



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

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Management Advisory Memorandum Concerning the Department of Justice's Administration and Oversight of Contracts



July 13, 2020

MANAGEMENT ADVISORY MEMORANDUM FOR:

MICHAEL H. ALLEN
DEPUTY ASSISTANT ATTORNEY GENERAL AND
SENIOR PROCUREMENT EXECUTIVE
JUSTICE MANAGEMENT DIVISION

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Notification of Important Concerns Identified in
the Department of Justice's Administration
and Oversight of Contracts

The purpose of this memorandum is to advise you of potentially systemic issues that the Office of the Inspector General (OIG) has identified related to the Department of Justice's (Department) contract management through the OIG's audit work. In fiscal years (FY) 2013 through 2019, the Department awarded over \$54 billion in contracts for products and services.¹ Over those same 7 years, our audits of the Department's contracts and related programs frequently identified significant issues linked to inadequate contract solicitation, award, administration, and oversight. Specifically, our completed audits have regularly identified the following contracting problems: (1) inadequate execution of contract oversight responsibilities, (2) insufficient quality assurance practices, and (3) non-compliance with contracting-related laws and regulations. For these reasons, the OIG has consistently identified contract administration and oversight in its annual *Top Management and Performance Challenges Facing the Department of Justice*. Nevertheless, the Department's FY 2019 Enterprise Level Risk Profile does not mention contract management.

While the Department, through actions taken to address recommendations in our audit reports, has made progress towards improving its contract administration and oversight, we are providing this memorandum to summarize the issues and concerns that we have identified in multiple OIG

¹ Federal Procurement Data System (accessed on October 9, 2019).

audits and that we believe should be addressed comprehensively. The contract audits that form the basis for this memorandum include reviews of contracts administered by the Federal Bureau of Prisons (BOP); Federal Bureau of Investigation (FBI); Drug Enforcement Administration (DEA); United States Marshals Service (USMS); Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Civil Division; and Justice Management Division (JMD). We believe that the breadth and pervasiveness of our findings warrant the Department's sustained attention, particularly in light of the important role that contract oversight plays in ensuring that taxpayer dollars are spent wisely. Further, we believe the Department should consider including contract management in its enterprise-level risk management prioritization.

Contract Oversight Responsibilities

Department components utilize Contracting Officers, who, pursuant to the Federal Acquisition Regulation (FAR), are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.² Contracting Officers must be appointed in writing and receive clear instruction regarding the limitations of their authority.³ While Contracting Officers have the ultimate responsibility and authority for contract administration, they also have the authority to designate a Contracting Officer's Representative (COR) to assist in administering and overseeing the contract.⁴ A COR's responsibilities could include reviewing invoices, verifying the existence of adequate funding, and ensuring the proper goods or services have been received. The FAR specifies that a COR, whom a Contracting Officer must designate in writing, shall be qualified by training and experience commensurate with the responsibilities to be delegated.⁵

In several of our contract audits, we found instances where the Contracting Officer or COR did not have the technical proficiency to perform the responsibilities they were assigned. For example, in an audit of a nearly \$700 million USMS contract to operate a detention center, we learned that the COR had minimal training and experience.⁶ The COR was appointed to oversee the contract just 3 weeks after attaining COR certification and with no prior contracting experience. This COR also did not have experience in detention

² FAR Subpart 1.602-2, *Responsibilities*.

³ FAR Subpart 1.602-1, *Authority* and 1.603-3, *Appointment*.

⁴ FAR Subpart 1.602-2, *Responsibilities*.

⁵ FAR Subpart 1.602-2, *Responsibilities*.

⁶ U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [*Audit of the United States Marshals Service Contract No. DJJODT7C0002 with CoreCivic, Inc., to Operate the Leavenworth Detention Center Leavenworth, Kansas*](#), Audit Report 17-22 (April 2017), 14-15.

services and relied significantly on the expertise of a Deputy U.S. Marshal to monitor contractor performance. Moreover, USMS did not provide the COR with additional training to bolster the individual's knowledge of detention services and monitoring and oversight. During the 4-year period following the COR's appointment, the only formalized detention-related training the COR received was a 60-minute lecture on roles and responsibilities during the pre-solicitation and post-award phases of a contract. As noted in our audit report, the COR maintained an infrequent onsite presence at the Leavenworth Detention Center (LDC), did not document the inspection activities performed, and did not develop an inspection program or monitoring procedures. These issues contributed to the overall insufficient oversight that resulted in the USMS becoming aware of incidents at the LDC only after they occurred, and that allowed several problems at the LDC to persist over a significant period of time. Furthermore, in our judgment, the USMS's lack of effective continuous monitoring at the LDC presented risks that could extend throughout all its other contract detention facilities.

