



Audit of the Federal Bureau of Investigation's  
Contract Awarded to TUVA, LLC for Subject Matter  
Expert Services



AUDIT DIVISION

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# Executive Summary

*Audit of the Federal Bureau of Investigation's Contract Awarded to TUVA, LLC for Subject Matter Expert Services*

## Objective

In December 2015, the Federal Bureau of Investigation (FBI) awarded a \$60 million non-personal services contract to TUVA, LLC (TUVA) for Subject Matter Experts (SME) with specialized skills. The Department of Justice Office of the Inspector General conducted an audit of this contract to assess the FBI's administration of the contract, and TUVA's performance and compliance with the terms, conditions, laws, and regulations applicable to the contract.

## Results in Brief

We found that the FBI did not establish essential contract oversight controls and responsibilities in its SME contract with TUVA. First, the SME contract did not require TUVA to provide programmatic technical support and on-site management of the SMEs. As a result, we found FBI personnel providing relatively continuous supervision and control over SMEs' daily operational support tasks and participating in the recruitment, interviewing, and hiring of SMEs. Thus, the FBI's administration of the SME contract created the appearance of a personal services contract, which conflicts with Federal Acquisition Regulation (FAR) contracting requirements and FBI policy. Furthermore, we found SMEs performing operational support tasks not listed in the task order Statement of Work (SOW) and prohibited by the FAR. Second, we found SMEs did not report outside employment and foreign travel to the FBI as required under the contract.

We also found that the FBI did not comply with certain requirements under the FAR in procuring and awarding the SME contract. For example, we found that the FBI did not obtain proper authorization prior to announcing the SME contract solicitation, properly delegate contract administration responsibilities to qualified Contracting Officer's Representatives (COR), or evaluate and report TUVA's performance on the SME task orders. Lastly, we questioned \$9,376 in unallowable airfare charges for SMEs.

## Recommendations

Our report contains 12 recommendations to assist the FBI in improving its contract award and administration practices.

## Audit Results

In December 2015, the FBI awarded contract number DJF-16-1200-V-0001485, an indefinite delivery/indefinite quantity non-personal services contract to TUVA for \$60 million. The contract period of performance was 1-year base and four 1-year options. As of December 2019, the FBI had exercised 3 of those option years. As of December 2019, TUVA had received \$48.8 million (81 percent) of the estimated total contract value.

***SME Contract Administered as a Personal Services Contract*** - Although the FBI had entered into a non-personal services contract with TUVA, we found that the SME contract is being administered in a manner that more closely aligns with the oversight and management of a personal services contract, which is contrary to FAR requirements and FBI policy.

We found that, according to the contract, TUVA's Program Manager is responsible for administering the contract but is not required to provide programmatic technical support and on-site management of the SMEs. As a result, the FBI directly assigns SMEs daily tasks and is providing relatively continuous supervision and control over the SMEs. Additionally, TUVA's Program Manager does not possess the security clearance level required to manage and oversee SMEs working on classified programs and therefore is not aware of the specific operational support tasks assigned to the SMEs. We found SMEs performing FBI mission essential tasks that far exceeded the operational support tasks listed in the SOW, such as determining operational needs and assisting in the selection of FBI personnel for integral mission-related activities. Contractor personnel performing these inherently governmental functions is prohibited by FBI policy.

We also found that FBI personnel were inappropriately involved in recruiting, interviewing, and hiring TUVA SMEs, which is contrary to the contract requirements and not allowed by FBI policy.

***SME Non-Compliance with Security Reporting Requirements*** - The FBI contract required SMEs to report certain activities to the FBI as promptly as possible, but no later than 5 business days after the activity or event. Those activities include, but are not



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limited to, outside employment, official and unofficial foreign travel, and contacts with foreign nationals. We found that 9 of the 30 SMEs we interviewed did not report outside employment to the FBI, as required. In addition, 6 of 28 foreign trips taken by SMEs were not reported to the FBI as required by the contract and the National Industrial Security Operating Program Manual. We further identified one SME who did not report their contact with foreign nationals in a timely manner to the FBI.

***FBI's Non-Compliance with the FAR*** – The FBI did not adhere to the FAR in several instances when procuring and awarding its SME contract. For example, we found the FBI did not inform the Small Business Administration (SBA), as required, of its intent to solicit SBA 8(a) Small Disadvantaged Business Program participants for the SME contract prior to announcing the solicitation. Additionally, the FBI's contract files were not adequately maintained to ensure that there is a complete record of the justifications, decisions, and rationale for awarding the SME contract.

Further, we found that the FBI did not always properly delegate contract administration responsibilities to qualified CORs. The FBI also did not prepare and enter TUVA's past performance information into the Contractor Performance Assessment Reporting System (CPARS) as required by the FAR. Specifically, we determined that the FBI did not enter contractor performance information into CPARS for 60 percent of the SME task orders.

***TUVA Invoiced and the FBI Paid Unallowable Expenses*** – We found that TUVA's invoices do not include enough detail to verify the accuracy of the labor hours billed. As a result, the FBI COR or Task Lead certifying the invoice for payment is unaware of the actual hours each SME worked each month. We also found that TUVA does not submit supporting documentation to the FBI, such as SME timesheets, to support the actual hours being worked. Finally, we questioned \$9,376 in unallowable business-class airfare expenses that the FBI approved and paid without written justification from TUVA.

**AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S  
CONTRACT AWARDED TO TUVA, LLC  
FOR SUBJECT MATTER EXPERT SERVICES**

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# **AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S CONTRACT AWARDED TO TUVA, LLC FOR SUBJECT MATTER EXPERT SERVICES**

## **INTRODUCTION**

Between 2003 and 2010, the FBI entered into more than 150 personal services contracts to acquire the services of subject matter experts (SME) with the varying specialized skills and experience required to support the FBI's critical mission areas related to intelligence and counterintelligence activities.<sup>1</sup> Personal services contracts typically require a *government* employee to exercise relatively continuous supervision and control over contractor personnel. In addition to personal services contracts, the FBI utilizes non-personal services contracts to obtain the services of SMEs. Unlike personal services contracts, non-personal services contracts typically require the *contractor* to provide relatively continuous supervision and control of its contracted personnel.

In May 2010, the FBI steered away from personal services contracts for SMEs and awarded SAVA Workforce Solutions, LLC (SAVA), located in Herndon, Virginia, a \$65.6 million sole-source indefinite delivery/indefinite quantity (IDIQ) non-personal services contract to provide SMEs for various FBI programs, including the FBI's intelligence and counterintelligence efforts.<sup>2</sup> The SAVA contract had a 1-year base and 4 option years, all of which were exercised. The FBI determined that using the IDIQ vehicle to obtain the services of SMEs would help reduce costs and the administrative tasks associated with program management, contract administration, and project oversight for multiple personal services contracts.

In May 2015, the FBI's contract with SAVA was scheduled to expire. While reviewing vendor proposals in response to its solicitation for the next SME contract, the FBI extended SAVA's contract period of performance through December 2015 to ensure continuity of services until the new SME contract could be awarded. In accordance with the FAR, the FBI offered a competitive solicitation for the follow-on

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<sup>1</sup> Federal law generally allows the FBI Director to enter into personal services contracts if the services to be provided under such contracts directly support the intelligence or counterintelligence missions of the FBI. 50 U.S.C. § 3072(a).

<sup>2</sup> An indefinite delivery/indefinite quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period.

At the time of the award, SAVA was part of the Small Business Administration's 8(a) Small Disadvantaged Business Program. SAVA was a subsidiary of AKIMA, LLC (AKIMA) which is a wholly owned subsidiary of NANA Development Corporation (NANA). NANA is an Alaska Native Corporation (ANC), which operates more than 40 subsidiary companies and has more than 14,000 Inupiat shareholders native to northwest Alaska. According to Federal Acquisition Regulation (FAR) Subpart 19.8, since SAVA was owned by an ANC, the FBI was not required to conduct competitive contract negotiations.

