;
- FAR Subpart 4.8, *Government Contract Files*;
- FAR Subpart 7.1, *Acquisition Plans*;
- FAR Subpart 7.5, *Inherently Governmental Functions*;
- FAR Subpart 15.4, *Contract Pricing*;
- FAR Subpart 16.601, *Time and Material Contracts*;
- FAR Subpart 19.8, *Contracting with the Small Business Administration*;
- FAR Subpart 22.10, *Service Contract Labor Standards*;
- FAR Part 37, *Service Contracting*;
- FAR Part 46, *Quality Assurance*;
- FAR Part 52, *Solicitation Provisions and Contract Clauses*;
- 29 C.F.R. § 541, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (2019)*; and
- 29 C.F.R. § 779, *The Fair Labor Standards Act (2019)*.

This testing included analyzing contract files and related documentation, interviewing ATF and Shearwater personnel, and reviewing invoices and supporting documentation. As noted in the Audit Results section of this report, we found that ATF and Shearwater did not comply with federal regulations related to acquisition

planning, quality assurance, Service Contract Labor Standards, invoicing, and Whistleblower Protections.

#### *Sample-based Testing*

To accomplish our audit objectives, we performed sample-based testing for personnel and security requirements and invoice testing. In this effort, we employed a judgmental sampling design to obtain board exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

#### *Computer-Processed Data*

During our audit, we obtained information from Shearwater's accounting system. We did not test the reliability of those systems as a whole, therefore, any findings identified involving information from those systems were verified with documentation from other sources.

**SCHEDULE OF DOLLAR-RELATED FINDINGS**

<u>Description</u>	<u>Amount</u>	<u>Page</u>
<b>Questioned Costs:</b>		
Unallowable Labor	<u>\$10,982</u>	25
<b>Total Questioned Costs<sup>40</sup></b>	<b>\$10,982</b>	

---

<sup>40</sup> **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, the provision of supporting documentation, or contract ratification, where appropriate.

## APPENDIX 3

# BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES' RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Assistant Director*

---

Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

401030.KH  
8310

MEMORANDUM TO: Assistant Director  
Office of Professional Responsibility and Security Operations

FROM: Assistant Director (Management)/CFO

SUBJECT: Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives'  
Administration of the National Integrated Ballistic Information  
Network and Its Sole-Source Contracts Awarded to Shearwater  
Systems, LLC

This memorandum responds to the recommendations contained in the Office of Inspector General's (OIG) report titled "Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Administration of the National Integrated Ballistic Information Network and Its Sole-Source Contracts Awarded to Shearwater Systems, LLC." We welcome OIG's constructive comments and appreciate the opportunity to respond.

**Recommendation 1: Continue to develop procedures and mechanisms to collect performance data that measures the success of the NIBIN program as it relates to ATF's overall mission, such as the successful arrest and prosecution of shooters.**

ATF concurs with this recommendation. This recommendation has been noted in previous reviews of the NIBIN program such as the MITRE report as well as self-assessments within ATF. To address it, ATF FOD has developed procedures to collect results and performance measures of the NIBIN program. In the spring of 2018, iNIBIN, a tool for the submission of NIBIN success stories was issued to all ATF field personnel; as of February 2020, 978 success

Assistant Director  
Office of Professional Responsibility and Security Operations

stories documenting the use of NIBIN and crime gun intelligence by ATF and state/local partners have been collected. While iNIBIN has recorded these many successful investigative and prosecutorial outcomes using NIBIN, there remains difficulty in capturing such data largely due to the fact that much of follow-up is conducted at the state/local level and not reported in ATF's own case management system. The NIBIN Enforcement Support System or NESS, the crime gun intelligence analytical platform utilized by ATF field divisions, has results reporting capabilities similar to iNIBIN; NESS was deployed to all ATF Field Divisions personnel in the fall of 2018 and is beginning to be deployed to state/local partners, thus allowing for the direct submission of results by these agencies and enabling a more comprehensive snapshot of NIBIN successes.

It should also be noted that ATF is currently piloting Crime Gun Enforcement Teams or CGETs, which are the enforcement arm of the CGIC or dedicated investigative groups to specifically conduct follow-up of CGI leads. During the 5-city pilot, ATF FOD has issued and collected quarterly performance metrics focusing on the number of suspected shooters arrested and number of shootings solved, further demonstrating the effectiveness of the program. These stats will likely be utilized beyond the pilot when the CGET concept is implemented nationwide.

**Recommendation 2: Continue to deploy NESS to all NIBIN partners, and evaluate how NESS could be used to track performance measures that demonstrate the success of the NIBIN program and the program's impact on ATF's overall mission.**

ATF concurs with this recommendation. To address it, ATF deployed NESS to all ATF personnel in all field divisions in October of 2018. At that time, 5 representatives from each field division were invited to ATF HQ for NESS related training; these invitees were provided materials and instructions to serve as trainers in the respective divisions. It should be noted that the second version or update of NESS, released in December of 2018, incorporated the ability for all users to report the results or outcomes of CGI leads.

Since this initial rollout, ATF has conducted numerous NESS trainings for ATF and contractor personnel to include in-person conferences, webinars, and video vignettes in order to familiarize users with the tool.

In September 2019, the AD of Field Operations distributed a directive requiring all field personnel to use NESS to collect, analyze, and track all NIBIN/CGI leads in lieu of independent spreadsheets or databases.

Currently, ATF FOD has begun to deploy NESS to state/local partners. ATF created a NESS Memorandum of Understanding (MOU) process to provide partner law enforcement agencies access to NESS. ATF has provided this MOU and supporting documentation to 11 initial agencies (including those participating in the CGET pilot). Upon agency request, ATF has provided security documentation and answered legal questions from the agencies' counsel. To date, ATF has received the signed MOUs from 7 agencies and is processing or has already

Assistant Director  
Office of Professional Responsibility and Security Operations

processed the associated user requests. ATF will continue to supply the MOU, provide guidance and create user accounts to additional agencies.

