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AND THE BROADCASTING BOARD OF GOVERNORS
OFFICE OF INSPECTOR GENERAL

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Audit of the Broadcasting Board of Governors Administration and Oversight of Acquisition Functions

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United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

PREFACE

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared by OIG periodically as part of its responsibility to promote effective management, accountability, and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the office, post, or function under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The recommendations therein have been developed on the basis of the best knowledge available to OIG and, as appropriate, have been discussed in draft with those responsible for implementation. It is my hope that these recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in blue ink, appearing to read "N. P. Brown", with a stylized flourish at the end.

Norman P. Brown
Assistant Inspector General
for Audits

Acronyms

ADA	Anti-Deficiency Act
BAM	Broadcasting Administrative Manual
BBG	Broadcasting Board of Governors
BPA	blanket purchase agreement
CCR	Central Contractor Registration
CO	contracting officer
CON	Office of Contracts
COR	contracting officer's representative
DUNS	Data Universal Numbering System
EPLS	Excluded Parties List System
FAC-C	Federal Acquisition Certification in Contracting
FAC-COR	Federal Acquisition Certification for Contracting Officer's Representatives
FAR	Federal Acquisition Regulation
FBO	FedBizOpps.gov
GAO	Government Accountability Office
IBB	International Broadcasting Bureau
JOFOC	Justification for Other Than Full and Open Competition
OCB	Office of Cuba Broadcasting
OIG	Office of Inspector General
OMB	Office of Management and Budget
POV	Purchase Order Vendors
PSC	personal services contract
SOW	Statement of Work
SPE	Senior Procurement Executive
USC	United States Code
VOA	Voice of America

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Executive Summary

The Broadcasting Board of Governors (BBG) is an independent Federal agency that oversees all U.S. Government-supported, civilian international broadcasting. Its mission is to inform, engage, and connect people around the world in support of freedom and democracy. BBG reaches a worldwide audience of more than 175 million in 59 languages via radio, television, and the Internet. The BBG Office of Contracts (CON), within the International Broadcasting Bureau (IBB), is responsible for the planning, management, and implementation of all acquisition efforts, including the procurement of supplies, services, and construction for the IBB, Voice of America (VOA), and Office of Cuba Broadcasting (OCB).¹

The Office of Inspector General (OIG) conducted an audit of BBG's acquisition functions to evaluate whether BBG had adequate acquisition policies and procedures and to assess the efficacy of those policies and procedures. The primary objective of this audit was to determine whether BBG was in compliance with Federal regulations for conducting selected acquisition functions in support of the BBG mission.

OIG notified BBG that it had reportable violations of the Anti-Deficiency Act (ADA). First, BBG awarded contracts that were personal in nature, resulting in BBG exceeding its statutory authority to award personal services contracts (PSC). Second, BBG's use of contract pre-approval allowed contractors to work without having valid contracts or secured funding in place, resulting in reportable violations of two provisions of the ADA. The use of contract pre-approval also resulted in \$431,502 of funding that was not certified prior to the start of the contractor's period of performance, \$51,140 of which was not available when the contractor began performance.²

OIG found a number of additional areas in which BBG had not complied with Federal regulations related to procurement. Specifically, we found that BBG had not adequately complied with pre-solicitation requirements, namely acquisition planning and market research. BBG also did not adequately promote full and open competition when soliciting for offers or awarding contracts, did not adequately determine that contract prices were fair and reasonable, and did not perform contractor responsibility determinations. We also determined that BBG acquisitions reflected little or no competition largely because program offices, rather than CON, controlled the acquisition process. As a result, BBG did not have reasonable assurance that its needs were met in the most effective, economical, and timely manner. In addition, OIG identified \$419,020 in funds that could have been put to better use in relation to contracts that were never executed, possibly because of lack of planning, and \$3.5 million in questioned costs because of unsupported contract pricing.

¹ IBB provides day-to-day management of agency operations, including VOA and OCB, which are international broadcasting institutions working under the umbrella of BBG.

² See Finding C for a complete discussion of this topic.

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OIG also identified a number of issues regarding contract administration and oversight. Specifically, we found that BBG did not have updated policies and procedures to ensure that:

- contracting officer's representatives (COR) were appropriately designated
- quality-assurance procedures were documented and performed
- contractors were not assigned to oversee contracts
- evaluations of contractor performance were performed, when required

In addition, contracting officers (CO) and CORs did not meet statutory training requirements. We also found that BBG did not have updated policies and procedures or proper internal controls to ensure that COs appropriately maintained contract files or always executed contracts within their delegated warrant authorities. Without adequate policies and procedures or appropriate controls, BBG did not comply with Federal Acquisition Regulation (FAR) requirements and had no reasonable assurance that contract funds were spent appropriately, increasing the risk of fraud, waste, and abuse. In addition, OIG identified \$24,325 in questioned costs attributable to a lack of contract oversight and \$475,347 in unauthorized commitments.

Based on the systemic nature of the FAR noncompliance, coupled with the discovery of ADA violations and multiple internal control deficiencies, OIG made two principal recommendations to the Board of Governors: develop an action plan with measurable goals and milestones and develop and implement enforcement mechanisms to assist in ensuring enhanced accountability for compliance with procurement regulations.

OIG also made 36 recommendations to improve BBG's acquisition functions and ensure compliance with Federal regulations, 20 of which address the development and implementation of policies and procedures for the pre-award, award, and administration stages of the contract lifecycle. We also recommended that BBG develop and implement fund control regulations and adhere to its requirements for hiring PSCs. Finally, we recommended that BBG cease the practice of pre-approval and use of quarterly sources sought³ notices and that it provide enhanced training to staff and implement various internal controls.

OIG provided BBG a draft of this report on April 14, 2014. In its April 29, 2014, response (see Appendix I) to the draft report, BBG concurred with 37 of the recommendations and partially concurred with one recommendation. Based on management's response and OIG's receipt of supporting documentation, OIG considers Recommendations 13, 21, and 31 closed, and no further action is required for these recommendations. Although BBG concurred with Recommendation 26, OIG considers this recommendation unresolved because BBG had not yet made a determination on whether the identified costs were allowable. This recommendation can be resolved and subsequently closed when BBG makes a determination and provides documentation showing that the recommendation has been fully implemented. OIG considers the remaining 34 recommendations resolved, pending further action. Each of these

³ FedBizOpps states that "the Sources Sought notice is a synopsis posted by a government agency that states they are seeking possible sources for a project. It is not a solicitation for work, nor is it a request for proposal."

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recommendations will remain open until documentation is provided showing that they have been fully implemented. Management's responses to the recommendations and OIG's replies to those responses are presented after each recommendation.