SME contract and received three bids in May 2015.<sup>3</sup> The FBI evaluated each of the bids and in June 2015, it awarded the SME contract to an 8(a) Small Disadvantaged Business Program participant. However, after awarding the contract, the FBI received a bid protest from TUVA, LLC (TUVA), located in Herndon, Virginia. TUVA stated in its protest that the FBI failed to consider the past performance and experience of its sister company, SAVA, in TUVA's bid. TUVA was permitted to include the past performance and experience of its sister company, SAVA, in its bid proposal.<sup>4</sup>

As a result of TUVA's protest, the FBI re-evaluated two of three bids it had found to be acceptable and met the FBI's SME needs. Consequently, in December 2015, the FBI reversed its original decision and awarded its \$60 million IDIQ non-personal services contract to TUVA under contract number DJF-16-1200-V-0001485.<sup>5</sup> The contract has a 1-year base and four 1-year options, and as of December 2019, the FBI had exercised 3 of the option years. The contract with TUVA is intended to provide the FBI with SMEs who will enhance the FBI's ability to perform its mission-related requirements and are cleared at the Top Secret (TS) level with Sensitive Compartmented Information (SCI) access.

Various FBI branches and divisions requiring SME services use task orders to acquire the services under the IDIQ contract. Task orders may be awarded as firm-fixed-price or time and material orders.<sup>6</sup> At the time of the IDIQ contract award, 13 task orders were awarded to support the: (1) Intelligence Branch; (2) National Security Branch; (3) Criminal, Cyber, Response and Services Branch; (4) Science and Technology Branch; (5) Inspection Division; and (6) Internal Policy Office. As of December 2019, the FBI had paid TUVA \$48.8 million, or 81 percent of the estimated total contract value of \$60 million.

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<sup>3</sup> According to FAR Subpart 19.808-1, the FBI is not permitted to award a follow-on sole-source SME contract to an 8(a) program participant owned by an ANC, if the predecessor contract was performed by another 8(a) program participant (or former 8(a) program participant) owned by the same ANC. Instead, the FBI must conduct competitive contract negotiations among 8(a) program participants for the follow-on SME contract.

<sup>4</sup> The FBI's Request for Proposals stated that an offeror may submit its subcontractor's past performance information, if the subcontractor is expected to perform more than 25 percent of the work described in the task orders, provided the past work performance is relevant to the work the subcontractor is expected to perform on the contract. TUVA argued during its bid protest that this statement in the Request for Proposals, combined with certain provisions of the FAR and SBA precedent, allowed it to include the past performance of SAVA, its sister company, in its bid proposal. TUVA stated in its bid proposal that SAVA would perform work on more than 25 percent of the work described in the task orders.

<sup>5</sup> According to the contract, the maximum dollar amount the FBI may order under this contract is \$100 million and the minimum amount is \$10 million.

<sup>6</sup> According to FAR Subpart 16.2, a firm-fixed-price contract provides a contract price that is not subject to adjustment based on the contractor's cost in performing the contract. This contract type places maximum risk and full responsibility for all costs and resulting profit or loss on the contractor. In contrast, FAR Subpart 16.6 states that a time and materials contract acquires supplies or services on the basis of: (1) direct labor hours at specified fixed hourly rates; and (2) the actual cost of materials.

## **Office of the Inspector General Audit Approach**

Our audit objective was to assess the FBI's administration of the contract, and TUVa's performance and compliance with the terms, conditions, laws, and regulations applicable to this contract. The assessment of performance included a review of TUVa's financial management, monitoring, reporting, and progress toward meeting the contract's goals and objectives.

In conducting our audit, we tested compliance with what we consider to be the most important conditions of the contract award. Unless otherwise stated in our report, the criteria we used to evaluate compliance are contained in the FAR and FBI policies and procedures. We interviewed key personnel at TUVa including executive management, legal counsel, other officials and staff, and 30 SMEs working on the contract. We conducted more than 40 interviews with FBI Section Chiefs, Unit Chiefs, legal counsel, Supervisory Special Agents, Contracting Officers, and Contracting Officer's Representatives (COR), as well as FBI finance and procurement staff. We also spoke to Small Business Administration (SBA) officials regarding the policies and procedures for its 8(a) Small Disadvantaged Business Program. We tested the FBI's procedures for ensuring adequate contract oversight and reviewed supporting documentation to verify the contractor hiring process was appropriate. We also tested contractor compliance with the contract's personnel security reporting requirements and the FBI's monitoring of contract performance. We reviewed the FBI's contract file to ensure completeness as required by the FAR. Lastly, we tested invoices billed to the FBI to ensure accuracy and allowability of those expenditures.



## AUDIT RESULTS

The FBI did not establish essential contract oversight controls and responsibilities in its SME contract with TUVA. Specifically, TUVA's Program Manager was not required to provide programmatic technical support and on-site management of the SMEs. Instead, the contract was administered in a manner that more closely aligned with the execution of a personal services contract, which, unless specifically authorized by the FBI Director, is a violation of FAR contracting requirements. Specifically, we found FBI personnel were overseeing the SMEs' daily operational support tasks and inappropriately participating in the recruitment, interviewing, and hiring of new TUVA SMEs. We also found that SMEs were not properly reporting events such as outside employment and foreign travel to the FBI. In addition to the issues with its oversight of SMEs, we also found that the FBI did not comply with certain requirements under the FAR in procuring and awarding the SME contract. For example, we found that the FBI did not: (1) inform the Small Business Administration (SBA) of its intent to solicit 8(a) Small Disadvantaged Business Program participants for the SME contract prior to announcing the solicitation, (2) properly delegate contract administration responsibilities to qualified CORs, or (3) evaluate and report TUVA's performance for the majority of the task orders in the Contractor Performance Assessment Reporting System (CPARS). Lastly, we identified \$9,376 in unallowable business-class airfare charges that TUVA charged and the FBI paid on some of the task orders without proper justification.

### **SME Contract Administered as a Personal Services Contract**

Although the FBI's contract with TUVA is a non-personal services contract, the contract is being administered in a manner that more closely aligns with the oversight and management of a personal services contract. Overall, we found that the FBI is providing relatively continuous supervision and control over almost all of the SMEs we interviewed, while TUVA provides no oversight or supervision of these particular SMEs. As a result, the SMEs performed duties that we believe far exceed the operational support tasks outlined in the statement of work (SOW) and performed potentially prohibited inherently governmental functions. We also identified instances where FBI personnel were inappropriately involved in the recruiting, interviewing, and hiring of new SMEs under the contract.

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.<sup>7</sup> 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 "a contract that, by its express terms

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<sup>7</sup> FAR Subpart 7.503(a), *Inherently Governmental Functions, Policy*; FAR Subpart 37.104(b), *Service Contracts-General, Personal Services Contracts*.

or as administered, makes the contractor personnel appear to be, in effect, government employees.”<sup>8</sup>

### *FBI Employees Provide Daily Tasks to TUVA SMEs*

FBI employee oversight of TUVA SMEs performing operational support tasks under the contract creates the appearance of a personal services contract. The key inquiry to assess whether a contract is personal services in nature is whether the government exercises “relatively continuous supervision and control over the contractor personnel.”<sup>9</sup> The FAR provides “descriptive elements” to consider in assessing whether a service contract is personal in nature, including whether the type or manner of services provided reasonably require government direction or supervision of contractor employees to: (1) adequately protect the government’s interest, (2) retain control of the function involved, or (3) retain full personal responsibility for the function supported.<sup>10</sup>

We interviewed 30 of the 61 SMEs working on the TUVA contract at the time of our audit. Of these SMEs, 27, or 90 percent of those interviewed, stated that they receive daily tasks from FBI personnel and that FBI personnel directly oversee the work being performed. Pursuant to the contract, TUVA hired 1 Program Manager to administer and oversee the contract’s 61 SMEs; however, the majority of SMEs we interviewed stated that TUVA’s Program Manager was not aware of the substance of the work they performed because the Program Manager was not on-site and did not possess the requisite security clearance to review classified material. In fact, we determined that the SME contract does not actually require TUVA to provide on-site management of the SMEs, and when we began our audit, 26, or 43 percent, of the 61 SMEs were working on projects that required a Top Secret clearance with SCI access.