**Recommendation 3: Enhance its standardized lead report in NESS to include solvability factors in order to provide consistent, valuable information to law enforcement that incorporates ATF guidance.**

ATF concurs with this recommendation. To address it, ATF standardized the use of NESS by all ATF Field Divisions in September of 2019; NESS provides a single, standardized format for viewing all NIBIN and relevant intelligence collected for a specific lead. This standard lead sheet was developed based on review of samples previously used by all CGICs in the field. Moreover, this printable lead summary sheet in NESS contains the basic NIBIN data to include potential solvability factor of time between linked events. It also contains a section for additional firearms recovered from and/or used on the same events, which provides insight on interconnectivity of violence. Data related to locations and people associated with events is also incorporated on the lead sheet. That said, due to local variations across the country regarding types/amount of violent crimes as well as the investigative response, CGICs may differ in weighing specific information contained or not-contained on a standard lead sheet.

**Recommendation 4: Assess its current lead time minimums for clarity and realism for such multiyear crime gun intelligence contracts; and formalize a procedure for its contracting officials to notify program officials of expiring contracts in a timely manner.**

ATF concurs with this recommendation. ATF has met with Acquisition Staff to identify the need for and processes to develop a reporting and notification procedure to track and communicate lead times to assure the accuracy of estimated lead times and will establish a reasonable timeframe to notify the Program Offices of expiring contracts.

**Recommendation 5: Reassess its needs and develop a comprehensive acquisition plan that adequately addresses all significant acquisition considerations in FAR Subpart 7.105.**

ATF concurs with this recommendation. As part of its contracting officer/specialists performance management system, ATF will conduct bi-annual mandatory training to review and discuss our Acquisition Plans and the need to comply with all facets of FAR 7.105. ATF will ensure contracting officers and 1<sup>st</sup> and 2<sup>nd</sup> line reviewers of contracts will be responsible for reviewing and assuring all elements within FAR 7.105 were met. ATF will also incorporate this and Performance Based Acquisition (PBA) content to semi-annual training and include the specific rationale for selecting or not selecting PBA as a more viable work statement for the specific requirement being procured in each Acquisition Plan which will also be included in the 1<sup>st</sup> and 2<sup>nd</sup> line reviewers' analysis. ATF requests that Recommendation # 5 and # 11 are combined, since both findings are similar in nature.

Assistant Director  
Office of Professional Responsibility and Security Operations

**Recommendation 6: Enhance its policies related to documenting assessments of inherently governmental functions (and those closely associated with such functions) to include all FAR and DOJ requirements, while allowing program and contracting officials to consider circumstances unique to each acquisition.**

ATF concurs with this recommendation. As part of its contracting officer/specialists performance management system, ATF is currently discussing training and methodology to ensure all contracting officers are familiar with and apply the tests of Inherently Governmental identifiers to job classifications and functions. ATF has begun integrating the DOJ Inherently Governmental document presented at the OIG out-brief meeting into its acquisitions process. The document has been implemented into the ATF checklists. Links to Department of Justice Document [DOJ Instruction 1301.02.01](#) (Inherently Governmental and Critical Functions) are within the ATF document. (Attachment 1)

**Recommendation 7: Evaluate and update its policies and procedures to ensure that its contract personnel: (1) create timely QASPs in conjunction with the SOW; and (2) ensure that ATF employees that assist with contract monitoring and thus serve as Government Technical Representatives know of and receive appropriate training to effectuate their roles and responsibilities.**

ATF concurs with this recommendation. As part of its contracting officer/specialists performance management system, ATF will ensure contracting officers are proactively creating meaningful QASPs that directly crosswalk to the PWS or SOW. The QASP will include close monitoring of performance and contain acceptable and achievable parameters for such monitoring. The QASPs will be reevaluated periodically to assure they are current and meaningful performance measures. ATF will review its contracting office organizational structure, authorized contracting manpower, and job assignments/expectations to determine if modifying employee performance work plans, the organizational structure, contracting officer/specialists job assignments, or contracting support staff will create opportunities for improved contractor oversight and monitoring by contracting officers is possible and within resourcing constraints. ATF requests that Recommendation # 7, # 8 and #17 are combined, since all three (3) findings are similar in nature.

**Recommendation 8: Incorporate into the QASP the required biannual reviews and site visits in support of the COR's monitoring activities.**

ATF concurs with this recommendation. ATF will include in the training above the requirement to incorporate the required biannual reviews and site visits into the QASP. ATF requests that Recommendation # 7, # 8 and #17 are combined, since all three (3) findings are similar in nature.

**Recommendation 9: Develop policies and procedures that provide guidance on how to prepare IGCEs with the adequate basis and rationale necessary to support the CO's determination of fair and reasonable pricing.**

Assistant Director  
Office of Professional Responsibility and Security Operations

ATF concurs with this recommendation. Program and Acquisitions staff will be required to attend a combined IGCE training session on the preparation of a comprehensive IGCE with supporting rationale and stress fair and reasonable estimates, along with a reasonable escalation rate for a particular good or service. ATF will add more lead-time to its contract administration process to allow contract specialists to more closely work with program offices to develop comprehensive IGCEs.

**Recommendation 10: Enhance its pre-award analysis to include consultation with the DOL WHD and ATF's Office of Chief Counsel for concurrence on SCLS decisions and factor the results into the IGCE as a basis to assess fair and reasonable pricing.**

ATF concurs with this recommendation. As part of its contracting officer/specialists performance management system, ATF will include contacting the DOL and Chief Counsel if job descriptions are questionable under the SCLS. ATF will include this in the training referenced in Recommendation 9.