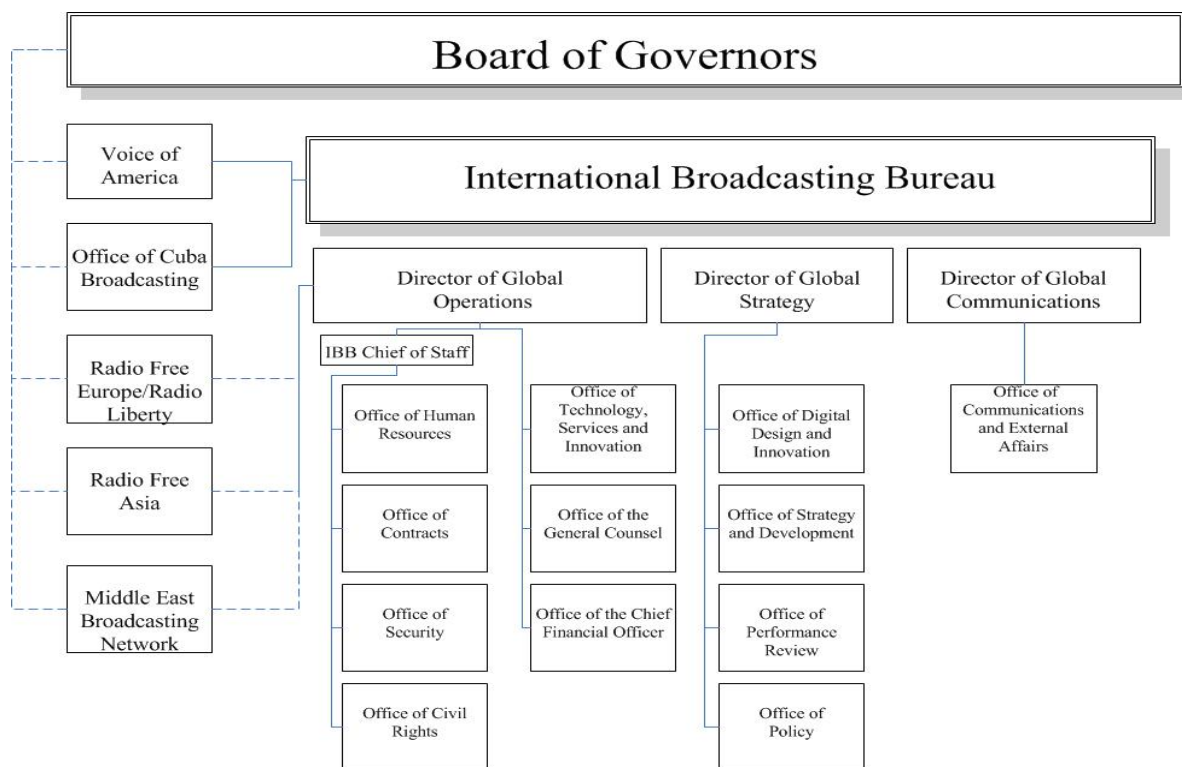
Background

Broadcasting Board of Governors

The BBG is an independent Federal agency that oversees all U.S. Government-supported, civilian international broadcasting. The BBG administers nonmilitary international broadcasting funded by the U.S. Government in accordance with the U.S. International Broadcasting Act of 1994, as amended.⁴ Its mission is to inform, engage, and connect people around the world in support of freedom and democracy by reaching a worldwide audience of more than 175 million in 59 languages via radio, television, and the Internet. The Board of Governors that oversees BBG is a nine-member bipartisan body, including eight private citizens appointed by the President and the Secretary of State (ex officio). The Board sets the priorities and the overall strategic direction of U.S. international broadcasting, allocates resources, manages relationships with the other executive branch agencies and Congress, reviews and evaluates the effectiveness of the broadcast language services, and safeguards journalistic integrity. Chart 1 reflects the BBG organizational structure as of December 18, 2013.

⁴ Title III of Public Law 103-236.

Chart 1. BBG Organization Chart



Source: OIG generated using a Broadcasting Board of Governors Resolution dated December 18, 2013.

International Broadcasting Bureau and Office of Contracts

The IBB supports the day-to-day operations of the VOA and the OCB, as well as BBG's three grantees,⁵ and provides transmission and distribution of services and technical support for all broadcasting services. Each entity within the IBB includes language services, which are offices that produce content such as radio and television programs for particular languages and regions. During the scope of the audit, the IBB Director, who was appointed by the President, operated as an extension of BBG in its oversight of U.S. international broadcasting. However, on December 18, 2013, the Board implemented a reorganization through the issuance of the Resolution To Create an Interim Agency Management Structure, replacing the former IBB Director with three management officers until a Chief Executive Officer is selected. The Board appointed a Director of Global Operations, Director of Global Strategy, and Director of Global Communications, who together provide oversight and direction of the BBG. As depicted in Chart 1, the IBB comprises 12 administrative, marketing, and technical offices, including CON. CON falls under the purview of the Director of Global Operations, and the IBB Chief of Staff, and is overseen by a Director who is also the Senior Procurement Executive (SPE). CON is

⁵ The BBG provides funding and other services to three grantees—Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Network.

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responsible for the planning, management, and implementation of all acquisition efforts in support of the global broadcasting network and other broadcasting support operations, including the procurement of supplies, services, and construction. As shown in Table 1, IBB's annual funding for fiscal years 2011–2013 ranged from \$499 million to \$507 million.

Table 1. International Broadcasting Operations Funding by Year (*\$ in thousands*)

	2011 Actual	2012 Actual	2013 Enacted
International Broadcasting Operations			
International Broadcasting Bureau	\$ 265,326	\$ 263,096	\$ 270,301
Voice of America	205,104	207,376	208,045
Office of Cuba Broadcasting	28,416	27,977	28,266
Grand Total	\$ 498,846	\$ 498,449	\$ 506,612

Source: Broadcasting Board of Governors FY 2013 and FY 2014 Budget Request.⁶

Federal Regulations and BBG Acquisition Policies

Most Federal acquisitions, including those within BBG, are regulated by the FAR. The FAR establishes uniform policies and procedures for acquisition by all executive agencies. BBG has one all-encompassing internal policy titled, “Manual of Operations and Administration,” better known as the Broadcasting Administrative Manual (BAM),⁷ which is designed to provide all IBB employees with an authoritative source of information on the policies and procedures of broadcasting. Specific to acquisitions, Part IX of the BAM, “Procurement,” implements and supplements the FAR, Federal statutes, and directives of regulatory agencies to guide CON's acquisition functions. BBG's “Contracting for Talent & Other Professional Services Handbook” (POV Handbook), dated 2010, is intended to provide the authoritative source of current information and procedures for acquiring and using nonpersonal services contractors, which BBG refers to as Purchase Order Vendors (POV). CON also intermittently issues memoranda regarding acquisition-related policies and procedures that are not addressed in the BAM or POV Handbook.

BBG Acquisition Funding

BBG funds programs through contracts, grants,⁸ and interagency agreements.⁹ BBG contracts directly with individuals for talent and other professional services, including writers,

⁶ Broadcasting Board of Governors FY 2013 and FY 2014 Budget Requests, <http://www.bbg.gov/about-the-agency/research-reports/budget-submissions/>, accessed June 4, 2013.

⁷ The BAM is not dated; however, according to a BBG official, the procurement section was initially developed in 1996.

⁸ 7 BAM 600, “Grants and Other Financial Assistance,” defines a grant agreement as “a standardized legally binding agreement used to provide financial assistance by the BBG to a grantee.” BBG provides funding to three grantees to carry out broadcasting services.

⁹ 2 BAM 510, “Interagency Agreements,” defines interagency agreements as “agreements between Broadcasting and other departments and agencies of the U.S. Government.” For example, the Department of State and the United States Agency for International Development provide funding to BBG for various language service programs through interagency agreements.

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stringers,¹⁰ announcers, and translators. BBG awards contracts primarily under the simplified acquisition threshold of \$150,000,¹¹ and OIG determined that the average dollar value of an acquisition between FY 2011 and FY 2013 was \$18,441. Table 2 summarizes the estimated total dollar amount of acquisitions during fiscal years 2011–2013, as well as the average dollar value of each acquisition.