We asked the FBI how it ensures that proper oversight and supervision of the SMEs is occurring when TUVA is not required to oversee its SMEs’ daily tasks. An FBI official stated that SME oversight depends on the FBI requirement and comes at an additional cost. In the FBI’s previous non-personal services contract with SAVA, contractor programmatic support and on-site supervision was included in the contract’s terms and conditions for a cost of about \$650,000. However, the FBI official stated that SAVA’s Program Manager’s tasks focused mainly on contract administration, such as preparing monthly invoices, rather than overseeing the operational support tasks performed by the SMEs. Therefore, in an effort to reduce costs, the FBI removed the requirement for on-site supervision. Instead of modifying the contract to ensure that TUVA provided a program manager with the requisite technical expertise to oversee the SMEs’ daily operational support tasks,

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<sup>8</sup> FAR Subpart 2.1, *Definitions*.

<sup>9</sup> FAR Subpart 37.104(c)(2), *Service Contracts-General, Personal services contracts*.

<sup>10</sup> FAR Subpart 37.104(d)(6). The other descriptive elements are performance on site, principal tools and equipment furnished by the Government, services applied directly to integral effort of agencies in furtherance of assigned function or mission, comparable services performed in same or similar agencies using civil service personnel, and need for the type of service reasonably expected to last beyond 1 year.

the FBI required TUVA to provide a program manager who performed primarily administrative functions. As a result, FBI personnel were responsible for providing daily operational support tasks to the SMEs.

We believe that by removing the contractual requirement and shifting the responsibility to FBI personnel to provide on-site supervision of the SMEs and technical programmatic support, the FBI is administering its non-personal services contract in a manner that more closely aligns with a personal services contract. Further, without adequate supervision by TUVA, we found that the SMEs are performing duties that far exceed the operational support tasks outlined in the SOWs, as described in the next section.

### *SMEs Performing Inherently Governmental Functions*

The FAR states that non-personal services contracts shall not be used for the performance of inherently governmental functions.<sup>11</sup> The FAR provides examples of inherently governmental functions, which include: (1) determination of agency policy, (2) direction and control of federal employees, (3) selection or non-selection of individuals for government employment, and (4) determination of federal program priorities for budget requests.<sup>12</sup>

We believe the SMEs' performance of tasks such as the determination of FBI mission-related priorities and operational needs and the selection of FBI personnel for integral mission-related activities raises concerns that the SMEs are at risk of inappropriately performing inherently governmental functions that exceed the operational support tasks listed in the SOWs. While the FAR allows the government to use contractors, such as SMEs, to support government efforts such as gathering intelligence, we found that 6 of the 61 SMEs (10 percent) were assisting in areas beyond the operational support tasks outlined in the SOWs. Further, we found that the task order SOWs for these six SMEs did not always include a specific description of tasks the SMEs would be performing. For example, one task order SOW required the SMEs to "Perform other duties as requested by the Unit Chief" and "Perform other administrative tasks..." We believe that unclear SOWs can potentially allow FBI Supervisors to task SMEs to perform prohibited inherently governmental functions. Additionally, we determined one task order SOW was used for four of the six SMEs even though each SME had different job tasks. In contrast to the tasks listed in the SOWs, we found that the SMEs were deeply integrated in FBI mission essential functions, and that, due to the classified nature of the work being performed, FBI employees directly assigned SMEs daily operational support tasks. One of the SMEs we interviewed told us they assisted in determining FBI mission-related priorities and operational needs for budgetary requests. Additionally, we determined that two SMEs voted on selection panels to assist with staffing FBI personnel on integral mission-related activities.

We also found that several SMEs were performing services that were previously awarded under personal services contracts. Specifically, we determined

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<sup>11</sup> FAR Subpart 7.503, *Inherently Governmental Functions, Policy*.

<sup>12</sup> FAR Subpart 7.503(c).

that SMEs conducted interviews of confidential human sources to provide comprehensive psychological written assessments of a source's suitability for the FBI. According to two of the SMEs we interviewed, the interviews occurred without FBI personnel present, where the interviewees may have assumed that the SMEs were FBI employees. The FAR provides examples of functions that are "generally not considered to be inherently governmental functions" but "may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance." One such example is "Contractors participating in any situation where it might be assumed that they are agency employees or representatives."<sup>13</sup> Contractors performing functions that may approach being inherently governmental typically require greater attention and an enhanced degree of management oversight.<sup>14</sup> We believe without direct or indirect government supervision during these types of interviews, the FBI cannot reasonably ensure that its interests are protected.

#### *FBI's Inappropriate Participation in Recruiting and Selecting Contractor Personnel*

According to officials within the FBI's Fiscal and Contract Law Unit's (FCLU), the FBI should not be involved in hiring contractor personnel, beyond reviewing résumés to determine if the minimum job qualifications have been met, to avoid the appearance of administering the contract in a manner that is indicative of a personal services contract. A FCLU official stated that the FCLU advises FBI personnel against conducting interviews or participating in "meet and greets" with potential contractor personnel. According to the SME contract, TUSA was responsible for performing all activities associated with recruiting and hiring contractor personnel, such as advertising, screening applicants, interviewing, reference checks, and passing security clearances to the FBI. The FBI's COR was required to make the final determination on whether to hire a TUSA SME, which occurred after reviewing the job qualifications outlined in the résumé or, in some cases, after interviewing the proposed SME.

We asked 17 SMEs, as well as several FBI Supervisors and Task Leads about their experience with TUSA's recruiting and selection process.<sup>15</sup> We found that 11, or 65 percent, of the 17 SMEs we interviewed were informed about the FBI contract positions by FBI personnel. Additionally, when we asked each of the 17 SMEs who interviewed them prior to being hired, we were told that 6 had interviewed only with FBI personnel, 5 interviewed with both TUSA and FBI personnel, and 6 interviewed only with TUSA personnel. We believe allowing FBI personnel to

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<sup>13</sup> FAR Subpart 7.503(d)(13).

<sup>14</sup> Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, 76 Fed. Reg. 176, 56227 (September 2011).

<sup>15</sup> Each Task Order was assigned a Task Lead responsible for monitoring and reporting SME performance to the Contracting Officer.

recruit and conduct interviews of potential contractor personnel contradicts the FBI's own guidance.

We also asked several FBI Supervisors and Task Leads how TUVA SMEs were recruited and hired for several of the task orders, and some of them described their own processes for recruiting TUVA SMEs. For example, one FBI Task Lead told us that they recruit soon-to-be retired and retired Law Enforcement Officers (LEOs), while attending various correctional intelligence task force conferences.<sup>16</sup> Another FBI Task Lead stated that they conducted meet and greets with potential contractor personnel. According to officials within the FCLU, FCLU has advised FBI employees that involvement beyond reviewing résumés may create the perception that the FBI is circumventing federal laws and regulations established to ensure fair and open competition in the federal government's hiring process.

We determined that 20 of 61, or 33 percent, of the SMEs were retired or former LEOs. Of the 20 retired or former LEOs, we found that 17 had retired early from federal government service and 8 of the 17 went to work for TUVA within 1 year after retiring. The remaining three LEOs had reached the mandatory retirement age of 57, and after retiring or leaving federal government service, two went to work for TUVA within 1 year after retiring. Several FBI Supervisors stated that hiring an experienced contractor was typically faster and more streamlined than acquiring and filling a full-time federal position. This raises concerns that the FBI may selectively choose to hire a contractor instead of a federal employee because of the ease of recruitment. As a result, the FBI could be circumventing fair and open competition in the federal hiring process and utilizing former LEOs as contractors to perform prohibited inherently governmental functions.