Another example of inadequate experience and training was presented in an audit of an FBI aircraft lease contract.⁷ In this instance, the FBI did not formally appoint a COR, and the Contracting Officer, who was responsible for contract performance and billing, did not have the requisite technical expertise to oversee the contract. In another instance, our review of a DEA aviation support contract found that an individual the DEA had designated as an alternate COR did not maintain appropriate COR certification in accordance with the FAR's continuing learning requirements.⁸ As the findings of these audits demonstrate, adequate training and experience is crucial to a COR's ability to perform the delegated contract oversight responsibilities.

In multiple other instances, our audits revealed that CORs did not fully understand the responsibilities delegated to them in their designation letters or were simply not completing their designated responsibilities. For example, during our audit of a DEA regional linguist services contract, we found that the COR was not performing the majority of the responsibilities as identified in the COR's designation letter, including the review and approval or disapproval of invoices. Instead, other individuals in the DEA Special Operations Division, who had not received COR-specific training, reviewed the invoices, and we found the improper payment of some invoices.⁹ Also, during our audit of 16 ATF small business sole-source contracts, we noted that the CORs responsible

⁷ DOJ OIG, [Audit of the Federal Bureau of Investigation's Aircraft Lease Contract Awarded to Midwest Jet Center, LLC, DBA Reynolds Jet Management](#), Audit Report 17-30 (July 2017), 9.

⁸ DOJ OIG, [Audit of the Drug Enforcement Administration's Aviation Support Services Contract with L3 Vertex Aerospace](#), Audit Report 18-19 (March 2018), 17.

⁹ DOJ OIG, [Audit of the Drug Enforcement Administration's Regional Linguist Services Contract Awarded to Conduit Language Specialists, Inc.](#), Audit 18-08 (January 2018), 17-18.

for daily administration and oversight of the contracts were unaware of subcontractors working on contracts. In addition, the CORs did not know the division of labor between the prime contractor and the known subcontractors, which increased the risk of non-compliance with regulatory limits on the amount of subcontractor pass-through costs and small business workload requirements.¹⁰

In addition to those formally designated as CORs, the Office of Management and Budget (OMB) advises that other individuals, such as Task Monitors, can assist Contracting Officers with contract management functions.¹¹ Although OMB specifies that Task Monitors should complete training based on their level of experience and the type of contract managed, we found that the DEA did not require individuals assigned to Task Monitor positions receive training prior to serving in the position, even though those individuals are delegated responsibilities related to contract administration and oversight.¹² We highlighted this issue in a Management Advisory Memorandum to the DEA prior to the issuance of a 2018 report, and in response the DEA advised that all Task Monitors who oversee its regional linguist contracts would complete FAC-COR Level I training covering the basic knowledge and skills needed to perform duties, such as proper communication, documentation, contract monitoring, payments, and ethics.¹³ We believe this training requirement should be implemented Department-wide to ensure that all Task Monitors are required to complete at least FAC-COR Level I training prior to being designated a Task Monitor in accordance with OMB guidance. This minimal level of training only requires 8 hours of training every 2 years. We also note that, since September 8, 2016, the Department has required any employee seeking any level of FAC-COR certification to complete three specified free online Federal Acquisition Institute (FAI) courses in addition to the government-wide FAC-COR requirements, and we believe these courses should also be required for Department Task Monitors.¹⁴

Given the repeated issues we have identified with contract administration and oversight in our work, we are concerned that these problems may be systemic across the Department. It is essential that each component maintains guidance and procedures to assist assigned personnel with their

¹⁰ DOJ OIG, [Audit of the Bureau of Alcohol, Tobacco, Firearms, and Explosives Small Business Sole-Source Contracting](#), Audit 19-15 (March 2019), 25-26.

¹¹ OMB Memorandum: [Revisions to Federal Acquisition Certification for Contracting Officer's Representatives \(FAC-COR\)](#), September 6, 2011.

¹² DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 21.

¹³ DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 64-73.

¹⁴ The three FAI courses are: FAC 018 – *Green Purchasing for Civilian Acquisition*, FAC 031 – *Small Business Programs*, and FAC 043 – *Ethics & Procurement Integrity for the Acquisition Work Force*.

contracting responsibilities and identifies effective training to ensure that contracting personnel attain the knowledge and understanding they need to properly perform their roles in administering and overseeing Department contracts. Doing so will help the Department prevent deficiencies in contractor performance, contract administration, and financial management.