Table 2. Summary of BBG Acquisition Actions

	FY 2011	FY 2012	FY 2013	Total
Total Dollar Amount*	\$ 103,130,531	\$ 153,148,993	\$ 143,838,838	\$ 400,118,362
Average Dollar Value	\$ 15,635	\$ 21,640	\$ 18,048	\$ 18,441

Source: OIG generated based on contract data obtained from USASpending.gov.

*The total dollar amount does not include negative contract actions, such as de-obligations, terminations, and negative modifications.

Stages of the Acquisition Process

In general, there are four stages within the acquisition process. The first is the pre-solicitation phase, during which the CO and/or COR develop the acquisition plan, conduct market research, develop contract specifications, and ultimately prepare the solicitation. In the second, or pre-award, phase of the acquisition process, the CO selects a proposal submitted in response to the solicitation through an evaluation and ranking process. During this phase, negotiations may take place, after which the award document is prepared. The third phase, contract administration, involves activities performed after a contract has been awarded to determine how well the contractor performed to meet the requirements of the contract. These include voucher review and processing, assurance of performance, and contract modifications and terminations for cause or convenience, if necessary. The fourth phase, contract closeout, begins when all services have been performed and products delivered. A contract is properly closed out when all administrative actions have been completed, disputes have been settled, and final payments have been made.

OIG Outline for Action

On September 26, 2013, we issued *OIG Outline for Action: Management Attention Needed To Improve Broadcasting Board of Governors Acquisition Functions*¹² (see Appendix D), in order to alert BBG and Congress to our preliminary findings of significant FAR noncompliance and violations of the ADA. The Outline for Action provided a high-level summary of the issues we identified, which are extensively detailed in the contents of this report. We recommended that BBG cease the use of PSCs beyond what it is statutorily authorized to

¹⁰ A stringer is a freelance journalist who contributes reports to a news organization on an ongoing basis but is paid individually for each piece of broadcast work.

¹¹ FAR Part 13, “Simplified Acquisition Procedures,” prescribes simplified acquisition procedures for those acquisitions under the simplified acquisition threshold of \$150,000. The purpose of the simplified procedures is to reduce costs, promote efficiency, and avoid burdens.

¹² AUD-CG-IB-13-43, September 2013.

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hire to avoid an ADA violation (Recommendation 1), cease the practice of “pre-approval” for contractors to continue working until funding is secured and a contract is executed to avoid an ADA violation (Recommendation 2), and hire an expert to evaluate the BBG CON (Recommendation 3).

For Recommendation 1, BBG stated in its fifth response to the Outline for Action, dated April 29, 2014 (see Appendix I, Enclosure 1 of BBG’s response to the draft report), that its view, “as a matter of law,” was that it had not exceeded its authority regarding PSCs, resulting in no reportable violation of the ADA. BBG also stated, however, that it would transition away from the use of the contracting vehicle in question and would instead contract its PSCs through one or more staffing agencies. BBG further stated that it would seek authority from Congress to employ up to “700 United States citizens or aliens” as PSCs. (For additional information on this issue, see Finding B.) In this same response, BBG concurred with Recommendation 2 to cease the practice of contract “pre-approval” and stated that it was conducting an internal review of contracts “to conclude whether or not there was a commitment in excess of an allotment.” If this condition is found, BBG stated that it would report on those ADA violations accordingly. (For additional information on this issue, see Finding C.) Finally, BBG concurred with Recommendation 3 to hire an outside expert in its second response to OIG’s Outline for Action, dated October 28, 2013 (see Appendix F).

OIG considers Recommendation 1 unresolved and Recommendations 2 and 3 resolved, pending further action. The audit resolution process for these three recommendations will continue to be handled via a separate audit compliance process, and unresolved recommendations will continue to be reported in OIG’s semiannual reports, as required.

Objective

The primary objective of this audit was to determine whether BBG was in compliance with Federal regulations for conducting selected acquisition functions in support of the BBG mission. Specifically, OIG assessed BBG’s compliance with the requirements for acquisition planning, market research, competition, contract pricing, contractor responsibility determinations, contract administration, training, contract file maintenance, use of personal services contractors and contract funding. (The scope and methodology of the audit are detailed in Appendix A.)

Audit Results

OIG found that BBG was not in compliance with Federal regulations for conducting selected acquisition functions, including contract oversight, in support of the BBG mission. Specifically, OIG determined that the FAR was not followed during the pre-solicitation, pre-award, and contract administration phases of the acquisition process. Noncompliance included not adequately performing acquisition planning, market research, full and open competition, contract pricing, and contractor responsibility determinations. In addition, BBG did not provide adequate oversight of the acquisition process, evidenced by a failure to designate CORs, weak

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quality assurance procedures, a lack of performance evaluations, and the allowance of contractors to perform inherently governmental functions. Further, BBG was not in compliance with regulations for training COs and CORs and did not adequately maintain contract files. Finally, OIG identified two practices that resulted in reportable BBG ADA violations. Specifically, BBG entered into PSCs exceeding its statutory authority, and contractors regularly worked without valid contracts in place.

Finding A. Matters for Board of Governors Action

OIG determined that there was a systemic failure of BBG's acquisition function based on the discovery of significant FAR noncompliance, ADA violations, and multiple internal control deficiencies identified during the audit. Specifically, OIG found the following during our review of 34 contracts:

- PSCs were routinely awarded above BBG's legislative limitation.
- Contractor services were regularly accepted without contracts in place, and, in a few instances, funding was not available when performance began.
- There was little evidence that acquisition planning had occurred.
- The acquisition process often lacked competition, and, in many instances, contractors were preselected by program offices without CO input.
- Contract prices were rarely based on fair or reasonable rates, and, in many instances, were predetermined by program offices without CO input.
- COs were sometimes pressured by senior officials to award contracts that they knew were not in accordance with the FAR.
- COs did not perform contractor responsibility determinations for prospective contractors, including foreign contractors, prior to their receipt of Federal funds.
- There was limited to no evidence that contract oversight was performed.
- Selected contracting officials had limited training and some signed documents that were not in accordance with Federal procurement regulations.

Systemic failures occurred for a number of reasons, including but not limited to the absence of leadership within BBG to promote an effective procurement process, a lack of accountability for noncompliance with Federal regulations, and an environment in which some contracting officials were not able and/or willing to award contracts in accordance with Federal regulations. Collectively, these findings indicate that BBG is at extreme risk for fraud, waste, and abuse within its acquisition function, as well as the potential for conflicts of interest. Additionally, without policies or procedures or a mechanism to ensure that accountability is present within the procurement system, some COs continued to award contracts while ignoring Federal regulations. Because of the egregious nature of these audit findings, OIG recommends that the Board of Governors ensure that an action plan is developed and implemented to remedy

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the vulnerable process, that milestones are established, and that progress on the plan is tracked. In addition, an enforcement mechanism should be developed and implemented to ensure that those responsible for violations of the procurement regulations are held accountable.

Recommendation 1. OIG recommends that the Board of Governors develop an action plan to implement and track a restructuring of the acquisition process within the International Broadcasting Bureau to ensure that all procurements comply with Federal and agency procurement policies. The action plan must have measurable goals and milestones.