We believe the FBI's current contracting practices related to the TUVA SME contract appear to be inappropriately placing contractor personnel in a personal services role contrary to the terms of the contract and FBI guidance. Therefore, we recommend that the FBI review its SME contract with TUVA in its entirety to ensure that: (1) the non-personal services contract, as it is being administered, is in compliance with FAR requirements and FBI policy; (2) proper contractor oversight controls and responsibilities have been established, including proper oversight of SMEs and the recruiting, interviewing, and hiring of SMEs; and (3) SMEs are not performing inherently governmental functions, which are prohibited by the FAR. We also recommend that the FBI provide periodic training to Contracting Officers, CORs, Task Leads, and any other FBI personnel overseeing the activities of SMEs, to ensure that appropriate, FAR-compliant relationships are being maintained with contractor personnel.

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<sup>16</sup> Federal law enforcement officers are generally subject to mandatory retirement at age 57. See 5 U.S.C. § 8335(b); 5 U.S.C. § 8425(b).

## **SME Non-Compliance with Security Reporting**

According to the SME contract and consistent with FBI policy, SMEs are required to report certain events or activities to the FBI as promptly as possible, but no later than 5 business days after the activity or event.<sup>17</sup> Those events include but are not limited to outside employment and activities, official and unofficial foreign travel, and contact with official and unofficial foreign nationals. The purpose of reporting such events is to assist the FBI in identifying potential conflicts of interests and activities that pose a risk to the FBI.<sup>18</sup> These requirements are similar to those placed on FBI employees. However, we found that some SMEs failed to report outside employment and foreign travel to the FBI, while others did not report contact with foreign nationals in a timely manner.

### *Outside Employment Activities*

As noted above, we interviewed 30 of the 61 SMEs on board when we began our audit. Ten of those we interviewed had engaged in outside employment. Of those 10 only 1 had reported their outside employment to the FBI, as required under the contract.<sup>19</sup> We asked three FBI Supervisors if they were aware that the SMEs working for them had engaged in outside employment without properly reporting the employment. One FBI Supervisor stated that he was not aware that the two SMEs that worked for him had engaged in outside employment and failed to report those activities. The two other FBI Supervisors stated that they were aware that SMEs working for them were engaged in outside employment but were unaware of the reporting requirement. The purpose of reporting outside employment activities is to identify potential conflicts of interest and other activities that pose a risk to the FBI, such as divided loyalties, espionage or sabotage, and suspicious contacts. When a SME fails to properly report and obtain approval to engage in outside employment, the FBI is unable to assess the potential risk the outside employment could present to FBI operations.

### *Foreign Travel and Foreign Contacts*

The SME contract requires contractor personnel to report all official and unofficial foreign travel and contacts with foreign nationals to an FBI Security Officer as soon as possible, but no later than 5 business days after the activity or

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<sup>17</sup> Contractor personnel security reporting requirements are applicable to all individuals assigned to FBI locations and who require access to FBI protected information and information systems. Self-reporting is required electronically to the FBI's Chief Security Officer through the Personnel Self-Reporting Enterprise Process Automation System.

<sup>18</sup> A conflict of interest arises when an individual has competing interests or loyalties because of their official or professional responsibilities to more than one organization.

<sup>19</sup> To properly report outside employment and activities, contractors are required to complete the FBI's Request to Engage in Outside Employment form (FD 331). The FD 331 requires a description of the outside work or activity to be performed and is electronically sent to the FBI Supervisor and the Chief Security Officer for approval. The FBI's General Counsel may also be asked to review the form for potential conflicts of interest.

event.<sup>20</sup> TUVA also required SMEs to report official and unofficial foreign travel to TUVA's management. To determine if the SMEs were properly reporting official and unofficial foreign travel, as well as close and continuous contact with foreign nationals to the FBI, we compared SME foreign travel requests and contact with foreign national reports submitted to TUVA with the information maintained in the FBI's Personnel Self-Reporting Enterprise Process Automation System.

We found that 12 SMEs took at least 28 foreign travel trips that were required to be reported to the FBI. Of the 28 trips taken and reported to TUVA, 6 were not reported to the FBI as required.<sup>21</sup> One SME reported four foreign trips to TUVA but did not report three of them to the FBI, and two other SMEs reported one and two trips, respectively, to TUVA but failed to report them to the FBI. As noted in TUVA's Annual Security Briefing and Insider Threat training provided to the SMEs, it is the responsibility of the SME to report foreign travel to the government and failure to do so is an indicator of an insider threat risk to the FBI. We also determined that one SME had three instances of close and continuous contact with foreign nationals and each was reported to the FBI; however, two of the three instances were not reported within 5 days of the activity as required by the contract. In fact, the SME did not report the contact with foreign nationals to the FBI until 119 and 262 days after the events had occurred. The purpose of reporting foreign travel and contact with foreign nationals is to identify activities that pose a risk for the FBI, such as providing intelligence to a foreign country or terrorist activities directed against the United States and its interests abroad. While we did not seek to determine whether these SMEs were involved in such activities, the failures and delays in reporting prevent the FBI from assessing the potential risks of foreign travel and foreign contact. Therefore, we recommend that the FBI ensure that SMEs are reporting all outside employment activities, official and unofficial foreign travel, and contact with foreign nationals promptly to the FBI as required by FBI policy and the contract.

### **FBI's Non-Compliance with the FAR**

We found that the FBI did not adhere to the FAR in several instances when awarding and administering its SME contract with TUVA. Specifically, we found the FBI did not inform SBA, as required, of its intent to solicit Small Business Administration 8(a) Small Disadvantaged Business Program (8(a) program) participants for the SME contract prior to announcing the solicitation and that the FBI's Source Selection Decision Memorandum was incomplete.

We also found that the FBI did not: maintain a complete contract file that included the justifications, decisions, and rationale for awarding the SME contract; delegate administrative oversight responsibilities to properly trained CORs; or prepare and enter TUVA's performance evaluations into CPARS. Additionally, we

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<sup>20</sup> The FBI's SME contract required TUVA to comply with the National Industrial Security Program Operating Manual.

<sup>21</sup> It is possible that SME personal foreign travel occurred but was not reported to TUVA. Therefore, 28 foreign trips is the minimum that could have occurred.

found that the FCLU does not review the individual task order SOWs for compliance with the FAR.

#### *Lack of Timely Notification to SBA*

The FAR states that once a requirement, such as the FBI's contract for SMEs, has been accepted by SBA into the 8(a) program, any follow-on requirement shall remain in the 8(a) program, unless SBA agrees to release the requirement.<sup>22</sup> For repetitive and follow-on acquisitions awarded through the 8(a) program, the agency must submit a new offer letter to SBA for acceptance.<sup>23</sup> SBA then reviews the offer letter to ensure that the contract can be competed as an 8(a) program award.<sup>24</sup>

We determined that the FBI sent a new offer letter to SBA informing it that an 8(a) program participant would be able to continue to fulfill its SME contract requirements 4 days after the FBI had awarded the contract to an economically disadvantaged women-owned certified 8(a) program participant. Without first receiving SBA's review and approval for the follow-on SME contract, including ensuring potential contractors were eligible 8(a) program participants, the FBI was at risk of awarding the contract to ineligible contractors. Therefore, we recommend that the FBI ensure the timely and proper notification to SBA of proposed 8(a) program small disadvantaged business acquisitions, prior to competing and awarding those acquisitions as required by the FAR.

#### *Incomplete Source Selection Decision Memorandum*

According to the FAR, a Source Selection Authority's (SSA) decision to award a contract shall be based on a comparative assessment of the proposals received against all source selection criteria in the solicitation.<sup>25</sup> The source selection decision must be documented, and the documentation must include the rationale for any business judgments and tradeoffs made or relied on by the SSA when awarding the contract.<sup>26</sup> In addition, FBI officials told us that the Source Selection Decision Memoranda should be signed and dated. We found that the Source

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<sup>22</sup> FAR Subpart 19.815, *Contracting with the Small Business Administration (The 8(a) Programs)*, Release for non-8(a) procurement.