Quality Assurance

Quality assurance (QA) is an essential contract oversight activity and is the responsibility of both the contractor and the government. More specifically, the contractor is responsible for carrying out its obligations under the contract in terms of quality, timeliness, and cost, while the government is responsible for ensuring that the services and supplies received meet the quality and performance requirements of the contract. The FAR states that QA shall be performed at such times and places as may be necessary to determine that the supplies or services conform to contract requirements. To effectuate this mandate, the FAR advises that QA surveillance plans, specifying the work requiring surveillance and method of surveillance, should be prepared in conjunction with the preparation of the statement of work.¹⁵ The FAR further requires that contract QA be performed by or under the direction or supervision of government personnel.¹⁶ These QA requirements help to ensure that the government contracting entity is getting what it is paying for and that federal contracting dollars are being spent wisely and appropriately. However, we found that Department components are not always developing QA surveillance plans, as required by the FAR. For example, in our audit of a DEA regional linguist services contract, we found that the DEA placed full reliance for QA on the contractor and failed to review the contractor's QA surveillance plan, as stipulated in the contract, to determine whether it was adequate and to ensure that the contractor was following the plan.¹⁷

If a component does not have its own QA surveillance plan, it cannot ensure that the supplies and services it received and purchased adequately met all contract requirements. This lack of QA can be costly to the Department, resulting in overpayment when the contractor has not complied with the contractual terms. Additionally, such lack of oversight risks non-compliance with the primary FAR cost principles, which require that all costs billed to a contract be reasonable, allocated properly, and comply with the terms of the contract.¹⁸ In the aforementioned DEA contract, where we found that there was no government QA surveillance plan, we also found that the

¹⁵ FAR Subpart 46.401(a), *Quality Assurance, General*.

¹⁶ FAR Subpart 46.401(e), *Quality Assurance, General*.

¹⁷ DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 25-26.

¹⁸ FAR Subpart 31.201-2, *Contracts with Commercial Organizations, Determining Allowability*.

contractor failed to enforce or follow its own QA surveillance plan. As a result, 93 percent of the sampled linguists did not have the required language proficiency testing prior to working on the contract and a number of linguists worked under the contract without an approved background investigation, as required by the contract. This led to the OIG questioning nearly \$3 million in costs as unallowable under the terms of the contract.

We have also found multiple instances where the Department conducted QA activities, but its processes were inadequate and did not identify significant contractor deficiencies. For example, an audit of an FBI aircraft lease contract revealed that the contract had not specified performance metrics.¹⁹ As a result, the FBI could not take meaningful recourse when the aircraft experienced significant unexpected downtime and the contractor did not provide a backup aircraft. We estimated that this resulted in 44 days or \$580,000 in unexpected downtime. In addition, in multiple audits of BOP residential reentry centers, we found that while the BOP had processes in place to address contract compliance, the BOP was not using those established procedures to monitor the contractors and the procedures did not adequately address the quality of programming provided by the contractors.²⁰

Further, in the audit of a DEA contract awarded for financial investigative services, we found that the Subject Matter Experts lacked educational requirements, as specified in the contract.²¹ The DEA, however, did not identify this deficiency, and it did not grant a written waiver of the contract requirements prior to approving these individuals' experience as a substitute for education requirements, as specified in the contract. Therefore, without a waiver, the DEA effectively paid a premium of \$485,356 over what it would have paid these individuals had they served in a lower tier labor category. The lack of a process to ensure that the DEA documented required waivers before hiring and subsequently paying these individuals as Subject Matter Experts placed the government at an unnecessary risk of overpaying for services.

Another important component of monitoring contractor performance is entering performance information into the Contract Performance Assessment Reporting System (CPARS). This government-wide application is used to document contractor performance, including the contractor's success or failure to meet contract requirements, control costs, and adhere to contract schedules.

¹⁹ DOJ OIG, [Contract Awarded to Midwest Jet Center](#), 5-7.

²⁰ DOJ OIG, [Audit of the Federal Bureau of Prisons Residential Reentry Center Contract No. DJB200244 Awarded to Centre, Inc. Fargo, North Dakota](#), Audit 17-25 (June 2017); DOJ OIG, [Audit of the Federal Bureau of Prisons' Management of Inmate Placements in Residential Reentry Centers and Home Confinement](#), Audit 17-01 (November 2016).

²¹ DOJ OIG, [Audit of the Drug Administration's Asset Forfeiture Program Task Orders Awarded to Maximus, Inc., for Financial Investigative Services](#), Audit 18-26 (April 2018), 19-20.

The Department and other government agencies rely on this information when making subsequent award decisions, making accurate and timely completion of the reports in CPARS critical to future procurement efforts. The FAR generally requires that contracting officials prepare performance evaluations and enter the information into CPARS at least annually during the contract, and also when the work under a contract or order is completed.²²

We have repeatedly found that components did not meet this requirement at all, or only met it months or years late. Most recently, at ATF and the DEA, we were told that CPARS reports were not being completed because the automated system had not generated email requests to submit the assessment reports to the appropriate personnel.²³ CPARS is a crucial element of a comprehensive oversight framework and should be tracked and completed in a timely manner by the appropriate contracting officials. We are concerned that inconsistencies in CPARS reporting may lead to the Department and other government agencies relying on the services of suboptimal contractors, resulting in unnecessary delays or subpar products and services that waste taxpayer dollars. Therefore, we recommend that the Department develop policy or implement procedures to ensure that contractor performance evaluations are completed, accurate, and entered into CPARS in a timely manner.