Management Response: The Board of Governors concurred with the recommendation, stating that it had “contracted with an outside expert to create a corrective action plan to improve the agency’s acquisition processes including, but not limited to complying with all applicable Federal law and regulations” and that “BBG’s action plan will include measurable goals and milestones.” The Board further stated that it had “tasked a management working group to develop a new contracting structure for the agency.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that an action plan to implement and track a restructuring of the acquisition process, with measurable goals and milestones, has been developed.

Recommendation 2. OIG recommends that the Board of Governors develop and implement enforcement mechanisms to ensure accountability for compliance with the action plan developed in response to Recommendation 1. This must include regular monitoring and evaluation of the acquisition function and compliance with the action plan.

Management Response: The Board of Governors concurred with the recommendation, stating that it will “define a reporting protocol with the[ir] Interim Management Team to monitor and evaluate compliance with the corrective action plan.” The Board also stated that it “will define enforcement mechanisms to ensure accountability and compliance” to “include a requirement that progress be tracked through monthly updates to the Board’s Advisory Committee.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that enforcement mechanisms, including regular monitoring and evaluation with the acquisition function and compliance with the action plan, have been developed and implemented.

Finding B. Inappropriate Use of Personal Services Contracts Resulted in Reportable Violations of the Anti-Deficiency Act

OIG determined that BBG had routinely exceeded its statutory authority to enter into PSCs. FAR 37.104(b) prohibits the use of PSCs without explicit statutory authority. BBG does have statutory authority to enter into PSCs,¹³ but the statute limits this authority to 60 PSCs. Based on an estimate provided by an agency official, BBG awarded approximately 660 services contracts that may have been personal in nature, 44 of which, according to BBG officials, were appropriately classified as PSCs. Therefore, the overwhelming majority of the remaining service contracts may have been inappropriately defined as nonpersonal services contracts or not defined at all. There are likely multiple underlying reasons behind the inappropriate use of PSCs. According to agency officials, the excessive use of services contracts occurred because they did not have the authorization to fill full-time employee positions and because contracting officials may not have been fully aware of or properly trained on the definition and proper implementation of statutory limitations. As a result, BBG violated the ADA, which prohibits “employ[ing] personal services exceeding that authorized by law.”

Personal Services Contracts

A PSC is defined in FAR 2.101 as “a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees.” FAR 37.104(a) further states that “a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor’s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.” FAR 37.104(c)(1) states that the employer-employee relationship under a services contract occurs when, as a result of “the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government employee.”

Additionally, FAR 37.104(d) identifies six factors that provide guidance in assessing whether a proposed contract is personal in nature:

1. Performance on site.
2. Principal tools and equipment furnished by the Government.
3. Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

¹³ P.L. 107-228 § 504, Foreign Relations Authorization Act, Fiscal Year 2003, “Personal Services Contracting Pilot Program,” Sept. 30, 2002, 116 Stat. 1393 (22 U.S.C. 6206 note).

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5. The need for the type of service provided can reasonably be expected to last beyond 1 year.
6. The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—
 - o Adequately protect the Government's interest;
 - o Retain control of the function involved; or
 - o Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

Finally, FAR 37.104(b) expressly prohibits agencies from awarding PSCs unless specifically authorized by statute to do so.

Statutory Authority for Limited Number of Personal Services Contracts

In 2002, the Personal Services Contracting Pilot Program was enacted to provide the Director of the IBB with the authority to “establish a pilot program for the purpose of hiring United States citizens or aliens as personal services contractors, without regard to Civil Service and classification laws, for service in the United States as broadcasters and other broadcasting specialists in the [IBB] to respond to new or emerging broadcast needs or to augment broadcast services,” through December 31, 2005.¹⁴ The statute includes four conditions that must be followed in order for BBG to utilize PSCs. For instance, no more than 60 U.S. citizens or aliens can be employed at any one time as a PSC. This provision was extended each year via appropriations bills or continuing resolutions, keeping the authority in effect through September 30, 2014.

Evaluation of BBG's Use of Personal Services Contracts

In order to determine whether BBG was appropriately utilizing PSCs, and ultimately applying its statutory authority correctly, OIG employed the following analytical techniques, which led to the following determinations.

Determination that Services Contracts Were Personal in Nature

OIG first had to determine whether contracts were appropriately labeled and administered as personal or nonpersonal services contracts. We selected and reviewed 23 services contracts¹⁵ and found that 13 were labeled as nonpersonal services contracts, 5 were identified as PSCs, 2 were identified both as a PSC and a nonpersonal services contract,¹⁶ and 3 had no indication of

¹⁴ Ibid. Contracts made prior to December 31, 2005, could remain in effect for an additional six months.

¹⁵ The sample of 34 contracts selected for testing included 18 services contracts (16 nonpersonal services contracts and 2 PSCs). OIG selected an additional five PSCs in order to perform an in-depth comparison between the personal and nonpersonal services contracts. See Appendix A for additional information.

¹⁶ OIG considered the contracts labeled as “PSC and nonpersonal services contracts” to actually be PSCs based on BBG's indication that they were PSCs on the provided listing.

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whether they were personal or nonpersonal services contracts. To determine whether the 16 contracts labeled as nonpersonal services or not labeled at all were appropriately defined, we:

- applied the six criteria identified in FAR 37.104(d) to each sample contract;
- performed a comparison between the contracts labeled “personal services contract” and those labeled “nonpersonal services contract” to note similarities and differences; and
- interviewed COs, CORs, and other program officials.

The execution of these three techniques required a careful review of each contract file, including the award document and statement of work (SOW), as well as discussions with BBG personnel who awarded and administered each contract.

Comparison to FAR PSC Requirements

For the 16 contracts labeled as nonpersonal services contracts or not labeled at all, we assessed whether the contracts were appropriately defined by comparing the job requirements included in the contract to FAR criteria for determining whether contracts were personal in nature. Our results are shown in Table 3.

Table 3. Comparison of Contract Requirements to FAR PSC Criteria

FAR Criteria	Number of Sample Contracts Meeting FAR Criteria	Additional Comments
Work performed on site.	14	Contractors performed work on site at either the VOA Headquarters in Washington, DC, the OCB in Miami, FL, or a regional BBG office.
Principal tools and equipment were furnished by the Government.	15	For example, computer equipment and programming was provided by BBG.
Services were applied directly to BBG’s integral effort in furtherance of its assigned function or mission.	16	All of the work was in furtherance of the international broadcasting mission.
Comparable services, meeting comparable needs, were performed at BBG or other similar agencies using civil service personnel.	16	Similar tasks were performed by civil service employees hired by BBG.
Need for the type of service provided can reasonably be expected to last beyond 1 year.	15	The average length of contractor service provided was 5 years, ranging from 1 to 13 years.
Inherent nature of the service, or the manner in which it is provided, reasonably requires (directly or indirectly) Government direction or supervision of contractor employees.	15	Government employees directly supervised the work performed by contractors.

Source: OIG prepared based on analysis of 16 contract files.

OIG also took into account whether “contractor personnel [were] subject to the relatively continuous supervision and control of a Government officer or employee,” and found that 14 of

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the 16 contractors were subject to continuous supervision from BBG employees or other nonpersonal services contractors who were performing inherently governmental functions, and ultimately that an employee/employer relationship existed. For example, the vast majority of the contracts we selected called for the contractor to report to work, on site, during specified hours and perform work as directed by a BBG employee.

Please see Appendix B for additional details of our analysis of contracts that met the FAR 37.104(d) criteria for PSCs.