The Department of Justice Office of Small and Disadvantaged Business Utilization negotiates small business contracting goals on behalf of all Department of Justice agencies.

<sup>23</sup> FAR Subpart 19.804-4, *Repetitive Acquisitions*.

<sup>24</sup> According to FAR Subpart 19.804-3 and 19.804-4, SBA's review includes: (1) ensuring that the requirement should continue under SBA's 8(a) program, (2) determining that all the participants are eligible under the SBA's rules to bid on the contract, (3) determining the appropriateness of the participants' North American Industry Classification System (NAICS) size code designations, and (4) evaluating the effects that the contract award will have on the agency's equitable distribution of 8(a) program contracts.

<sup>25</sup> FAR Subpart 15.308, *Contracting by Negotiation, Source selection decision*. FAR Subpart 15.303 states that the Contracting Officer is designated as the SSA, unless the agency head appoints another individual. According to FAR Subpart 15.308, the source selection decision shall represent the SSA's independent judgment.

<sup>26</sup> FAR Subpart 15.308, *Contracting by Negotiation, Source selection decision*.



Selection Decision Memorandum for the TUVA contract that the FBI provided to the OIG was not signed and dated, and therefore, was not properly executed by the FBI's SSA.

As discussed earlier in this report, TUVA was awarded the SME contract following a Government Accountability Office (GAO) bid protest. As a result of the bid protest, the FBI issued a corrective action plan and re-evaluated two of the three bids it had originally found to be acceptable.<sup>27</sup> We found that the original Source Selection Decision Memorandum the FBI completed before the bid protest was signed, dated, and included the FBI's rationale for its decision. However, the Source Selection Decision Memorandum designating TUVA as the new contract awardee was not signed or dated. The FBI's Contracting Officer assigned to the SME contract at the time the memorandum was completed did not know why the memorandum had not been signed and dated. The Contracting Officer told us they believed the document provided to the OIG might have been a draft and that the final Source Selection Decision Memorandum might have been saved to an external drive that was corrupted.

Without a signature attesting to the accuracy of the document and a date to determine when the decision to award the SME contract was made, we requested the individual technical re-evaluation rating sheets upon which the Source Selection Decision Memorandum was based. However, we found that the rating sheets were not retained. Based on the lack of information available, we could not determine whether the FBI in fact conducted an assessment of the proposals received against each source selection criteria the FBI stated it would re-evaluate and whether there was an adequate basis for the final award decision.

Therefore, we recommend that the FBI ensure that the source selection decision is properly documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the SSA as required by the FAR.

#### *Lack of Task Order Review*

The FBI Office of General Counsel's FCLU provides advice on federal procurement matters within the FBI including requirements identification, contract evaluation, contract award, contract administration, and closeout. FBI Policy Directive 0369D requires that the FCLU review and provide legal advice on all acquisition packages with an anticipated value of \$5 million or more.

We asked the FCLU Chief if the SME contract and associated task orders were reviewed prior to the FBI procuring those services. The FCLU Chief stated that the FCLU is required to review master contracts and associated SOWs with a total value

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<sup>27</sup> The proposals were re-evaluated on the following factors: (1) technical, (2) staffing, (3) past performance, and (4) price. The FBI did not include security in its re-evaluation because the reasonableness of the evaluation was not challenged in the GAO protest.

of \$5 million or more.<sup>28</sup> According to an FBI official, FBI divisions are not required to provide task orders to the FCLU for review, and therefore the FCLU often does not receive for review individual task order SOWs. As a result, the FCLU would generally have no knowledge of the contractual requirements and conditions included in the task order SOWs or the scope of the SMEs' operational support tasks. As previously discussed, we found several SMEs performing operational support tasks that may be prohibited by FBI policy. Additionally, we found task order SOW language to be unclear and potentially allow FBI Supervisors to task SMEs to perform prohibited inherently governmental functions. For example, one task order states that the SME will "Provide other assistance as needed or as directed by the FBI Technical Supervisor in furtherance of the unit's mission." The FCLU Chief stated that because many of the SMEs were performing classified operational support tasks, those tasks may not be listed in unclassified SOWs. The FCLU Chief further acknowledged that having the FCLU review individual task order SOWs, and the associated operational support tasks listed, could help reduce the risk of SMEs performing prohibited operational support tasks.

We believe the FBI's FCLU should include in its contract review a review of individual task order SOWs. Such a review will help FBI mitigate the risk of entering into inappropriate contract vehicles and ensure that individual task order SOWs are in compliance with the master contract, FBI policy, and the FAR. Therefore, we recommend that the FBI ensure that the FBI Office of General Counsel's contract review include a review of all task order SOWs over a designated threshold amount associated with the master acquisition package.

#### *Missing and Incomplete Contract-Related Files*

Maintaining a complete contract file that allows for appropriate monitoring and oversight is an essential component of good contract management. The FAR requires government contract files to contain documents that are sufficient to constitute a complete history of the contract action for the purpose of:

(1) providing a complete background as a basis for informed decisions made at each step in the acquisition process, (2) supporting contract actions taken, (3) providing information for reviews and investigations, and (4) furnishing essential facts in the event of litigation, contract disputes, or congressional inquiries.<sup>29</sup>

The FBI's TUVA contract file was maintained in hardcopy and electronic format. We found that the file was missing contract-related documents and some documents were incomplete, lacking proper approval and signatures. The Contracting Officer stated that a removable storage device, which held contract-related documents, had been corrupted and that they were unable to retrieve the missing information. The Contracting Officer stated that in an effort to address concerns about incomplete contract files, the FBI's Procurement Section had

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<sup>28</sup> The FBI's master contract SOW broadly states background information, objectives and scope of the contract, and lists the FBI divisions seeking SMEs. The associated task order SOWs describe the tasks to be performed by the SMEs for each FBI division.

<sup>29</sup> FAR Subpart 4.801(b), *Government Contract Files, General*.

implemented a checklist in 2018 to help ensure that each contract file was complete. The Contracting Officer also stated that the FBI is transitioning current contract files, hard-copy and electronic, to a centralized all-electronic format to promote sharing and improve accessibility of contract-related documents between contract personnel in the Procurement Section.

In FY 2019, the FBI's Procurement Section began scanning hardcopy contract files into electronic format, which were temporarily stored in a Microsoft SharePoint database called the Electronic Contract Filing System (ECFS). Once contract files related to on-going contracts were uploaded to ECFS, those contract files were migrated to the FBI's enterprise-wide Unified Financial Management System (UFMS), where contract-related documents are now entered directly. The FBI has not scanned and uploaded hardcopy contract files created before FY 2012, or contract files for which all contract years have been exercised and are therefore considered closed.

An FBI official stated that UFMS will enable the FBI to electronically maintain a complete contract file, including background information and support for the contract actions taken and decisions made at each step in the acquisition process, for on-going and future contracts. However, in February 2020, during a demonstration of UFMS capabilities, we observed that the TUVA contract file could not be located within the system. Additionally, the FBI does not have an acquisition checklist or system controls configured in UFMS to ensure that the contract file is complete and that all documents are properly completed and signed as required by FBI policy and the FAR. Rather, the FBI uses checklists and process controls outside of UFMS to document each phase of the contract. Therefore, we recommend that the FBI develop and implement procedures for uploading and maintaining appropriate contract-related documents that support the acquisition process in UFMS.

#### *Lack of Contracting Officer's Representative Delegation and Training*

Contracting Officers 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.<sup>30</sup> While Contracting Officers have the ultimate responsibility and authority for contract administration, they also have the authority to designate, in writing, a Contracting Officer's Representative (COR) to assist in administering and overseeing the contract.<sup>31</sup> According to the FBI's COR delegation letter, a COR's responsibilities could include reviewing, verifying, and approving invoices, notifying the Contracting Officer of anticipated cost overages or shortages of estimated costs, and providing input on the contractor's performance. The FAR specifies that a COR shall be qualified by training and experience commensurate with the responsibilities to be delegated.<sup>32</sup> In addition, the COR must be a government employee, certified

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<sup>30</sup> FAR Subpart 1.602-2, *Contracting Officers, Responsibilities*.