**Recommendation 11: Implement procedures to ensure that acquisition planning considers PBA strategies or documents a rationale for not using those methods in its acquisition plans.**

ATF concurs with this recommendation. See Recommendation 5. ATF requests that Recommendation # 5 and # 11 are combined, since both findings are similar in nature.

**Recommendation 12: Develop procedures to ensure all contract workers complete background investigations and sign non-disclosure agreements prior to working on a contract and complete the required certifications and security trainings.**

ATF concurs with this recommendation. ATF will work will implement a tiger team of OPRSO, OST, OM, and program office representatives to develop and publish a joint policy/process for ensuring BIs and NDAs are completed prior to work starting. In the meantime, the Acquisitions Office is researching this issue at all ATF facilities and will ensure that all Non-Disclosure Agreements are signed before an employee begins performing on a contract and that contract staff have taken the appropriate security training modules.

**Recommendation 13: Remedy \$4,317 in unallowable G&A expenses and review the remaining invoices to recover any additional unallowable G&A expenses invoiced by Shearwater.**

ATF does not concur with this Recommendation. ATF did negotiate the contractor's rates for their G&A cost. The G&A rates were within the contractor's approved Defense Contract Audit Agency (DCAA) rate.

Assistant Director  
Office of Professional Responsibility and Security Operations

**Recommendation 14: Remedy \$10,982 is unallowable labor costs.**

ATF does not concur with this Recommendation. The CGI Coordinator in question was a Level III CGIC Field Contractor with prior law enforcement experience and background in effectively utilizing Crime Gun Intelligence. During his time, the CGIC assisted FOD with the development and drafting of a partnership/stakeholders guide for implementing Crime Gun Intelligence strategies and also helped FOD provide seminars/training for ATF field personnel and partners related to Crime Gun Intelligence best practices. Much of this work occurred remotely, within the FOD office at ATF Headquarters, and in the field at ATF/partner offices, which is allowable under the place of performance in this contract. The CGIC's expertise and qualifications were not that of a technical writer, but rather a CGIC Level III. The work he performed could not have been accomplished by someone at the technical writer level as it required a higher level of expertise and experience in law enforcement.

The primary overarching function of the CGIC Coordinator Level III is to support ATF and partner agencies in implementing Crime Gun Intelligence best practices and ultimately producing actionable investigative leads to disrupt shooters. The required prior law enforcement experience of the CGIC Level IIIs is critical in effectively performing this role. With this experience, the CGIC Coordinator Level III performs other duties beyond the Level I and II positions; thus, CGIC Level IIIs do not generally conduct acquisitions and correlation reviews at a NIBIN site as a primary duty and instead focus on supporting ATF and partners with the associated processes and analysis of crime gun intelligence for valuable follow-up. These CGIC Level III duties are not typically performed at a NIBIN site but rather, working closely with stakeholders at the CGIC and/or partner agencies' location(s).

ATF would like to clarify the following highlighted sections from above:

- 1) These duties are typically not performed at a NIBIN Site. The CGIC Level III duties are typically performed, working closely with stakeholders at the CGIC and/or partner agencies' location(s).
- 2) Access to NIBIN Equipment such as Brasstrax and Matchpoint Plus is not needed for a CGIC Level III to perform their duties, since the CGIC III services provided rely on the end-product from such the equipment, such as the leads generated after the entry and correlation reviews are completed.

Under the Shearwater contract, the CGIC Coordinator Level III position services that most specifically applied in this case were:

- Assisted with the coordination and helped conduct presentations and training to agency officials
- Utilize crime gun intelligence to identify high value targets; merge NIBIN hits, tracing results, multiple sales, NICS and local intelligence to identify high value targets.
- Distribute crime gun intelligence to the proper authorities

Assistant Director  
Office of Professional Responsibility and Security Operations

- Coordinate the results from crime gun intelligence with:
  - ATF Field Divisions - Field Intelligence Groups
  - Local law enforcement intelligence
  - Designated authorities
- Provide liaison support outside the office as required.

**Recommendation 15: Enhance its policies and procedures related to invoice review to ensure that it does not pay unallowable costs.**

ATF concurs with this recommendation. ATF will include invoice review as a topic in the combined Program/Acquisition staff training cited in Recommendation 9 and will discuss unallowable costs in its initial kickoff meetings with the vendor prior to performance on individual contracts. ATF will also include expense monitoring oversight to contracting officer/specialists performance management.

**Recommendation 16: Develop procedures to ensure contractors implement appropriate quality control plans and procedures, including quality control program awareness and associated training for contract personnel.**

ATF concurs with this recommendation. ATF will include the review and evaluation of a contractor's quality control methodology and understanding in the training referenced in Recommendation 9.

**Recommendation 17: Develop policies or procedures to enhance its oversight of contractor compliance with contract terms and conditions, including monitoring to ensure work is performed within the scope of the contract, ATF approves key personnel changes, and required separation checklists and procedures are completed.**

ATF concurs with this recommendation. ATF will conduct training for this Recommendation during the training events referenced in Recommendation 9 and will discuss contractor oversight and compliance at each kickoff meeting at the beginning of contract performance. ATF request that Recommendation # 7, # 8 and # 17 are combined, since all three (3) findings are similar in nature. ATF will also include contractor compliance monitoring to contracting officer/specialists performance management.

Assistant Director  
Office of Professional Responsibility and Security Operations

**Recommendation 18: Provide evidence that all 74 contracts have been modified to include the required FAR Subpart 52.203-17 whistleblower provision.**

ATF concurs with this recommendation. ATF has completed its review (Attachment 2).

Please let me know if I can be of further assistance on this or any other matter.