Services Contract Comparison

In applying the second technique of comparing personal and nonpersonal services contracts in our sample, OIG performed a comparison of SOWs from the contracts identified as personal services to SOWs from contracts labeled as nonpersonal services (or not labeled at all) to determine whether the job requirements were similar. In 9 of 16 contracts labeled as nonpersonal services or not labeled, OIG determined that the contractors were performing almost identical job requirements as those labeled for personal services. Table 4 shows an example of the similarities between a PSC and a nonpersonal services contract.

Table 4. Example of Personal and Nonpersonal Services Contract Comparison

Personal Services Contract (BBG50-A-12-0536)	Nonpersonal Services Contract (BBG28-A-12-0031)
Host/Reporter/Writer/Translator/ Researcher/Producer	Producer/Writer/Editor/ Reporter/Translator
Translate texts into Urdu	Translate news to Azerbaijani
Host live show	Conduct interviews for broadcast
Conduct research, writes, voices stories	Write and voice original scripts for broadcast
Produce radio material suitable for Urdu broadcast	Produce radio shows
Write/voice/produce stories or hosts live shows	Participate in live broadcasts

Source: OIG generated based on BBG contract files.

For the remaining 7 of 16 contracts labeled as nonpersonal services or not labeled at all, OIG was not able to perform a comparison because there were no analogous job titles within our sample of PSCs. However, OIG performed an analysis of each SOW and determined that the job requirements for 5 of those 7 contracts were personal in nature. Specifically, we found that the SOWs contained job requirements similar to that which would be expected of full-time employees.

Contracting Official Interviews

Finally, during interviews with various COs, CORs, and other program officials, OIG asked why contractors were hired to fill positions that should have been full-time employees. According to agency officials, this occurred because they did not have the authorization to fill

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full-time employee positions. OIG also asked IBB officials why this practice continued to occur, and found that it had been a long-standing practice which had never changed, even when it was identified as a problem.¹⁷ BBG officials stated that they had examined other options to the use of PSCs, such as obtaining the services of a staffing agency to contract out the positions or requesting more full-time employee positions, but each option would likely increase costs more than 30 percent and, therefore, had not been acted upon. Finally, in order to further explore the issue of personal versus nonpersonal services contractors, OIG asked an IBB official, CON officials, COs, and CORs to explain the difference between the two types of contracts. The answer to this question was universal: there was no difference in the nature of the contract or work performed; instead, the determination was based solely on the language service requesting the contract.

As a result of our analyses, we determined that BBG had not appropriately labeled its nonpersonal services contracts for 14 of 16 contracts we reviewed; OIG could not determine whether the remaining two contracts were appropriately labeled. The FAR clearly implies that contract language is not the only determinant for defining services contracts but the manner in which the contract is administered is equally important. Merely changing words without changing the relationship between BBG and the contract employees does not resolve the issue of whether these contracts are PSCs. Further, when comparing services, contracts labeled as personal or nonpersonal services, we found that, although the contract language differed, the manner in which the contracts were administered was identical. In addition to our analysis, an IBB official stated that the BBG had approximately 660 services contracts that may have been personal in nature.¹⁸ Based on BBG's improper labeling of 14 (88 percent) of the 16 contracts in our sample, statements made by various BBG officials, and work performed by another Federal agency, OIG concluded that the overwhelming majority of BBG's services contracts were likely personal in nature.

Determination that BBG Exceeded Statutory Authority

Once OIG determined that BBG had improperly labeled its services contracts, we conducted additional analysis to determine whether BBG was meeting or exceeding its statutory authority regarding PSCs. Based on our review of each PSC file selected as a part of our sample, we determined that BBG violated each of the statutory conditions instituted via the Personal Services Contracting Pilot Program. Specifically, the Pilot Program required:

1. the IBB Director to make a determination "that existing personnel resources are insufficient and the need is not of permanent duration." OIG was provided with three Request for Group Approval of Proposed Personal Service Contracts memoranda, which

¹⁷ The Internal Revenue Service (IRS) determined in a 2010 examination that certain contractors included in "talent and other professional services" were not independent contractors and should have been classified as employees for tax purposes. Per an IRS memorandum dated November 22, 2013, it was the IRS position that "the agency [BBG] exercised or had the right to exercise such control over the workers in the performance of their services as was necessary under the usual common-law rules to establish the relationship of employer and employee."

¹⁸ OIG was not able to verify the number of services contracts because a listing of contracts did not exist. See Appendix A for more information.

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provided “group” approval for certain language services to enter into PSCs. These memoranda authorized a specific number of PSCs for each language service. However, none of the group approval memoranda contained a determination that personnel resources were insufficient or that the need was not permanent.

2. the IBB Director to “approve each employment of a personal services contractor.” Although the Director signed a “group” approval memorandum, OIG does not consider that memorandum to fulfill the requirements of the statute. Further, of the seven¹⁹ contract files identified as PSCs that we reviewed as part of our sample, none contained an approval by the Director.
3. that “The contract length, including options, may not exceed 2 years, including options, unless the Director makes a finding that exceptional circumstances justify an extension of up to one additional year.” OIG found that 3 of the 7 PSCs selected for review were more than 2 years in length, and the remaining 4 PSCs were expressly 1 year in length; however, the 4 contracts were renewed for multiple years without competition. For example, one personal services contractor had been providing the same services to BBG continuously since 2003.
4. “Not more than a total of 60 United States citizens or aliens are employed at any one time as personal services contractors under the program.” According to BBG records, as of March 20, 2013, BBG had filled 43²⁰ of 60 authorized PSC slots. However, as stated, during our audit work, we found 14 contracts that should have been PSCs. Based on this work, we concluded that BBG likely exceeded the statute’s limit on the number of PSCs employed by awarding an overwhelming majority of all services contracts as nonpersonal services contracts, though they were personal in nature.

Use of Nonpersonal Services Contracts To Perform Personal Services

OIG recognizes that there may have been multiple reasons that BBG utilized nonpersonal services contracts to perform personal services. One reason may have been because, according to BBG contracting officials, they did not know the difference between personal and nonpersonal services contracts. This is an indication that some or all BBG contracting officials may not have been fully aware of or properly trained on the proper implementation and specific limitations of applicable statutes.

Noncompliance With the Anti-Deficiency Act

As a result of noncompliance with the FAR and other procurement statutes, OIG concluded that BBG had a reportable violation of the ADA, which states, “An officer or employee of the United States Government...may not accept voluntary services for [the]

¹⁹ This includes five contracts identified as PSCs and two identified as both a PSC and nonpersonal services contract.

²⁰ BBG officials stated on August 19, 2013, that there were 44 PSCs in place; however, the listing of PSCs provided to OIG as of March 20, 2013, included only 43 PSCs.

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government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.”

OIG Outline for Action

The BBG was notified of this reportable violation of the ADA via OIG’s Outline for Action, and the following recommendation was made:

OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of personal services contracts that violate the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, “Reports on violations.”