<sup>31</sup> FAR Subpart 1.602-2(d).

<sup>32</sup> FAR Subpart 1.602-2(d)(3).

in accordance with the Office of Management and Budget's guidance.<sup>33</sup> The FBI Finance Division's Acquisition Policy Manual also states that the Contracting Officer may delegate responsibilities to a COR, but the delegation must be in writing and maintained in the contract file.

We reviewed 16 of the 20 SME task orders to determine if the FBI properly delegated COR responsibilities and documented the delegation as required by the FAR and FBI policy.<sup>34</sup> As shown in Table 1, we found that the FBI did not always properly assign and document its COR delegations for the SME task orders.

**Table 1**  
**SME Task Order COR Delegations**

<b>Task Order Number</b>	<b>FBI Personnel Not a Certified COR</b>	<b>FBI Personnel Performing COR Duties without Contracting Officer Delegating COR Responsibility</b>	<b>Contracting Officer Did Not Issue a COR Delegation Letter</b>	<b>Incomplete COR Delegation Letter</b>
DJF-16-1200-D-0000230	X	X	X	
DJF-16-1200-D-0000222	X	X	X	
DJF-16-1200-D-0000227	X			X
DJF-16-1200-D-0000211				X
DJF-16-1200-D-000228			X	

Source: OIG

We found that although FBI personnel were performing COR duties on two SME task orders, the Contracting Officer never issued a formal COR delegation letter. Additionally, the FBI did not ensure that FBI personnel performing COR duties for these two SME task orders were properly certified CORs. Recently, the Contracting Officer corrected the issue for one of the SME task orders and issued a COR delegation letter to a certified COR.

We also found that the FBI did not maintain complete COR delegation letters for two other SME task orders. Specifically, the COR delegation letters were not signed by the Contracting Officer, thereby acknowledging that the Contracting Officer had assigned contracting-related responsibilities to a properly certified COR. In addition, for one of the task orders with an incomplete COR delegation order, the Contracting Officer delegated COR responsibilities to an FBI employee that was not properly certified as a COR. In fact, it was only after we asked the FBI if a certified

<sup>33</sup> FAR Subpart 1.602-2(d)(1)-(3).

<sup>34</sup> At the time of our audit, the FBI had awarded 7 SME task orders in addition to the original 13 task orders.

COR had been delegated to the SME task order that the Contracting Officer delegated the responsibilities to a uncertified COR, approximately 3 years after the SME task order had been awarded. Lastly, we found that the FBI did not properly document its delegation of COR responsibilities to a certified COR on another SME task order.

We believe the Contracting Officer needs to properly delegate contract administration responsibilities to a certified COR and ensure that the COR is qualified to perform the delegated responsibilities as well as oversee contractor performance. Therefore, we recommend that the FBI ensure COR duties are delegated, in writing, to appropriately trained government personnel as required by the FAR and FBI policy.

### *Missing CPARS Reports*

The FAR requires agencies to prepare annual and final contractor performance evaluations and enter the information in the CPARS for contracts that exceed the simplified acquisition threshold.<sup>35</sup> This government-wide reporting tool is used to document contractor past performance, including the contractor's record of conforming to requirements, controlling costs, and adhering to contract schedules. The FBI's Acquisition Policy Manual requires contracting officials to electronically enter interim and final contractor performance information into CPARS.

As of September 2018, the FBI had awarded TUVA 20 SME task orders requiring 47 performance evaluations be entered into CPARS. Of the 20 task orders, the FBI never entered performance evaluations into CPARS for 12, or 60 percent, of them. Further, we found that the FBI only entered 10 of the 47, or 21 percent, required performance evaluations into CPARS.

We asked an FBI official why contractor performance information was not entered into CPARS as required. The FBI official acknowledged that the performance evaluations were not being completed and entered into CPARS and stated that, as a result, the FBI has tasked a Policy and Compliance Lead to spearhead the effort to improve CPARS compliance. The Policy and Compliance Lead has informed FBI CORs of the FAR requirement to report contractor performance evaluations in CPARS. When performance evaluations are not submitted in CPARS, government agencies, who rely on this information when making subsequent award decisions, may engage an underperforming contractor, potentially causing unnecessary delays and waste of taxpayer dollars. Therefore, we recommend that the FBI ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner, as required by the FAR and FBI policy.

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<sup>35</sup> FAR Subpart 42.15, *Contractor Performance Information*.

## **TUVA Invoiced and the FBI Paid Unallowable Expenses**

TUVA submits to the FBI for each task order monthly invoices that detail the monthly charges for each SME by contract line item number. TUVA also includes with the invoice supporting receipts and invoices related to other direct costs, such as travel costs. Upon receipt, the FBI COR or Task Lead reviews the invoice for accuracy. If the invoice is complete and correct, the FBI COR or Task Lead approves the invoice for payment.

To determine whether TUVA accurately billed the FBI for services provided, we selected 18 out of the 531 invoices that TUVA billed to the FBI between January 2016 and December 2018, totaling approximately \$1.8 million for review. We reviewed the invoices to determine whether the invoices were adequately supported, accurately stated, and in compliance with the terms and conditions of the contract.

### *Lack of Detailed Invoices*

The FBI's master contract included SMEs with different levels of expertise, which the FBI anticipated would be required by its various program offices. As a result, each program office task order SOW indicated the quantity and level of SMEs required. TUVA proposed individual labor rates for the SMEs on each task order depending on their level of experience.

The 18 sampled invoices that we selected for review included \$1,702,427 in billed labor costs charged to the contract. We reviewed the contract documentation for the associated SME task orders to verify the accuracy of TUVA's billed labor rates. We also compared the number of hours TUVA billed to the number of hours on the SMEs' certified timesheets. TUVA's SMEs are required to enter their hours worked on a daily basis through an on-line web portal. The SMEs' timesheets are then reviewed and certified by TUVA's Program Manager. On a monthly basis, TUVA sends the FBI an invoice for each task order, summarizing the total hours worked by the SMEs for the previous month. However, we found that TUVA's invoices do not include the details of each SME's weekly or daily hours worked. As a result, the FBI COR or Task Lead certifying the invoice for payment cannot reconcile the monthly hours billed with the actual hours each SME worked for the month.

As previously discussed, the FBI's contract does not clearly establish who is responsible for overseeing the SMEs' work. We found that TUVA's Program Manager was located off-site and was not in a position to know how many hours the SMEs actually worked. Additionally, we found that FBI CORs and Task Leads for several of the task orders were not located where the SMEs worked and they were not in a position to know how many hours the SMEs actually worked. In these instances, the FBI COR or Task Lead approved TUVA invoices for payment without verifying the accuracy of the invoices.

To ensure the FBI is receiving the services for which it is paying, the FBI needs to establish clear SME oversight responsibilities for TUVA. Additionally, TUVA

must submit invoices that properly document individual SME hours worked, not just a summary of monthly SME hours worked. Therefore, we recommend that the FBI ensure that TUVA submits detailed monthly task order invoices, including each SME's hours worked on a daily basis, and documentation to support the labor hours billed to the FBI.

#### *Unallowable Contractor Travel Costs*

According to the SME contract, the FBI COR or Task Lead was required to pre-approve all SMEs' travel costs. The FBI would then reimburse TUVA for actual transportation costs incurred, as long as the most direct routes and non-first-class transportation were utilized. According to the FAR, costs for transportation may be based on mileage rates, actual costs incurred, or a combination thereof, provided the method used results in a reasonable charge.<sup>36</sup> Additionally, airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable unless documented and justified.

For the 18 sampled invoices, we reviewed \$87,624 in contractor travel costs charged to the contract. We found eight transactions, totaling \$9,376, where TUVA SMEs purchased and the FBI pre-approved and paid for unallowable business-class airfares without receiving and approving the written justification.