Francis H. Frandé

Attachments

**SHEARWATER SYSTEMS, LLC'S RESPONSE  
TO THE DRAFT AUDIT REPORT**



Monday March 23, 2020

John Manning  
Regional Audit Manager  
Washington Regional Audit Office  
Office of the Inspector General  
U.S. Department of Justice  
1401 S. Clark Street, Suite 900  
Arlington, VA 22202

Subject: Shearwater Systems Response to OIG Draft Audit Report

Mr. Manning,  
Thank you for allowing Shearwater to provide a response to the draft audit report. I have included an update (in red text) from Our March 16<sup>th</sup> response below:

**Invoice Testing - G&A billing, Page 25**

"Shearwater applied a G&A rate of [redacted] or [redacted] percent to travel expenses and other direct costs (ODC) on the seven sampled invoices that totaled \$4,317. FAR Subpart 16.601 considers travel and ODC to be material costs that contractors must invoice at actual cost without applying a G&A rate. ATF officials stated that the contracts permitted Shearwater to charge G&A to travel expenses and ODC. However, paying the contracts did not include a negotiated G&A on top of material costs does not comply with FAR.17rate. As a result, Shearwater should not have billed, and ATF should not have paid, G&A expenses applied to travel and ODC. Accordingly, we recommend ATF remedy \$4,317 in unallowable G&A expenses and review the remaining invoices to recover any additional unallowable G&A expenses invoiced by Shearwater."

Shearwater response:

Position: Shearwater requests the allowance of the G&A costs applied.

Supporting information: According to FAR 52.232-7 Section (b)(5)(i,ii,iii)

Payments Under Time-and-Materials and Labor-Hour Contracts

(b) Materials.

(5) The Contractor may include allocable indirect costs and other direct costs to the extent they are -

- (i) Comprised only of costs that are clearly excluded from the hourly rate;
- (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
- (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

---

WWW.SHEARWATERLLC.COM

10440 Balls Ford Road, Suite 200, Manassas, VA 20109 • Phone: (703) 365.0450 • Fax: (703) 365.0460  
2702 Denail Street, Suite 100, Anchorage, AK 99503 • Phone: (907) 278.6100 • Fax: (907) 276.3441

A T&M contract is comprised of two key elements: (1) Time, and (2) Materials. The T&M FAR clause specifies how payments will be made for both the Time and the Materials elements of the contract. The clause clearly defines materials to include direct materials, subcontractors, ODCs, travel, and applicable allowable indirect costs. Shearwater's indirect costs that are applied to travel do not include any costs that are already part of the fixed hourly rate. The audit guidance found in the Defense Contract Audit Manual says the company needs to use what best reflects total business activity and results in the most equitable allocation of G&A expenses across all contracts. Therefore, not putting travel in the G&A base would be violating not only the DCAM, but also CAS 401.

Additionally – the G&A rates were proposed and accepted by the ATF in each of the two contracts. Shearwater's explanation in its price narrative specifying how G&A costs are applied is in compliance with FAR 52.232-7 Section (b)(5)(i,ii,iii).

Friday March 20, 2020 –

- 2012 contract - Shearwater provided the original pricing submission with proposed G&A.
- 2017 contract – Shearwater provided the Price Narrative with proposed G&A and communication that documents acceptance by the ATF KO.

Monday March 23, 2020 –

- Shearwater provided 2012 Market Research proposal that includes G&Afee. Shearwater provided proposal in response to ATF rfp. This proposal includes our pricing narrative which addresses the inclusion of G&A on travel and ODCs on page 25.
- Shearwater provided fully executed copy of 2012 contract.

#### **Invoice Testing - Local travel, Page 26**

“Additionally, under the 2017 contract, Shearwater workers cannot receive reimbursement for local travel within a 50-mile radius of their primary worksite. For four of the seven invoices we tested, we found that Shearwater billed and ATF paid for local travel that was less than 50 miles. Specifically, we identified 10 instances, totaling \$809, of local travel that was less than 50 miles.”

#### Shearwater response:

Position: While there seems to be conflicting guidance, Shearwater believes it has reimbursed for local travel as stated in the contract. Shearwater requests the travel detail specific to the ten instances that found Shearwater billed for local travel less than 50 miles to confirm appropriate reimbursement.

#### Supporting information:

There will be no reimbursement for local travel within a 50-mile radius of primary working site. When an employee performs official duty at an alternate duty station within the geographic boundaries as defined by the field division or within 50 miles of his/her residence, reimbursement for transportation expenses will be limited to expenses in excess of the normal daily commute.

After further research, Shearwater's position remains unchanged. We do not reimburse for travel to and from Duty Station, but trips in excess of reporting to assigned station are reimbursed as per contract language. No further documentation is being submitted at this time.

#### **Invoice Testing – Labor Category Assignment, Page 26**

“Through our audit work, we also identified a contract worker that was classified as a CGI Coordinator, but was performing duties associated with a Technical Writer. We discuss this non-compliance in further detail in our *Contract Compliance* section. Shearwater billed an hourly rate of \$ [REDACTED] for this contract worker as a CGI Coordinator, but the hourly rate for a Technical Writer was \$ [REDACTED], a difference of \$ [REDACTED] per hour. Therefore, Shearwater invoiced and ATF paid \$10,982 in unallowable labor costs for services charged at a rate above the rate associated with the level of work performed by the contract worker. We recommend ATF remedy \$10,982 in unallowable labor costs.”

#### Shearwater response:

Position: The Shearwater CGIC Coordinator was the correct labor category. Request updating response to reflect the appropriate labor category was used.