On October 1, 2013, BBG sent a letter to OIG, with various members of Congress copied, stating that “the Office of Inspector General’s Office of Audits has identified areas of concern that require immediate attention. These areas are described generally as significant noncompliance with the Federal Acquisition Regulation and violations of the Anti-Deficiency Act,” (see Appendix E). BBG officials later stated that this October 1 letter was their “report” to Congress of the ADA violations identified by OIG. BBG’s report to Congress of its ADA violations needs to further comply with the reporting requirements, as required by 31 U.S.C. 1351, “Reports on violations.” Specifically, Office of Management and Budget (OMB) Circular A-11, Section 145, provides detailed information about what should be included in each letter to the Director of the OMB, the President, Congress, and the Comptroller General and provides sample letter templates.²¹

Subsequently, on October 28, 2013, BBG sent its second official response to the OIG Outline for Action (see Appendix F), in which it neither agreed nor disagreed with OIG’s identification of an ADA violation in regard to PSCs but instead stated, “we look forward to a discussion with the OIG about the relevant legal authorities pertaining to the Federal Acquisition Regulation (FAR) provisions on personal service contractors.” The memorandum also stated that “IBB staff is working closely with VOA leadership to evaluate new strategies for securing the best talent available for our media needs. One of these strategies might require the agency to move some of its non-PSC workforce to PSCs, in which case the agency would seek legislation to raise its cap on the number of PSCs.”

On November 22, 2013, BBG sent a third response to the OIG Outline for Action (see Appendix G), in which BBG disagreed with OIG’s finding that it had exceeded its statutory

²¹ Two sample letters for reporting ADA violations appear in OMB Circular No. A-11, Section 145, Exhibit 145A and 145B, on pages 7 and 8. The sample letters include specific details of the identified ADA violation, such as a dollar amount, a description of the nature of the violation, and the administrative discipline imposed.

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authority for hiring PSCs. Specifically, BBG did not agree with the FAR's definition of a PSC.²² BBG claimed that the contracts were actually POV contracts rather than PSCs, which would negate OIG's findings based on FAR 37.104 criteria. However, FAR 37.104 (a) states that a PSC is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. As noted in FAR 37.104(c), in determining whether an employer-employee relationship occurs, "each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract." Regardless of whether the contracts we examined were POVs, the facts and circumstances demonstrated that the Government exercised relatively continuous supervision and control over the contractor personnel.

BBG's fourth response to the Outline for Action dated January 2, 2014 (see Appendix H), did not specifically address this recommendation; however, in its fifth response to the Outline for Action, dated April 29, 2014 (see Appendix I, Enclosure 1 of BBG's response to the draft report), the BBG provided contradictory information. The BBG stated that its view, "as a matter of law," was that it had not exceeded its authority regarding PSCs, resulting in no reportable violation of the ADA. Instead, the BBG had "begun a consultation process with OMB" for a determination on whether a reportable violation occurred. However, in this same response, the BBG concurred that it cannot employ PSCs in excess of those authorized. As a result, the BBG stated that it had decided to move away from using a "so-called Purchase Order Vendor (POV) contract vehicle [to] instead contract through one or more staffing agencies." The BBG stated that, in February 2014, the agency issued "a Request for Information seeking firms potentially interested in providing broadcast journalism support services to submit capabilities statements and potential cost structures," to which it received 12 submissions. The BBG stated that the next phase in the process is to issue a Request for Proposal. The BBG also stated that "to mitigate the risks identified by the OIG, the Agency has sought authority from the Congress to employ up to 700 United States citizens or aliens" as PSCs. Finally, the BBG stated that it "will also reissue clear guidance to each manager about the distinction between independent contractors and personal service contractors."

OIG considers this Outline for Action recommendation unresolved because of the BBG's reluctance to report on the ADA violation as required by 31 U.S.C. 1351, "Reports on violations."

Conclusion

BBG violated the ADA by regularly awarding services contracts that were incorrectly labeled as nonpersonal services contracts but were personal in nature. OIG thoroughly reviewed each of BBG's responses to our Outline for Action and concluded that BBG did not provide

²² The Outline for Action response dated November 22, 2013, is presented in Appendix G; however, BBG's explanation of its disagreement with the FAR criteria for determining who is and who is not a PSC was derived from Enclosure 2 of the response, which OIG did not include in the Appendix.

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sufficient information to show that it had not exceeded its statutory limit of personal services contractors.

Recommendation 3. OIG recommends that the Director of Global Operations adhere to the conditions stated in 22 U.S. Code 6206 for hiring personal services contractors; specifically, a determination of resources needed should be made; the Director should approve the employment of each personal services contractor; and contract length, including options, should not exceed 2 years.

Management Response: BBG concurred with the recommendation, stating that it “will update the relevant portion of its Broadcasting Administrative Manual to incorporate all relevant conditions set out in 22 U.S.C. 6206 for BBG’s Personal Services Contractor Pilot Program.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that the relevant portion of the BAM has been updated and procedures have been implemented, including all relevant conditions stated in 22 U.S.C. 6206 for hiring PSCs.

Recommendation 4. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to award and administer personal services contracts in accordance with the statutory requirements as defined by the Personal Services Contracting Pilot Program.

Management Response: BBG concurred with the recommendation, stating that it will “establish a training course covering award and administration of personal services contracts” and that the training would cover multiple Federal requirements, “BBG’s Personal Services Contracting Pilot Program, and relevant provisions in BBG’s BAM.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that CON has updated its training curriculum, as described, and administered a course covering the award and administration of PSCs with pertinent contracting personnel to ensure that responsible contracting officials are appropriately trained.

Finding C. Practice of Contract Pre-Approval Resulted in Reportable Violations of the Anti-Deficiency Act

OIG found that BBG obligated funds before they were available by allowing contractors to work without contracts in place. Specifically, many of the services contracts reviewed had been signed by the CO after the period of performance had begun, requiring the CO to grant “pre-approval” for the contractor to work until funds were secured and the subsequent contract was awarded. Contractors working without valid contracts may have occurred for a number of

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reasons. A lack of contract oversight may have resulted in a lapse in period of performance, whereby the contract expiration dates passed unnoticed, but contractors continued to work, or funds may not have been certified prior to COs granting pre-approval. BBG's utilization of this practice resulted in reportable violations of the ADA, which prohibits Federal employees from "making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation."²³ To further exacerbate the problem, COs and other agency officials stated that contractors may not have been aware that they were working without a valid contract, constituting an additional reportable violation of the ADA in regard to the voluntary services provision discussed in Finding B.

Federal and BBG Policies Regarding Obligating or Expending Federal Funds

The ADA prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, apportionment, or certain administrative subdivisions, such as allotments, of those funds, via 31 U.S.C. 1517(a) and 31 U.S.C. 1514(a). The Government Accountability Office (GAO)²⁴ provides an interpretation of these U.S.C. sections, which states, "overobligation or overexpenditure of an allotment or suballotment are always violations. Overobligation or overexpenditure of other administrative subdivisions are violations only if and to the extent specified in the agency's fund control regulations."

OIG was provided with the BAM, Title 7, Part 100, "Accounting Principles and Standards," as the BBG's fund control regulation. There was no evidence of OMB approval, and the regulation was not posted on the BBG Web site, as required by OMB Circular A-11, Section 150.7. The BAM, Title 7, Section 104, "Fund Control," states that the control of appropriations is exercised by allotment authorities, which are delegations of authority made by the Director, Office of Budget, to issue allotments. The section defines the fund control principles applicable to the agency and also states that obligations incurred or disbursements made in excess of the amount permitted by an allotment constitute a violation of the ADA.

Contracting prior to funding availability is also addressed in FAR Part 32, "Contract Financing," which states, "No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations" and that "before executing any contract, the contracting officer shall obtain written assurance from responsible fiscal authority that adequate funds are available or expressly condition the contract upon availability of funds."²⁵

Appendix C provides additional information regarding Federal and BBG policies governing the obligating and expending of Federal funds.