Two SMEs purchased business select airfare on eight occasions, which provided priority boarding and a complimentary premium drink, totaling \$9,376. TUVA provided us with copies of FBI's authorization of these travels but could not provide any justification for the unallowable business-class airfares purchased by its SMEs. Additionally, we found that the FBI's travel authorization form did not require the contractor to disclose the class of airfare travel. Without such a disclosure, FBI CORs and Task Leads would not have had any insight into the type of airfare billed, approved, and paid.

The FBI should ensure that TUVA and its SMEs are providing adequate written justifications for airfare and travel costs in excess of those mandated by the Federal Travel Regulation to ensure that official travel is conducted in a responsible manner in accordance with the government's need to minimize costs.<sup>37</sup> Therefore, we recommend that the FBI implement procedures requiring contractors to disclose the type of airfare travel booked and provide written justification when travel costs exceed the lowest prices available as required by the Federal Travel Regulation. We also recommend that the FBI ensure that TUVA remedies \$9,376 in unallowable business-class airfare costs.

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<sup>36</sup> FAR Subpart 31.205-46(a), *Travel Costs*.

<sup>37</sup> 41 C.F.R. Chapters 300 to 304.

## CONCLUSION AND RECOMMENDATIONS

We determined that the FBI did not establish essential contract oversight controls and responsibilities in its non-personal services SME contract with TUVA. We found that the contract is being administered in a manner that creates the appearance of an employer-employee relationship between the FBI and TUVA's SMEs, which is characteristic of a personal services contract and contrary to FAR requirements and FBI policy. Specifically, we found FBI personnel overseeing SMEs' daily operational support tasks and inappropriately participating in the recruitment, interviewing, and hiring of SMEs.

Further, TUVA's Program Manager performed primarily administrative functions and was not required to provide programmatic technical support and on-site management of the SMEs. As a result, we found SMEs performing operational support tasks not listed in the task order SOWs and potentially prohibited by FBI policy. We also found that SMEs were not properly reporting outside employment and foreign travel to the FBI as required under the contract, which is a possible indicator of an insider threat risk and potential conflicts of interests.

In addition to the issues with oversight of SMEs, we also found that the FBI did not adhere to the FAR in several instances when awarding and administering its SME contract. Specifically, the FBI did not inform SBA of its intent to solicit 8(a) program participants for the SME contract prior to announcing the solicitation. Additionally, the FBI's contract files did not contain adequate documentation to ensure a complete record of justifications, decisions, and rationale for awarding the TUVA contract. We also found that CORs were not consistently assigned to the SME task orders and did not always have the requisite experience or COR training, and that the FBI did not evaluate and report TUVA's performance on the SME task orders in CPARS as required by the FAR.

Lastly, we found \$9,376 in billed unallowable business-class airfare expenses that the FBI approved and paid without prior written justification.

We recommend that the FBI:

1. Review its SME contract in its entirety to ensure that: (1) the non-personal services contract, as it is being administered, is in compliance with FAR requirements and FBI policy; (2) proper contract oversight controls and responsibilities have been established, including proper oversight of SMEs and the recruiting, interviewing, and hiring of SMEs; and (3) SMEs are not performing inherently governmental functions, which are prohibited by the FAR.
2. Provide periodic training to Contracting Officers, CORs, Task Leads, and any other FBI personnel overseeing the activities of SMEs, to ensure that appropriate, FAR-compliant relationships are being maintained with contractor personnel.



3. Ensure that SMEs are reporting all outside employment activities, official and unofficial foreign travel, and contact with foreign nationals promptly to the FBI as required by FBI policy and the contract.
4. Ensure the timely and proper notification to SBA of proposed 8(a) program small disadvantaged business acquisitions, prior to competing and awarding those acquisitions as required by the FAR.
5. Ensure that the source selection decision is properly documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the SSA as required by the FAR.
6. Ensure that the FBI Office of General Counsel's contract review include a review of all task order SOWs over a designated threshold amount associated with the master acquisition package.
7. Develop and implement procedures for uploading and maintaining appropriate contract-related documents that support the acquisition process in UFMS.
8. Ensure COR duties are delegated, in writing, to appropriately trained government personnel as required by the FAR and FBI policy.
9. Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner, as required by the FAR and FBI policy.
10. Ensure that TUVA submits detailed monthly task order invoices, including each SME's hours worked on a daily basis, and documentation to support the labor hours billed to the FBI.
11. Implement procedures requiring contractors to disclose the type of airfare travel booked and provide written justification when travel costs exceed the lowest prices available as required by the Federal Travel Regulation.
12. Ensure that TUVA remedies \$9,376 in unallowable business-class airfare costs.

### OBJECTIVE, SCOPE, AND METHODOLOGY

#### Objective

The objective of this audit was to assess the Federal Bureau of Investigations' (FBI) administration of the contract, and TUVA, LLC's (TUVA) performance and compliance with the terms, conditions, laws, and regulations applicable to this contract. The assessment included a review of TUVA's financial management, monitoring, reporting, and progress toward meeting the contract's goals and objectives.

#### Scope and Methodology

In December 2015, the FBI awarded a \$60 million non-personal services contract to TUVA for Subject Matter Expert (SME) services. According to the contract, the maximum dollar amount the FBI may order under this contract is \$100 million and the minimum amount is \$10 million. Our audit focused on task orders awarded to TUVA under the non-personal services contract number DJF-16-1200-V-0001485. The SMEs worked in various FBI program offices such as the Counterintelligence, Counterterrorism, Criminal Investigations, and Internal Policy Office. As of December 2019, TUVA had received almost \$48.8 million (81 percent) of the estimated total contract value.

To accomplish the audit objective, we reviewed various federal regulations and policies, including the Federal Acquisition Regulation (FAR), and FBI policies related to contract award, administration, oversight, and invoice procedures. We interviewed approximately 40 FBI employees, including current and former contracting officials, Section Chiefs, Task Leads, and other FBI officials who participated in the contract award, oversight, and invoice review process. Additionally, we interviewed TUVA employees involved in the administration and security oversight of this contract action and 30 SMEs regarding their duties and responsibilities. Finally, we spoke to Small Business Administration (SBA) officials regarding the SBA's policies and procedures regarding the Small Business Administration 8(a) Small Disadvantaged Business Program (8(a) program).

#### *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 of internal controls significant within the context of our audit objective. We did not evaluate the internal controls of the FBI and TUVA to provide assurance on its internal control structure as a whole. FBI and TUVA management are responsible for the establishment and maintenance of internal controls in accordance with OMB Circular A-123. Because we do not express an opinion on the FBI's and TUVA's internal control structure as a whole, we offer this statement solely for the information and use of the FBI and TUVA.<sup>38</sup>

As noted in the Audit Results section of this report, we identified deficiencies in the FBI's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect the FBI's ability to efficiently operate and to ensure compliance with laws and regulations. The FBI needs to improve its internal controls to ensure compliance with all rules, regulations, and guidelines related to the award and administration of the contract. Specifically, the FBI needs to: (1) develop and implement procedures for uploading and maintaining all contract-related documents that support the acquisition process in the Unified Financial Management System; (2) notify the Small Business Administration of intent to award contracts to 8(a) program participants prior to solicitations; (3) ensure that Contracting Officer's Representatives or Task Leads enter contractor performance information into the Contractor Performance Assessment Reporting System (CPARS) in a timely manner; (4) require contractors to disclose the type of airfare travel booked and provide written justification when travel costs exceed the lowest prices available as required by the Federal Travel Regulation; (5) ensure that TUVA submits detailed monthly task order invoices, including each SME's hours worked on a daily basis, and documentation to support the labor hours billed to the FBI; (6) review acquisition packages, including task order Statements of Work; and (7) provide periodic training to Contracting Officers, CORs, Task Leads, and any other FBI personnel overseeing the activities of SMEs, to ensure that appropriate, FAR-compliant relationships are being maintained with contractor personnel.

## *Compliance with Laws and Regulations*

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

- FAR Subpart 4.8 – *Government Contract Files*
- FAR Subpart 19.8 – *Contracting with the Small Business Administration*

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<sup>38</sup> This restriction is not intended to limit the distribution of this report, which is a matter of public record.