#### Supporting information:

Upon review of this specific hiring, we found the following:

- ATF requested a level III for duties requiring the requisite skill level and experience.
- A candidate was identified that met Level III requirements.
- ATF approved the hiring of proposed candidate.
- The CGIC selected utilized his required, extensive experience to complete assignments as demonstrated by monthly reports.
- A review of all monthly reports for this specific position indicates that a Technical Writer would not have the required knowledge and experience to complete the vast majority of assignments completed.
- ALL assignments completed were within the scope of the Level III job requirements.
- SW did not (ever) propose labor categories to ATF.
- After a review of all monthly reports, **references to Technical Writer job duties are a small percentage of the overall body of work. Monthly reports clearly demonstrate the need for a CGI Coordinator with senior level law enforcement experience. and writing encompass only 20% of his efforts.** His writing capabilities and assigned tasks required subject matter expertise (SME) to complete. This would require a position with greater duties than a Tech Writer, as he would be assumed as a SME.
- Writing is a part of the CGIC job duties.

**Shearwater updated response above and submitted on March 23<sup>rd</sup> the full body of Monthly Reports to demonstrate the skills required for the position were for a CGI Coordinator III.**

#### **Shearwater Quality Control Plan, Page 26**

“Because substandard contractor work could negatively impact the success of ATF’s mission to reduce violent crime committed with firearms, the contracts required that Shearwater establish, maintain, and manage a Quality Control Plan (QCP) to ensure adequate performance.”

#### Shearwater response:

Position: Shearwater takes no exception to the Audit Report recommendations. However, we would like to include additional supporting information below to document the challenges faced with the requirements. NOTE: Does the contract require a peer review process, or just a quality control plan? That is, does the contract require Shearwater to include peer review in its QCP? If not, I would make that point as well – the contract does not require a peer review process in the QCP, it only requires Shearwater to submit a QCP that is acceptable to the government, which occurred here. If the government wants to require a different QCP, Shearwater can discuss that with the CO and the costs related to it.

Supporting information:

Overall, our challenges with a more defined QCP is related to two things: 1.) resources and 2.) access to information

1. Resources - We are not able to utilize our staff on the contract to formally perform sampling since the day to day tasking is based on the daily demands at the local level (local PD, local ATF). In other words, Shearwater could not direct employee "X" in Seattle to perform peer reviews tomorrow because his/her tasking is determined by the workload provided by the local PD and local ATF. This is multiplied across the country at every location.

For example, the OIG draft audit report states:

“For example, we found that at the NNCTC and ATF laboratory, Shearwater contract workers performed peer reviews of correlation reviews. However, this informal peer review process is not part of the QCP and does not extend to all contract workers.”

While some Shearwater employees have been able to conduct peer reviews, that does not extend to all workers because of the limitations of the program and its available resources. As noted above, the daily tasking for Shearwater employees is governed by the workload provided by the local PD and local ATF, over which Shearwater has no control. Moreover, , in many cases, there is only one Shearwater employee at a location, preventing the ability to use a formal peer review process in all locations. . This is not to say the work is not reviewed by someone, given the role of Shearwater supervisors and [who else would review?]. Accordingly, while a peer review process is a procedural step that is implemented by some ATF offices, it is not required for other ATF Shearwater contractor employees in the field and Shearwater is unable to implement a system like this contract wide using its resources.

2. Access To Information - Since we are unable to implement a formal peer review process with our Shearwater NIBIN employees due to the issues identified above, we have considered alternative resources. However, Shearwater currently does not have the access to the NIBIN system and the results of Shearwater employee's analysis to implement and conduct a formal, program wide quality review system. The NIBIN data and system access is held by the Government and its law enforcement partners, and prevents Shearwater from establishing a centralized process for peer review.

Shearwater has worked very hard implement the appropriate QCP, but have had limited success due lack of resources and access to information.

In an effort to perform the best quality control, we have relied on the information we do have access to:

Monthly reports – We perform 100% quality control on the content of the monthly report every month. We can monitor the number of acquisitions and correlations completed.

Weekly conference calls – We hold discussions with staff and ATF representatives to allow for feedback on work performed.

Timesheets – We validate hours from our monthly reports match the hours on the Deltek accounting system to ensure the government is billed accurately.

Feedback from the Field and HQ - We receive and act on feedback from the Field Offices or ATF HQ to address any performance issues.

#### **Contract Compliance, Page 27**

“Shearwater should have notified further explained that as the ATF CO and obtained written approval when NIBIN program grew, it was necessary to hire the Operations Manager took on the responsibilities of to assist the Program Manager with all of the duties required in the contract. Shearwater notified ATF of the hiring of the Operations Manager; however, Shearwater was unable to provide evidence of a written approval from ATF as required in the contract.”

#### Shearwater response:

Position: Request report updated to reflect there the PM was not replaced and therefore was in contract compliance. Mr. Jones remains fully engaged as the Program Manager. The notification announcing the Operations Manager support was not a request to replace the PM, but a courtesy notification that did not require written approval, since the PM was not being replaced.

#### Supporting information:

Mr. Jones remains fully engaged as the Program Manager. The notification announcing the Operations Manager support was not a request to replace the PM, but a courtesy notification that did not require written approval, since the PM was not being replaced.

Additional information to support our position follows:

- SW has not changed PMs and therefore believes this statement is inaccurate
- Growth from 8 to [REDACTED] employees, 40+ locations, expected growth of upwards 50 new employees (recruiting, backgrounds/security, onboarding, train)
- Administrative burden was unreasonable for one PM to focus on employees, growth, compliance, and customer satisfaction.
- Mr. Jones continued to attend meetings with Gov't
- Mr. Jones continued to attend conferences with Gov't and Staff
- Mr. Jones performed site visits
- Mr. Jones administered weekly conference calls
- Mr. Jones retained all final hiring and termination decisions

Please let me know if you would like to discuss further, or have any additional questions. I can be reached at 571-359-4097, or by email at [rjones@shearwaterllc.com](mailto:rjones@shearwaterllc.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Jones", with a horizontal line extending from the end of the signature.