Compliance with Laws and Regulations

The FAR is a vast and complex set of rules that govern the process by which agencies in the federal government acquire goods and services. In addition to the FAR provisions already identified related to contract oversight and QA, we have found that Department components are not consistently following several other provisions, including provisions related to maintaining appropriate documentation to support procurements, maximizing competition, avoiding personal services contracts, and purchasing from required sources.

Contract File Documentation

To begin, the FAR prescribes requirements for the government to establish and maintain files that contain records of all contractual actions.²⁴ The contract documentation must be sufficient to constitute a complete history of the transaction for the purposes of: (1) providing a complete background as a basis for making informed decisions at each step of the acquisition process; (2) supporting actions taken; (3) providing information for reviews and investigations; and (4) furnishing essential facts in the event of litigation or

²² FAR Subpart 42.1502, *Contractor Performance Information, Policy*.

²³ DOJ OIG, [Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Sole-Source Small Business Contracting](#); Audit 19-15 (March 2019), 23 and DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 22.

²⁴ FAR Subpart 4.801, *Government Contract Files, General*.

congressional inquiries.²⁵ Our audit work has revealed multiple occasions where contracting personnel were not maintaining adequate contract files. For example, in our audit of an FBI aircraft lease contract, inconsistent with the FAR and FBI policy, the contract file did not include the market research to support a determination that the contract price was fair and reasonable, contractor performance assessments, or copies of invoices and invoice tracking documentation.²⁶ Similarly, an audit of a BOP dental services contract revealed that the contract file did not contain the documentation used to support the decision to grant the contract to the awarded contractor.²⁷ Given the breadth and substantial monetary value of the Department's contracts, it is essential that contracting personnel retain all documentation used to support the decision to award current and future contracts. Maintaining such documentation ensures that there is a complete record of the justifications, decisions, and rationale for awarding contracts. This in turn ensures that the Department has information contemporaneous to the contract award decision to address any future contract disputes, including bid protests.

The Department has the flexibility to purchase a variety of goods and services using a wide selection of contract types. Contract types vary according to the degree and timing of the responsibility assumed by the contractor as well as the amount and nature of the profit incentive offered to the contractor for achieving specific goals. Generally, a firm-fixed-price (FFP) contract is preferred because it places the responsibility for cost control and performance on the contractor. However, when the amount of goods or services is uncertain, the government may use additional contract types, including time-and-materials contracts, because it is not possible to accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence. While time-and-material type contracts may provide the most appropriate cost structure in many cases, these contracts provide no profit incentive for contractors to control costs or maximize performance. Consequently, appropriate government oversight of time-and-material type contracts is especially important to ensure that contractors use effective cost controls and efficient performance methods. When other contract types are used, the FAR encourages agencies to continually reevaluate whether contracts can be transitioned to FFP or lower-risk contract types.²⁸ In addition, when a contract type other than FFP is used, the FAR requires Contracting Officers to include documentation to adequately justify that decision.²⁹ Despite these

²⁵ FAR Subpart 4.801(b), *Government Contract Files, General*.

²⁶ DOJ OIG, [Contract Awarded to Midwest Jet Center](#), 10.

²⁷ DOJ OIG, [Audit of the Federal Bureau of Prisons' Contract No. DJBP0616BPA12004 Awarded to Spectrum Services Group, Inc. Victorville, California](#), Audit 17-20 (March 2017), 9-10.

²⁸ FAR Subpart 16.103(c), *Negotiating Contract Type*.

²⁹ FAR Subpart 16.103(d), *Negotiating Contract Type*.

requirements, we often have found that contract files did not sufficiently document price analysis to demonstrate that the Department was paying a fair and reasonable price for services or include plans regarding the viability to transition to a lower-risk contract in the future.³⁰ As we noted in our audit report of USMS's Court Security Officers procurement process, not ensuring compliance with these requirements creates a risk that the Department may continue to award riskier types of contracts in future acquisitions even if the circumstances justifying the initial use of those types of contracts has changed.³¹