²³ 31 U.S.C. 1341 (a)(1)(A) as interpreted by the Government Accountability Office. See Appendix C for additional information.

²⁴ GAO-06-382SP, *Principles of Federal Appropriations Law*, Third Edition, Volume II, February 2006 (Red Book).

²⁵ FAR 32.702.

Pre-Approval of Contracts

OIG found that BBG obligated funds before they were available by allowing contractors to work without contracts in place. BBG had a process to allow for a “pre-approval,” which allowed for the period of a contract to begin before the contract was awarded. Specifically, the following was required for contract pre-approval:

Permission from the Office of Contracts to have a contractor perform work before a written award is in place. Service Chiefs requesting Pre-Approval must send an e-mail to the Office of Contracts. Funds must be available at the time of the Pre-Approval request, and a requisition must be sent to the Office of Contracts...within 7 days of the request so that a written award is made in time to pay the Contractor’s invoice.²⁶

To evaluate the contract pre-approval process, OIG reviewed 23 services contracts,²⁷ many of which were in the form of blanket purchase agreements (BPA) with associated call orders,²⁸ and also reviewed budget documentation provided by the Office of Budget. We found that 14 contracts or call orders were signed by the CO after the period of performance had begun. Of the 14 contracts or call orders, 12 were not signed until anywhere from 2 to 17 weeks after the actual period of performance had begun.

For example, OIG found that, for Contract BBG51-A-13-0001, the CO sent an email on April 18, 2013, to the SPE (regarding this contract and nine additional contracts), stating: “I need guidance with the BPA’s for the PSC’s. [Their] 2012 BPA’s ended 2/28/13. [Administrative Officer] is requesting new BPA’s because these people are still working and they will be invoicing soon.” The SPE replied via email: “The contractors may continue to work if they have an active, funded delivery order. If they don’t have a delivery order then they should go home UNLESS pre-approval is given.”

In a follow-up email, the SPE granted pre-approval for the 10 contracts, for \$6,000 each, or a total of \$60,000. OIG noted that the contract was dated May 31, 2013; however, upon inquiry, the CO stated that the contract was backdated and not actually signed until June 27, 2013, or 17 weeks after the contractor was performing services. The period of performance in the contract was May 1, 2013, through April 30, 2014. In a meeting with the OIG, the COR for this contract stated that the practice of pre-approval resulted in contractors not being paid for months.

²⁶ BBG, “COR Level I Training Handouts,” March 2013.

²⁷ The sample of 34 contracts selected for testing included 18 services contracts (16 nonpersonal services contracts and 2 PSCs); we selected an additional five PSC contracts in order to perform an in depth comparison between the personal and nonpersonal services contracts. See Appendix A for additional information.

²⁸ A BPA is an award document that contains terms and conditions by which delivery orders, or call orders, are issued to a contractor. BBG’s BPAs typically had a 1-year term with no options for renewal and were not obligating documents.

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According to one BBG official, the practice of pre-approval was a common occurrence, and a result of a lack of acquisition planning. The official stated that “anyone that wants funds prior to the start of the next quarter has to get special authority.” A CO stated that “pre-approvals are used so a vendor can begin work to prevent a break in work prior to receiving the funding citation.” A different CO stated that she never liked the idea of giving pre-approval because she did not believe that a contractor should work when funds were not available. She further stated that if she did not grant program offices a requested pre-approval, the customer would go to upper management and obtain the pre-approval from them.

Determination that Funds Were Not Always Available

OIG found that 14 of 23 services contracts, totaling \$431,502, were signed by the CO after the period of performance began, and did not have funds certified prior to the pre-approval request, but we could not determine whether funding was available for 10 of the 14 contracts because of lack of documentation. Further, OIG found that, for 4 of the 14 contracts, totaling \$51,140, the period of performance began before the program office obtained an allotment from BBG’s Office of Budget.

For example, OIG’s review of a call order associated with Contract BBG50-D-12-0044, found that the program office official had requested advance approval on October 12, 2012, for a contractor to provide services during October 13–24, 2012. On the same day, the CO stated in an email, “Advance approval is hereby granted for [contractor] in the amount not to exceed \$5,500 for the period of October 13, 2012, through October 24, 2012, while you await fiscal data for the Contingent [Continuing] Resolution.” OIG noted that the associated call order was not signed by the CO until December 9, 2012, or approximately 2 months after the advance approval was given, and more than 6 weeks after the services were provided. Based on documentation provided by BBG, the appropriation, apportionment, and allotment were available on October 19, 2012; therefore, the contractor was working for 6 days prior to BBG’s receipt of funding. This is a violation of the ADA.

Another example, OIG’s review of a call order associated with Contract BBG39-A-11-0553, revealed a similar violation. In an email to the CON Branch Chief, an AO stated: “You gave me pre-contracting approval for 7 days from 10/12/11. I’m waiting for budget to enter the funds. Can our contractor work next week?” The CON Branch Chief for this contract replied: “Based on your email below the present approval is hereby extended another (7) working days through 10/25/11.” On November 9, 2011, the AO stated in an email to the CO, “I am holding his October invoice until you prepare the call order,” implying that the call order for work performed during October was not prepared or signed until after the services were provided. OIG reviewed the October invoice and noted that it was dated October 31, 2011, but was not stamped as “received” until November 29, 2011. Based on documentation received from BBG, it appears that funds were allotted for this transaction on October 24, 2011, which was 21 days after the contractor began to perform work for the BBG—a violation of the ADA.

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In a third example, OIG found that a call order associated with Contract BBG50-A-12-0006 was dated November 4, 2011, although the period of performance began on October 10, 2011. The accompanying advice of allotment showed that, prior to October 14, 2011, the total allotment for this program office was \$3,800. The call order totaled \$7,600, which was more than the total amount allotted to the office at the time the contract was entered. This is a violation of the ADA.

Use of Contract Pre-Approval

There are likely multiple underlying reasons the practice of obligating funds prior to availability occurred within BBG, and two are discussed. One rationale that OIG identified was that in some instances, because of a lack of contract oversight, the program office did not realize that a contract had terminated but the contractor continued working. Eventually, that contractor would submit an invoice and the program office or CO would realize that there was not a valid contract in place and would have to execute a back-dated contract, which utilized an obligation that was not available at the beginning of the period of performance. Another reason that funds may not have been available when the contractor began work was that funds had not been certified prior to COs granting pre-approval.

Noncompliance with the Anti-Deficiency Act

Some BBG officials stated that contractors likely were unaware that they were working without valid contracts in place. This was significant because contractors continued to provide services to BBG unaware that they may not receive payment for these services. In effect, the contractors were providing voluntary services during the period of time when no valid contract was in place and funds were not secured. As a result, by not having valid contracts in place for 14 of 23 contracts reviewed, BBG accepted voluntary services. Under 31 U.S.C. 1342, an officer or employee of the U.S. Government may not accept voluntary services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. A violation of 31 U.S.C. 1342 results in a violation of the ADA.

In addition, a violation of 31 U.S. Code 1341 results in a violation of the ADA. Under 31 U.S.C. 1341(a)(1), "An officer or employee of the United States Government...may not:

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve [the] government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

The BAM also states that BBG considers "[o]bligations incurred or disbursements made in excess of the amount permitted by an allotment" to be "a violation of the Anti-Deficiency Act as amended." Based on BBG's fund control guidance, OIG finds there to be clear and convincing evidence that obligating funds in advance of an Advice of Allotment is a violation of the ADA for BBG.