Robert W. Jones

**OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY  
OF ACTIONS NECESSARY TO RESOLVE THE REPORT**

The OIG provided a draft of this audit report to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Shearwater Systems, LLC (Shearwater). ATF's response is incorporated in Appendix 3 and Shearwater's response is included as Appendix 4 of this final report. We describe, where appropriate, these responses in the applicable recommendations below.

After we provided a draft of this report to ATF and Shearwater, we received additional information that confirmed ATF approved Shearwater's general and administrative (G&A) rate. Therefore, we removed our recommendation pertaining to the G&A rate. ATF agreed with 16 of the 17 remaining recommendations and disagreed with one recommendation. As a result, the status of the audit report is unresolved. The following discussion provides the OIG analysis of the responses and summary of actions necessary to resolve and close the report.

**Recommendations for ATF:**

- 1. Continue to develop procedures and mechanisms to collect performance data that measures the success of the NIBIN program as it relates to ATF's overall mission, such as the successful arrest and prosecution of shooters.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it currently collects success stories through iNIBIN, and is beginning to collect similar data through NESS. NESS is currently being deployed to state and local partners, which will allow for the direct submission of results by all NIBIN users. This will also allow ATF to capture a more comprehensive snapshot of NIBIN successes. Additionally, ATF is currently piloting Crime Gun Enforcement Teams (CGET), which collects quarterly performance metrics focusing on the number of suspected shooters arrested and the number of shootings solved. ATF plans to utilize these statistics when the CGET concept is implemented nationwide.

This recommendation can be closed when we receive evidence that ATF has continued to develop additional procedures and mechanisms to collect performance data that measures the success of the NIBIN program as it relates to ATF's overall mission, such as the successful arrest and prosecution of shooters.

- 2. Continue to deploy NESS to all NIBIN partners, and evaluate how NESS could be used to track performance measures that demonstrate the success of the NIBIN program and the program's impact on ATF's overall mission.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that NESS was first piloted by five representatives from each ATF field division who later served as trainers in their respective divisions. Since its initial rollout, ATF has conducted numerous NESS trainings for ATF and contractor personnel. In September 2019, ATF directed all field personnel to use NESS to collect, analyze, and track all NIBIN leads in lieu of independent spreadsheets or databases. ATF is currently deploying NESS to state and local partners. ATF has provided a Memorandum of Understanding (MOU) to 11 initial agencies, and has received 7 signed MOUs and is processing those user requests. ATF will continue to supply the MOU, provide guidance, and create user accounts to additional agencies.

This recommendation can be closed when NESS has been deployed to all NIBIN users and ATF has evaluated how NESS could be used to track performance measures that demonstrate the success of the NIBIN program and the program's impact on ATF's overall mission.

- 3. Enhance its standardized lead report in NESS to include solvability factors in order to provide consistent, valuable information to law enforcement that incorporates ATF guidance.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it required all ATF field divisions to utilize NESS in September 2019. NESS provides a single, standardized format for viewing all NIBIN and relevant intelligence collected for a specific lead. This standard lead sheet was developed based on review of samples previously used by all Crime Gun Intelligence (CGI) centers in the field. It contains the basic NIBIN data including the potential solvability factor of time between linked events. It also contains a section for additional firearms recovered from and/or used in the same events which provides insight on interconnectivity of violence. Due to local variations across the country regarding types or amount of violent crimes as well as the investigative response, CGI centers may differ in weighing specific information contained on a standard lead sheet.

While we recognize there will be variations in information contained in the lead reports, ATF should standardize these reports with the information it has deemed most significant. Therefore, this recommendation can be closed when we receive evidence that ATF has incorporated its own guidance emphasizing significant information that should be contained in its standardized lead report.

4. **Assess its current lead time minimums for clarity and realism for such multi-year crime gun intelligence contracts; and formalize a procedure for its contracting officials to notify program officials of expiring contracts in a timely manner.**

Resolved. ATF concurred with our recommendation. ATF stated in its response it has met with its Acquisition Staff to identify the need for and processes to develop a reporting and notification procedure to track and communicate lead times to assure the accuracy of estimated lead times and will establish a reasonable timeframe to notify the Program Offices of expiring contracts.

This recommendation can be closed when ATF provides evidence of its development of a reporting and notification procedure to track and communicate lead times and the establishment of reasonable timeframes to notify the Program Offices of expiring contracts.

5. **Reassess its needs and develop a comprehensive acquisition plan that adequately addresses all significant acquisition considerations in FAR Subpart 7.105.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that as a part of its contracting officer/specialists performance management system, ATF will conduct bi-annual mandatory training to review and discuss their Acquisition Plans and the need to comply with all facets of FAR Subpart 7.105. ATF also stated it will ensure contracting officers and 1<sup>st</sup> and 2<sup>nd</sup> line reviewers of contracts will be responsible for reviewing and assuring all elements within FAR Subpart 7.105 are met. ATF will also incorporate this and Performance-Based Acquisition (PBA) content into semi-annual training and include the specific rationale for selecting or not selecting PBA as a more viable work statement for the specific requirement being procured in each Acquisition Plan which will also be included in the 1<sup>st</sup> and 2<sup>nd</sup> line reviewers' analysis.

In its response, ATF requested we combine recommendations 5 and 11. While we will keep the recommendations separate, if the corrective action ATF provides is adequate to address both recommendations, we will close both recommendations. This recommendation can be closed when ATF provides evidence of bi-annual training on Acquisition Plans and FAR Subpart 7.105, and semi-annual training on Performance Based Acquisition.