Maximizing Competition

Further, while the FAR generally prescribes policies and procedures to promote full and open competition in the acquisition process, the regulation acknowledges that there are circumstances when such competition is not appropriate and provides authority for contracting without full and open competition, including awarding sole-source contracts.³² The FAR states that Contracting Officers shall not commence negotiations for a sole-source contract without justifying such an action in writing, certifying the accuracy and completeness of the justification, and obtaining agency approval of the justification.³³ Again, we have found that these requirements are not consistently followed by Department components. For example, USMS did not obtain competition to the maximum extent practicable in connection with a sole-source contract for detention services.³⁴ In addition, the narrative for the justification of the sole-source contract did not support its conclusion and was missing the Contracting Officer's certification that its contents were accurate and complete to the best of the Contracting Officer's knowledge. Similarly, at FBI, we found that the appropriate contracting personnel did not sign and approve a sole-source justification for an aircraft lease until approximately 3 months after the contract was executed and 4.5 months after the period of performance had begun.³⁵ Further, in connection with the audit of the Department's administration of the September 11th Victim Compensation Fund, we found that the Civil Division did not provide a justification that sufficiently detailed why the selected contractor was uniquely qualified to

³⁰ For example, DOJ OIG, *Aviation Support Services Contract with L3 Vertex Aerospace*, 13-15; DOJ OIG, [Audit of the United States Marshals Service Judicial Security Division's Court Security Officers Procurement Process](#), Audit 18-20 (March 2018), 8-9.

³¹ DOJ OIG, [Court Security Officers Procurement Process](#), 9.

³² FAR Subpart 6.1, *Full and Open Competition*; FAR Subpart 6.3, *Other Than Full and Open Competition*.

³³ FAR Subpart 6.303-1, *Other Than Full and Open Competition, Requirements*.

³⁴ DOJ OIG, *United States Marshals Service's Contract with CoreCivic, Inc.*, 10-11.

³⁵ DOJ OIG, [Contract Awarded to Midwest Jet Center](#), 4.

receive a series of non-competitive contracts.³⁶ As we noted in that audit report, when such non-competitive contracts are awarded without sufficient justification, it risks creating the perception that the contractor received inappropriate or otherwise unfair preferential treatment. Moreover, contracts awarded non-competitively present a greater risk that the Department is not receiving the contracted services at the lowest cost. Therefore, it is imperative that justifications for non-competitive contracts are sound and properly documented, both as a matter of compliance and to ensure that non-competitive contracts are properly awarded.

Avoiding Personal Services Contracts

In addition, the FAR states that contracts shall not be used for the performance of inherently governmental functions and prohibits agencies from awarding personal services contracts without statutory authority.³⁷ These provisions are designed to protect the integrity of certain governmental activities that require either the exercise of discretion in applying government authority or making decisions for the government. A personal services contract is defined as a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees.³⁸ Unless specifically authorized by Congress, obtaining personal services by contract circumvents the civil service laws, which normally require that the government obtain its employees by direct hire under competitive appointment or other authorized procedures.³⁹ A key inquiry to assess whether a contract is personal in nature is whether the government is exercising relatively continuous supervision and control over the contractor personnel.⁴⁰

Our audits have revealed that current practices in the Department are potentially placing some contractor employees in a personal services role. For example, at the DEA, we found that some contract personnel were embedded on drug investigation teams and performed duties that were deeply integrated into the DEA's mission essential functions.⁴¹ We were concerned that those workers were at risk of inappropriately performing inherently governmental functions that should be performed by DEA personnel and that their work demonstrated several characteristics of a personal services contract. At the DEA, we recommended that employees receive regular training regarding how

³⁶ DOJ OIG, [Audit of the Department of Justice's Administration of the September 11th Victim Compensation Fund](#), Audit Report 17-32 (August 2017), 25.

³⁷ FAR Subpart 7.503(a), *Inherently Governmental Functions, Policy*; FAR Subpart 37.104(b), *Service Contracting, Personal services contracts*.

³⁸ FAR Subpart 2.1, *Definitions*.

³⁹ FAR Subpart 37.104(a), *Service Contracting, Personal services contracts*.

⁴⁰ FAR Subpart 37.104(c)(2), *Service Contracting, Personal services contracts*.

⁴¹ DOJ OIG, [Task Orders Awarded to Maximus, Inc.](#), 13-14.

to best manage contract personnel to avoid personal services.⁴² The concerns we raised also have potential implication outside of the DEA, as the contracts the DEA used, and is using, for these services are available for use by all Asset Forfeiture Program participants and are Government-wide Acquisition Contracts.

Similarly, in an audit of JMD's task orders awarded to CACI, Inc. (CACI), we found that CACI's legal support staff received assignments directly from government employees, such as Assistant U.S. Attorneys, rather than from the CACI Project Manager. This arrangement risked the appearance that CACI employees were placed in a personal services role, which is contrary to the terms of the contract and exceeds the Department's statutory authority for that contract.⁴³ We recommended that JMD develop consistent procedures for monitoring contractor's activities and develop and implement policies that define which activities should be completed by the various levels of government personnel to ensure that the limits of authority are understood by government and contractor personnel.

The concerns motivating these OIG recommendations about personal services apply Department-wide. We therefore recommend that the Department ensure that all components update their contractor-related monitoring policies and provide regular training to government contracting employees on how to maintain appropriate, FAR-compliant relationships with contractor personnel.