- FAR Subpart 37.1 – *Service Contracts*
- FAR Subpart 42.15 – *Contractor Performance Information*

This testing included interviewing TUVA and FBI personnel, analyzing data, and examining procedural practices.

As noted in the Audit Results section of this report, we found the FBI did not comply with the FAR. Specifically, we found the FBI did not inform the Small Business Administration of its intent to solicit 8(a) program participants prior to announcing the solicitation. Also, the FBI did not maintain a complete record of the contract action. We found that the contract file did not contain a properly executed copy of the Source Selection Decision Memorandum that includes the rationale for awarding the contract to TUVA.

#### *Sample-based Testing*

To accomplish our audit objective, we performed sample-based testing for interviews, invoices, and travel costs. In this effort, we employed a judgmental sampling design to obtain broad 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 the CPARS, Federal Procurement Data System, and Enterprise Process Automation 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.

## APPENDIX 2

### SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>Description</u>	<u>Amount</u>	<u>Page</u>
<b>Unallowable Questioned Costs:</b>		
Upgraded Travel	\$9,376	18
<b>Total Unallowable Costs</b>	<u>\$9,376</u>	
<b>TOTAL QUESTIONED COSTS<sup>39</sup></b>	<u><b>\$9,376</b></u>	

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<sup>39</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

### THE FEDERAL BUREAU OF INVESTIGATION'S RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

September 16, 2020

The Honorable Michael E. Horowitz  
Inspector General  
Office of the Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, *Audit of the Federal Bureau of Investigation's Contract Awarded to TUVa, LLC for Subject Matter Expert Services*.

We agree that it is important to strengthen the FBI's procurement and contract management business practices. In this regard, we concur with your twelve recommendations and will continue our efforts to implement the appropriate mitigation plans. Improving our contract management business processes is an area of focus here at the FBI - and for me personally - and your report is instructive as we continue to improve upon the way we do business.

Should you have any questions, feel free to contact me. We appreciate the professionalism of your audit staff throughout this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Dimos", is written over the typed name.

Nicholas Dimos  
Deputy Assistant Director  
Finance and Facilities Division

Enclosure

## TUVA, LLC'S RESPONSE TO THE DRAFT AUDIT REPORT



2553 Dulles View Drive, Suite 700  
Herndon, VA 20171

September 14, 2020

David J. Gaschke  
Regional Audit Manager  
San Francisco Regional Audit Office  
Office of the Inspector General  
U.S. Department of Justice  
90 7th Street, Suite 3-100  
San Francisco, California 95020

Subject: Tuva LLC OIG Draft Report Correspondence

Reference: (1) Federal Bureau of Investigation's (FBI) contract number DJF161200V0001485  
(2) Audit of the Federal Bureau of Investigation's Contract Awarded to Tuva, LLC  
for Subject Matter Expert Services

Dear Mr. Gaschke:

Pursuant to the referenced contract and in reference to the OIG's recommendations related to Unallowable Contractor Travel Costs, Tuva maintains it has followed the terms of the contract and subsequent Government direction as provided by the FBI. Also as recommended, we will continue to work directly with the agency to reconcile these costs. Tuva appreciates the opportunity to provide SME Services to the FBI under this contract and confirms it will continue to adhere to the terms of the contract and applicable governing regulations.

If you have any questions regarding this submission, please feel free to contact me at [Dan.Hatcher@tuva.com](mailto:Dan.Hatcher@tuva.com) or 703-766-7720.

Sincerely,



Daniel Hatcher  
General Manager

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TUVALLC.COM

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

The OIG provided a draft of this audit report to the Federal Bureau of Investigation (FBI) and TUVA, LLC (TUVA). The FBI's response is incorporated in Appendix 3 and TUVA's response is included as Appendix 4 of this final report. TUVA's response only addressed our finding on unallowable contractor travel costs, which we discuss with Recommendation 12, below. In response to our audit, the FBI concurred with our 12 recommendations. As a result, the status of the audit report is resolved. The following provides the summary of actions necessary to close this report.

**Recommendations for the FBI:**

- 1. Review its SME contract in its entirety to ensure that: (1) the non-personal services contract, as it is being administered, is in compliance with Federal Acquisition Regulation (FAR) requirements and FBI policy; (2) proper contract oversight controls and responsibilities have been established, including proper oversight of SMEs and the recruiting, interviewing, and hiring of SMEs; and (3) SMEs are not performing inherently governmental functions, which are prohibited by the FAR.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI has reviewed its SME contract in its entirety to ensure that: (1) the non-personal services contract, as it is being administered, is in compliance with FAR requirements and FBI policy (2) proper contract oversight controls and responsibilities have been established, including proper oversight of SMEs and the recruiting, interviewing, and hiring of SMEs, and (3) SMEs are not performing inherently governmental functions, which are prohibited by the FAR.

- 2. Provide periodic training to Contracting Officers, Contracting Officer's Representatives (COR), Task Leads, and any other FBI personnel overseeing the activities of SMEs, to ensure that appropriate, FAR-compliant relationships are being maintained with contractor personnel.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive evidence showing that the FBI has implemented periodic training to Contracting Officers, CORs, Task Leads, and any other FBI personnel overseeing the activities of SMEs, to



ensure that appropriate, FAR-compliant relationships are being maintained with contractor personnel.

3. **Ensure that SMEs are reporting all outside employment activities, official and unofficial foreign travel, and contact with foreign nationals promptly to the FBI as required by FBI policy and the contract.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that SMEs are reporting all outside employment activities, official and unofficial foreign travel, and contact with foreign nationals promptly to the FBI as required by FBI policy and the contract.

4. **Ensure the timely and proper notification to Small Business Administration (SBA) of proposed 8(a) program small disadvantaged business acquisitions, prior to competing and awarding those acquisitions as required by the FAR.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures the timely and proper notification to SBA of proposed 8(a) program small disadvantaged business acquisitions, prior to competing and awarding those acquisitions as required by the FAR.

5. **Ensure that the source selection decision is properly documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the Source Selection Authority (SSA) as required by the FAR.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that the source selection decision is properly documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the SSA as required by the FAR.

6. **Ensure that the FBI Office of General Counsel's contract review include a review of all task order Statement of Works (SOW) over a designated threshold amount associated with the master acquisition package.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that the FBI's FCLU contract review include a review of

all task order SOWs over a designated threshold amount associated with the master acquisition package.

7. **Develop and implement procedures for uploading and maintaining appropriate contract-related documents that support the acquisition process in Unified Financial Management System (UFMS).**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI has developed and implemented procedures for uploading and maintaining appropriate contract-related documents that support the acquisition process in UFMS.

8. **Ensure COR duties are delegated, in writing, to appropriately trained government personnel as required by the FAR and FBI policy.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that COR duties are delegated, in writing, to appropriately trained government personnel as required by the FAR and FBI policy.

9. **Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner, as required by the FAR and FBI policy.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that contractor performance evaluations are completed and entered into CPARS in a timely manner, as required by FBI policy and the FAR.

10. **Ensure that TUSA submits detailed monthly task order invoices, including each SME's hours worked on a daily basis, and documentation to support the labor hours billed to the FBI.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that TUSA submits detailed monthly task order invoices, including each SME's hours worked on a daily basis, and documentation to support the labor hours billed to the FBI.

11. **Implement procedures requiring contractors to disclose the type of airfare travel booked and provide written justification when travel costs exceed the lowest prices available as required by the Federal Travel Regulation.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI has implemented procedures requiring contractors to disclose the type of airfare travel booked and provide written justification when travel costs exceed the lowest prices available as required by the Federal Travel Regulation.

**12. Ensure that TUVAs remedies \$9,376 in unallowable business-class airfare costs.**

Resolved. The FBI concurred with our recommendation.

This recommendation can be closed when we receive documentation showing that the FBI ensures that TUVAs remedies \$9,376 in unallowable business-class airfare costs.