6. **Enhance its policies related to documenting assessments of inherently governmental functions (and those closely associated with such functions) to include all FAR and DOJ requirements, while allowing program and contracting officials to consider circumstances unique to each acquisition.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that as part of its contracting officer/specialists performance

management system, ATF is currently discussing training and methodology to ensure all contracting officers are familiar with and apply the tests of Inherently Governmental identifiers to job classification and functions. ATF also stated that it has begun integrating the DOJ Inherently Governmental document presented at the OIG out-brief meeting into its acquisition process. ATF further stated that the document has been implemented into the ATF checklists. ATF also attached the Department of Justice Document DOJ Instruction 1301.02.01 (Inherently Governmental and Critical Functions) to its response.

This recommendation can be closed when ATF provides evidence of training and its methodology for applying the tests of Inherently Governmental identifiers to job classifications and functions.

- 7. Evaluate and update its policies and procedures to ensure that its contract personnel: (1) create timely QASPs in conjunction with the SOW and (2) ensure that ATF employees assisting with contract monitoring and thus serve as Government Technical Representatives know of and receive appropriate training to effectuate their roles and responsibilities.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that as a part of its contracting officer/specialists performance management system, ATF will ensure contracting officers are proactively creating meaningful QASPs that directly crosswalk to the Performance Work Statement (PWS) or Statement of Work (SOW). ATF stated that the QASP will include close monitoring of performance and contain acceptable and achievable parameters for such monitoring. ATF also stated that the QASPs will be reevaluated periodically to assure they are current and meaningful performance measures. ATF stated that ATF will review its contracting office organizational structure, authorized contracting manpower, and job assignments/expectations to determine if modifying employee performance work plans, the organizational structure, contracting officer/specialists job assignments, or contracting support staff will create opportunities for improved contractor oversight and monitoring by contracting officers is possible and within resourcing constraints.

In its response, ATF requested we combine recommendations 7, 8, and 17. While we will keep the recommendations separate, if the corrective action ATF provides is adequate to address all three recommendations, we will close the three recommendations. This recommendation can be closed when ATF provides evidence that the training has occurred, including the attendee list and the course content; and ATF provides the QASP and PWS or SOW for the next iteration of this service contract.

**8. Incorporate into the QASP the required biannual reviews and site visits in support of the COR's monitoring activities.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will include in the training in recommendation 7, the requirement to incorporate the required biannual reviews and site visits into the QASP.

In its response, ATF requested we combine recommendations 7, 8, and 17. While we will keep the recommendations separate, if the corrective action ATF provides is adequate to address all three recommendations, we can close the three recommendations. This recommendation can be closed when ATF provides evidence of the training that incorporates the requirement for biannual reviews and site visits into QASPs.

**9. Develop policies and procedures that provide guidance on how to prepare IGCEs with the adequate basis and rationale necessary to support the CO's determination of fair and reasonable pricing.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that Program and Acquisitions staff will be required to attend a combined Independent Government Cost Estimate (IGCE) training session on the preparation of a comprehensive IGCE with supporting rationale and stress fair and reasonable estimates, along with a reasonable escalation rate for a particular good or service. ATF also stated that ATF will add more lead-time to its contract administration process to allow contract specialists to more closely work with program offices to develop comprehensive IGCEs.

This recommendation can be closed when ATF provides evidence that Program and Acquisitions staff have received training on the preparation of more comprehensive IGCEs that include supporting rationales, fair and reasonable estimates, and escalation rates.

**10. Enhance its pre-award analysis to include consultation with the DOL WHD and ATF's Office of Chief Counsel for concurrence on SCLS decisions and factor the results into the IGCE as a basis to assess fair and reasonable pricing.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that as part of its contracting officer/specialists performance management system, ATF will including contacting the DOL and Chief Counsel if job descriptions are questionable under the SCLS. ATF also stated it will include this in the training referenced in recommendation 9.

This recommendation can be closed when ATF provides evidence of the IGCE course content and that the training has occurred.

**11. Implement procedures to ensure that acquisition planning considers PBA strategies or documents a rationale for not using those methods in its acquisition plans.**

Resolved. ATF concurred with our recommendation. In its response, ATF requested we combine recommendations 5 and 11.

While we will keep the recommendations separate, if the corrective action ATF provides is adequate to address both recommendations, we will close both recommendations. This recommendation can be closed when ATF provides evidence: (1) that PBA content has been included in its semi-annual training referenced in recommendation 5 and (2) of the specific rationale for selecting or not selecting PBA as a more viable acquisition methodology in the next iteration of this service contract.

**12. Develop procedures to ensure all contract workers complete background investigations and sign non-disclosure agreements prior to working on a contract and complete the required certifications and security trainings.**

Resolved. ATF concurred with our recommendation. ATF stated in its response it will implement a team to develop and publish a joint policy/process for ensuring background investigations and non-disclosure agreements are completed prior to work starting. In the meantime, the Acquisitions Office is researching this issue at all ATF facilities and will ensure that all non-disclosure agreements are signed before an employee begins performing on a contract and that contract staff have taken the appropriate security training modules.

This recommendation can be closed when we receive evidence of ATF's updated policies or procedures related to background investigations, non-disclosure agreements, and security training.

**13.** (This recommendation was removed from the final report based on information ATF and Shearwater provided in response to the draft report.)

**14. Remedy \$10,982 in unallowable labor costs.**

Unresolved. ATF did not concur with our recommendation. ATF stated in its response that the CGIC Level III assisted ATF with the development and drafting of a partnership/stakeholders guide for implementing Crime Gun Intelligence strategies, and assisted in seminars and trainings for ATF field personnel and partners related to best practices. ATF also stated that the work performed could not have been accomplished by someone at the technical writer level as it required a higher level of expertise and experience in law enforcement. ATF further asserted that the CGIC Level III performed at least some of the work "in the field at ATF/partner offices," which ATF notes is permitted by the contract.