Purchasing from Required Sources

The FAR also includes a specific provision that identifies required sources to be used for the procurement of certain supplies and services.⁴⁴ For example, coal, natural gas, petroleum fuels, and certain petroleum products must be procured using a Defense Logistics Agency (DLA) contract.⁴⁵ Nevertheless, in an audit of FBI fuel procurement contracts, we found that while the FBI was aware of this requirement, it chose not to use a DLA contract to procure bulk fuel to meet its needs.⁴⁶ In addition to being required by the FAR, using a DLA contract for fuel provides numerous benefits to the

⁴² DOJ OIG, [Task Orders Awarded to Maximus, Inc.](#), 17.

⁴³ DOJ OIG, [Audit of the Justice Management Division Task Orders Awarded to CACI, Inc., Commercial](#), Audit Report 19-01 (October 2018).

⁴⁴ FAR Part 8, *Required Sources of Supplies and Services*.

⁴⁵ See FAR Subpart 8.002(a)(1)(v), *Required Sources of Supplies and Services, Priorities for use of mandatory Government sources* (citing 41 C.F.R. § 101-26.6).

⁴⁶ DOJ OIG, [Audit of the Federal Bureau of Investigation's Fuel Procurement Contracts Awarded to the Petroleum Traders Corporation](#), Audit Report 16-25 (September 2016).

government because it combines federal agencies' needs that, in turn, generate more vendor interest, greater competition, and better prices.

Finally, the FAR identifies policies and procedures implementing the provisions of other laws and statutes that must be followed depending on the specific type of contract used or type of supplies or services procured. One of these laws is the *Service Contract Labor Standards* (SCLS), which, among other requirements, provides that service contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits.⁴⁷ Contracts where the SCLS is applicable must include a Department of Labor (DOL) Wage Determination, which identifies specific wage and fringe benefit rates for workers under the contract. We have completed audits in which we found that contractors were not meeting their obligations under the SCLS, or may have been improperly classifying employees as independent contractors and thus avoiding their obligations under the SCLS. Department contracting officials had not previously identified these instances of noncompliance.⁴⁸

Further, the DOL periodically makes updates to reflect changes in the wage and fringe benefit rates and contractors can subsequently receive price adjustments from the Department to account for these changes.⁴⁹ The FAR requires that the price adjustment must be the result of increased costs caused by a contractor's compliance with a revised DOL Wage Determination and not due to other factors.⁵⁰ Our audits have revealed multiple instances where contractors received price adjustments that were not warranted or exceeded the allowable increases for wages or fringe benefits based on DOL revisions.⁵¹ For example, a USMS detention center contract included operating a commissary, but the commissary workers' salaries and benefits were not priced into the contract's monthly operating price and the contractor was not eligible to request price adjustments for those positions pursuant to the SCLS.⁵²

⁴⁷ FAR Subpart 22.1002-1, *Service Contract Labor Standards, Statutory and Executive order requirements, General*.

⁴⁸ DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 36; DOJ OIG, [Task Orders Awarded to Maximus, Inc.](#), 25.

⁴⁹ FAR Part 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment*.

⁵⁰ FAR Part 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment*.

⁵¹ DOJ OIG, [Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas to Operate the Reeves County Detention Center I/II Pecos, Texas](#), Audit Report 15-15 (April 2015); DOJ OIG, [Audit of the Federal Bureau of Prison's Contract with CoreCivic, Inc., to Operate the Adams County Correctional Center in Natchez, Mississippi](#), Audit Report 17-08 (December 2016); DOJ OIG, *Contract Awarded to Spectrum Services Group*; DOJ OIG, *United States Marshals Service's Contract with CoreCivic, Inc.*; DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#)

⁵² DOJ OIG, *United States Marshals Service's Contract with CoreCivic, Inc.*, 65-66.

However, we found the contractor had been incorrectly requesting price adjustments for the commissary worker positions and USMS approved these unallowable price adjustments and increased the contract's monthly operating price.⁵³

In another contract audit report, we noted that the Department did not have guidance for components with responsibility for SCLS contracting activities.⁵⁴ Although in 2018 JMD issued Acquisition Policy Notice 2018-03 to address this issue, we believe that further efforts should be made to ensure Department-wide compliance.

As noted above, our contract audit work continues to identify many concerns with compliance with FAR requirements, contract administration, and contractor performance. We believe it is critical that Department personnel understand the FAR's requirements and follow them in order to ensure supplies and services are procured properly, and that federal contracting dollars are allocated in a cost-efficient manner.