Shearwater neither agreed nor disagreed with our recommendation. However, it stated in its response that ATF requested and approved the hiring of a CGIC Level III. Additionally, Shearwater stated it was the correct labor category because the candidate met the CGIC Level III requirements, used extensive experience to complete assignments, and all of the assignments were within the scope of the CGIC Level III position as described in the contract. Shearwater added that someone meeting the requirements of the Technical Writer position would not have the required knowledge to complete the assignments assigned to this contract worker.

According to the contract, the function of the CGIC Level III is to use crime gun intelligence to assist ATF and partner agencies in identifying armed violent criminals and members of violent gangs and criminal organizations who are involved in shootings, violent criminal activity, or firearms trafficking that the ATF and partner agencies may investigate. Based on the monthly reports we reviewed, we saw no evidence that the CGIC Level III used crime gun intelligence to identify such individuals and organizations. While some of the duties the CGIC Level III performed appear to have fallen into a list of duties in the contract that this position "may" perform, many fall into a catch-all category ("Other functions as specified by the government representative for performance success"), and none of the duties performed, as documented in the monthly reports, involved working with crime gun intelligence to produce the kind of actionable investigative leads that the ATF acknowledges, in its response to our draft report, as being one of the primary functions of the position. We also note that, contrary to ATF's assertion in that response, we received no evidence during the audit that the CGIC Level III performed work at a CGI center or partner agency location.

We acknowledge that the duties performed by this CGIC Level III were different than all of the other CGIC Level III we interviewed during this audit. However, the duties documented in the monthly reports did not fulfill the main objective of the position as described in the contract. In our judgment, the tasks performed by this CGIC Level III better align with the tasks described in the contract as a Technical Writer, and to the extent that this position did not fit within any of the specified contract positions because of the additional experience and knowledge required, we believe that ATF should have created a unique job category in its SOW and negotiated a unique billing rate with Shearwater. This recommendation can be resolved when ATF develops a corrective action plan to remedy \$10,982 of unallowable labor costs, or provides evidence that the contract worker in fact performed duties consistent with the function of the CGIC Level III as specified in the contract.

**15. Enhance its policies and procedures related to invoice review to ensure that it does not pay unallowable costs.**

Resolved. ATF concurred with our recommendation. ATF stated in its response it will include invoice review as a topic in the combined Program/Acquisition staff training cited in recommendation 9 and will discuss

unallowable costs in its initial kickoff meetings with the vendor prior to performance on individual contracts. ATF will also include expense monitoring oversight to contracting officer/specialists performance management.

This recommendation can be closed when we receive evidence of ATF's updated training or policies related to invoice review.

**16. Develop procedures to ensure contractors implement appropriate quality control plans and procedures, including quality control program awareness and associated training for contract personnel.**

Resolved. ATF concurred with our recommendation. ATF stated in its response it will include the review and evaluation of a contractor's quality control methodology and understanding in the training referenced in Recommendation 9.

Shearwater stated in its response that it took no exception with our recommendation. However, it stated that it faced challenges related to resources and access to information. Shearwater explained that its contract worker's day to day workload is based on the daily demands at the local level. Therefore, some locations do perform peer reviews; however, Shearwater cannot implement an overall peer review program throughout all locations. Additionally, Shearwater explained that it cannot establish a process for peer review outside of its NIBIN contract workers because it does not have access to the NIBIN system. Shearwater stated it performed quality control by reviewing the monthly reports, holding weekly conference calls with contract workers and ATF, validating timesheets using the monthly reports, and addressing issues identified through feedback from the field.

This recommendation can be closed when we receive evidence of ATF's updated training or policies related to contractor quality control.

**17. Develop policies or procedures to enhance its oversight of contractor compliance with contract terms and conditions, including monitoring to ensure work is performed within the scope of the contract, ATF approves key personnel changes, and required separation checklists and procedures are completed.**

Resolved. ATF concurred with our recommendation. ATF stated in its response it will conduct training for this recommendation during the training events referenced in recommendation 9 and will discuss contractor oversight and compliance at each kickoff meeting at the beginning of contract performance. ATF will also include contractor compliance monitoring to contracting officer/specialists performance management. Subsequent to the issuance of our draft audit report, ATF provided additional detailed monthly reports. Therefore, there are now 22 of 515 (4.3 percent) Monthly Status Reports that did not contain sufficient detail on the services provided.

Additionally, ATF stated it updated its policy to ensure contract workers are completing a monthly report even when they are completing initial training.

Shearwater neither agreed nor disagreed with our recommendation. However, it stated in its response that because the original Program Manager was still performing the duties of the Program Manager, it was not required to notify or receive approval from ATF because it was not a change in personnel.

In its response, ATF requested we combine recommendations 7, 8, and 17. While we will keep the recommendations separate, if the corrective action ATF provides is adequate to address all three recommendations, we can close the three recommendations. This recommendation can be closed when we receive evidence of ATF's updated training or policies related to ATF's oversight of contractor compliance.

**18. Provide evidence that all 74 contracts have been modified to include the required FAR Subpart 52.203-17 whistleblower provision.**

Closed. ATF concurred with our recommendation. ATF stated in its response that ATF has completed its review and provided evidence to support the corrective action taken.

ATF furnished evidence of modified contracts that included the required FAR Subpart 52.203-17 whistleblower provision. We verified that ATF has taken corrective action that addresses this recommendation; therefore, this recommendation is closed.



The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations.

To report allegations of waste, fraud, abuse, or misconduct regarding DOJ programs, employees, contractors, grants, or contracts please visit or call the **DOJ OIG Hotline** at [oig.justice.gov/hotline](https://oig.justice.gov/hotline) or (800) 869-4499.

**U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL**

950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

<b>Website</b>	<b>Twitter</b>	<b>YouTube</b>
<a href="https://oig.justice.gov">oig.justice.gov</a>	@JusticeOIG	JusticeOIG

Also at [Oversight.gov](https://Oversight.gov)