Conclusion and Recommendations

We are providing this information so that the Department can assess the sustained, repeated, and systemic nature of our contract audit-related findings and devise approaches to address the root causes that have led to them. To this end, we specifically recommend that the Department:

- (1) implement a Department-wide policy to ensure that all Task Monitors are required to complete at least FAC-COR Level I training prior to being designated a Task Monitor in accordance with OMB guidance;
- (2) develop policy or implement procedures to ensure that contractor performance evaluations are completed, accurate, and entered into CPARS in a timely manner;
- (3) ensure all components update their contractor-related monitoring policies and provide regular training to government contracting employees on how to maintain appropriate, FAR-compliant relationships with contractor personnel; and
- (4) consider including contract management in its enterprise-level risk management prioritization.

⁵³ We brought this finding to the USMS's attention during the audit and the USMS issued a contract modification to the contractor to recover unallowable price adjustments and modified the monthly operating price to reflect the proper monthly price.

⁵⁴ DOJ OIG, [Contract Awarded to Conduit Language Specialists, Inc.](#), 47.

JMD provided a response to the draft advisory memorandum, which can be found in Attachment 1. Our analysis of that response is included in Attachment 2.

If you have any questions regarding the information in this memorandum, please contact me at (202) 514-3435 or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

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**JUSTICE MANAGEMENT DIVISION'S RESPONSE TO THE DRAFT
MANAGEMENT ADVISORY MEMORANDUM**



U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

June 15, 2020

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

FROM: Michael H. Allen
Deputy Assistant Attorney General and
Senior Procurement Executive
Justice Management Division

MICHAEL ALLEN Digitally signed by
MICHAEL ALLEN
Date: 2020.06.15
16:29:44 -04'00'

SUBJECT: Response to the Office of the Inspector General's Draft
Management Advisory Memorandum, *Notification of Concerns
Identified in the Department of Justice's Administration and
Oversight of Contracts*

This memorandum provides a response to the Office of the Inspector General's (OIG) May 11, 2020, draft Management Advisory Memorandum (MAM) entitled, a *Notification of Concerns Identified in the Department of Justice's Administration and Oversight of Contracts*. The Justice Management Division appreciates the opportunity to review and comment on the draft Management Advisory Memorandum.

The OIG's MAM identified the following contracting matters: (1) inadequate execution of contract oversight responsibilities, (2) insufficient quality assurance practices, and (3) non-compliance with contracting-related laws and regulations. The specific recommendations and our response follows.

(1) Implement a Department-wide policy to ensure that all Task Monitors are required to complete at least FAC-COR Level I training prior to being designated a Task Monitor in accordance with OMB guidance;

On January 16, 2018, the Department issued DOJ Policy Instruction 1301.03.01, *Federal Acquisition Certification for Contracting Officer's Representatives*. This policy guidance was established after the cited audits were performed and formally reported. Technical or Task Monitors are specifically addressed as part of the policies and procedures under the Department's Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Program. The requirement for active FAC-COR certifications for Technical or Task Monitors is detailed in Section VIII entitled, "Nomination and Appointment" as follows:

“Contracting officers may appoint an individual to act as an authorized representative in monitoring and administering a contract if the individual holds an active FAC-COR Certification at a level appropriate for the contract... This Delegation of Authority also applies to Technical or Task Monitors, and others who ensure proper development of requirements and assist the CO and/or CORs in managing assigned contracts.”

(2) Develop policy or implement procedures to ensure that contractor performance evaluations are completed, accurate, and entered into CPARS in a timely manner;

DOJ is developing a comprehensive Policy Instruction related to acquisition reporting and administration, which includes discussion of timely and accurate past performance evaluations. The Policy Instruction will also provide information and resources to ensure acquisition workforce members understand the methods and responsibilities for proper and prompt reporting of contractor performance information. DOJ also keeps current with developments regarding improved reporting procedures, capabilities and innovations through participation on the Chief Acquisition Officers (CAO) Council.

(3) Ensure all components update their contractor-related monitoring policies and provide regular training to government contracting employees on how to maintain appropriate, FAR-compliant relationships with contractor personnel; and

DOJ Policy Instruction 1301.03.01 mandates that appointment memorandums for component Contracting Officer’s Representatives (CORs) include detailed duties, responsibilities, and obligations for managing the assigned contract and contractor staff based on the contract’s terms and conditions. In particular, the Policy Instruction requires that each COR appointment memorandum issued by the component include monitoring and surveillance, inspection and acceptance, invoices and payments, and evaluating performance. Once published, components were expected to update all component-level policy to adhere to the DOJ Policy Instruction.

In addition to the requirements detailed in DOJ Policy Instruction 1301.03.01, components are required to report on their ongoing training efforts as part of the Department’s Acquisition Human Capital Plan (AHCP), which is submitted to the Office of Management and Budget annually. For the FY 2019 AHCP, many components reported developing and administering FAR-based component-specific training to manage and strengthen the acquisition workforce’s contract management and oversight practices.

(4) Consider including contract management in its enterprise-level risk management prioritization.

The JMD Internal Review and Evaluation Office submitted “Contract Oversight and Management” as an item for consideration in the Department’s Risk Profile. This risk will be reviewed as part of the Enterprise Risk Management (ERM) Program managed by the Strategic Planning and Performance Staff, working with the Department’s ERM Working Group. As part of the process, all proposed risks will be considered for inclusion in the Department’s Risk Profile using the Department’s methodology: 1) Articulate Strategies; 2) Identify and Prioritize; 3) Assess and Mitigate; and 4) Monitor and Report.

Thank you for the opportunity to respond to this draft Management Advisory Memorandum, and for your continued collaboration to improve the administration of Departmental programs. If you have any questions regarding this response, please contact Louise Duhamel, Acting Assistant Director, Audit Liaison Group, Internal Review and Evaluation Office, Justice Management Division, at (202) 514-4006 or me at 202-514-3101.

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**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE RECOMMENDATIONS**

The OIG provided a draft of this advisory memorandum to JMD. JMD's response is incorporated in Attachment 1 of this final memorandum. JMD agreed with our recommendations and stated the actions it has taken in response to previous OIG recommendations, or that it will implement in response to our concerns. As a result, the recommendations are resolved. The following discussion provides the OIG analysis of the response and summary of actions necessary to close the recommendations.

Recommendation for JMD:

- 1. Implement a Department-wide policy to ensure that all Task Monitors are required to complete at least FAC-COR Level I training prior to being designated a Task Monitor in accordance with OMB guidance.**

Resolved. JMD agreed with our recommendation. JMD stated in its response that it issued DOJ Policy Instruction 1301.03.01, *Federal Acquisition Certification for Contracting Officer's Representatives*, on January 16, 2018. The policy establishes the requirement that Technical or Task Monitors hold an active FAC-COR certification at a level appropriate for the contract. The Delegation of Authority also applies to "others who ensure proper development of requirements and assist the Contracting Officer and/or Contracting Officer's Representatives (COR) in managing assigned contracts."

This recommendation can be closed when JMD provides evidence that it has distributed DOJ Policy Instruction 1301.03.01 to DOJ components.

- 2. Develop policy or implement procedures to ensure that contractor performance evaluations are completed, accurate, and entered into CPARS in a timely manner.**

Resolved. JMD agreed with our recommendation. JMD stated in its response that it is developing a comprehensive Policy Instruction related to acquisition reporting and administration, which includes discussion of timely and accurate past performance evaluations. JMD also stated the Policy Instruction will provide information and resources to ensure acquisition workforce members understand the methods and responsibilities for proper and prompt reporting of contractor performance information.

This recommendation can be closed when we receive a copy of the final Policy Instruction and evidence that it has been distributed to DOJ components.

3. Ensure all components update their contractor-related monitoring policies and provide regular training to government contracting employees on how to maintain appropriate, FAR-compliant relationships with contractor personnel.

Resolved. JMD agreed with our recommendation. JMD stated in its response that DOJ Policy Instruction 1301.03.01 mandates that appointment memorandums for component CORs include detailed duties, responsibilities, and obligations for managing the assigned contract and contractor staff based on the contract's terms and conditions. The DOJ Policy Instruction specifically requires that each memorandum include monitoring and surveillance, inspection and acceptance, invoices and payments, and evaluating performance. After publication, DOJ components were expected to update all component-level policy to adhere to the DOJ Policy Instruction.

According to JMD, components are also required to report on their ongoing training efforts as part of the Department's Acquisition Human Capital Plan (AHCP), which is submitted to the Office of Management and Budget annually. For the Department's fiscal year 2019 AHCP submission, many components reported developing and administering FAR-based component-specific training to manage and strengthen the acquisition workforce's contract management and oversight practices.

This recommendation can be closed when we receive evidence that all DOJ components have updated contractor-related monitoring policies and are providing regular training to government contracting employees on how to maintain appropriate, FAR-compliant relationships with contractor personnel.

4. Consider including contract management in its enterprise-level risk management prioritization.

Resolved. JMD agreed with our recommendation. JMD stated in its response that the JMD Internal Review and Evaluation Office submitted "Contract Oversight and Management" as an item for consideration in the Department's Risk Profile. This risk will be reviewed as part of the Enterprise Risk Management (ERM) Program managed by the Strategic Planning and Performance Staff, working with the Department's ERM Working Group. As part of the process, all proposed risks will be considered for inclusion in the Department's Risk Profile using the

Department's methodology: 1) Articulate Strategies; 2) Identify and Prioritize; 3) Assess and Mitigate; and 4) Monitor and Report.

This recommendation can be closed when we receive evidence documenting that during the Department's Risk Profile reviews, risks associated with contract oversight and management are considered for inclusion in the ERM Program.



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