BBG Response to OIG's Outline for Action

As discussed in Finding B, on September 26, 2013, OIG issued an Outline for Action, through which BBG was notified of the ADA violation regarding the obligation of the Government without assurance of appropriate funds. In the Outline, we made the following recommendation:

OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of pre-approval for contracts, which violates the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, "Reports on violations."

On October 1, 2013, BBG sent a letter to OIG, with various members of Congress copied, stating that "the Office of Inspector General's Office of Audits has identified areas of concern that require immediate attention. These areas are described generally as significant non-compliance with the Federal Acquisition Regulation and violations of the Anti-Deficiency Act," (see Appendix E). BBG officials later stated that this October 1 letter was their "report" to Congress of the ADA violations identified by OIG. BBG's report to Congress of its ADA violations needs to further comply with the reporting requirements, as required by 31 U.S.C. 1351, "Reports on violations" and by 31 U.S.C. 1517 "Prohibited Obligations and Expenditures." Specifically, OMB Circular A-11, Section 145 provides detailed information about what should be included in each letter to the Director of the OMB, the President, Congress, and the Comptroller General, as well as a sample letter template.²⁹

Subsequently, on October 28, 2013, BBG sent its second official response to the OIG Outline for Action (see Appendix F), in which it neither agreed nor disagreed with OIG's identification of an ADA violation in regard to exceeding available appropriations. Instead, the response stated, "we pledge to provide you with additional information on the agency's contract pre-approval process." However, BBG never provided OIG with an adequate response to our requests for information related to pre-approval.

In its third response to the OIG Outline for Action, dated November 22, 2013 (see Appendix G), BBG stated, "We understand that the OIG team has acknowledged that pre-approval, by itself, does not create an ADA violation." While we agree that pre-approval alone does not constitute a violation of the ADA, BBG never provided OIG with sufficient information to show that BBG did in fact have funding available during the "pre-approval" period for the contracts as mentioned in this section.

BBG's fourth response to the Outline for Action, dated January 2, 2014 (see Appendix H), did not specifically address this recommendation; however, in its fifth response to the

²⁹ Two sample letters for reporting ADA violations appear in OMB Circular No. A-11, Section 145, Exhibit 145A and 145B, on pages 7 and 8. The sample letters include specific details of the identified ADA violation, such as a dollar amount, a description of the nature of the violation, and the administrative discipline imposed.

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Outline for Action, dated April 29, 2014 (see Appendix I, Enclosure 1 of BBG's response to the draft report), BBG stated that it had "ended the practice of pre-approval, and sent clear guidance to all employees that the practice will stop immediately." The BBG also stated that it had completed an assessment of 28 contracts or BPAs, which were part of OIG's sample, "to conclude whether or not there was a commitment in excess of an allotment." BBG stated that as a result of its internal review, it identified four contracts for which it cannot confirm that sufficient funds were available in an allotment at the time the BBG incurred the obligation, and that if this is accurate, BBG "will have exceeded the amount available in the corresponding allotment, which would be reportable violations of the ADA." BBG stated that it will conduct additional reviews to verify its results, and if its final analysis confirms the existence of violations of the ADA, it would report on those violations accordingly.

OIG considers this Outline for Action recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that the BBG has ceased the use of contract pre-approval and communicated this guidance to all employees and finalized its analysis of the 28 contracts and reported on the identified ADA violations as required by 31 U.S.C. 1351, "Reports on violations."

Conclusion

As a result of the practice of pre-approval, OIG determined that BBG had reportable violations of the ADA. Specifically, 31 U.S.C. 1341 and 1342 prohibit Federal employees from "making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation," and involving "[the] government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law," and states, "An officer or employee of the United States Government...may not accept voluntary services for [the] government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property."

OIG considered each of BBG's responses to our Outline for Action and concluded that BBG did not provide sufficient information to show that it had properly ensured that funds were available prior to obligating the Government and allowing contractors to provide services. OIG also identified that the contract pre-approval process essentially allowed BBG to accept voluntary services as provided by contractors, also violating the ADA, and that BBG's October 1, 2013, "report" to Congress did not meet the requirements for reporting ADA violations in accordance with 31 U.S.C. 1351 and 1517.

Recommendation 5. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with the Office of the Chief Financial Officer, develop and implement policies and procedures to ensure that funds are available at the beginning of the period of performance for each contract, which should include the tracking of contract period of performance and the maintenance of appropriate documentation within the contract file. If funds are not available for the entire term of a

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contract because of a continuing resolution, a subject to availability clause should be included in the terms and conditions of the contract, per the Federal Acquisition Regulation.

Management Response: BBG concurred with the recommendation, stating that it will “develop and implement policies and procedures related to the issuance of contracts and the availability of funds clause at the beginning of the period of performance for each contract” and that this effort will “include utilizing controls to monitor and manage contract status and period of performance.” BBG further stated that contracting officers will be required to include an “availability of funds clause” in every BBG-awarded contract.

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that the BBG has developed and implemented policies and procedures to ensure that funds are available at the beginning of the period of performance for each contract, including a tracking mechanism, maintenance of appropriate documentation in the contract file, and a subject to availability clause in contracts.

Recommendation 6. OIG recommends that the International Broadcasting Bureau develop and implement fund control regulations, obtain approval from the Office of Management and Budget for the fund control regulations, and post the fund control regulations on its Web site, as required by Office of Management and Budget Circular A-11.

Management Response: BBG concurred with the recommendation, stating that its Office of the Chief Financial Officer and Office of General Counsel had begun drafting a new funds control regulation. Once drafted, BBG stated that it would “finalize [the] funds control regulation, seek OMB approval for this regulation, and post the final regulation on bbg.gov.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed and implemented fund control regulations, obtained approval from OMB for these regulations, and posted the regulations on the its Web site.

Finding D. Pre-Solicitation Practices Did Not Comply With the Federal Acquisition Regulation

OIG found that BBG had not adequately performed pre-solicitation contracting phase requirements, such as acquisition planning or market research. Specifically, OIG found that none of the selected sample of 34 contracts contained evidence that sufficient acquisition planning was performed as is required by the FAR. Furthermore, 33 of the 34 contracts in our sample did not include documentation of market research, which is also required by the FAR.

Failure to comply with the FAR likely occurred for multiple reasons, including but not limited to, BBG not having internal policies or procedures governing the pre-solicitation requirements for acquisition planning and market research. Without conducting acquisition planning or market research, BBG did not ensure that the Government had selected appropriate vendors, awarded correct contract types, received the best prices for goods and services, or always executed the contract. Further, possibly because of a lack of acquisition planning, BBG did not execute two contracts, resulting in unspent funds of \$437,350 that had not been deobligated and used for other authorized purposes.

Acquisition Planning Not Performed

FAR Part 2, “Definitions,” defines acquisition planning as the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost.³⁰ FAR 7.102 states that acquisition planning must be performed for all acquisitions and that the planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. In addition, FAR 7.103 states that agency heads are responsible for prescribing acquisition planning procedures, which include establishing criteria and thresholds at which written acquisition plans must be prepared and also for ensuring that the planning principles outlined in FAR Part 7, “Acquisition Planning,” are used whether or not a written acquisition plan is required.

OIG found that none of the 34 contract files reviewed contained documentation to indicate that sufficient acquisition planning had been performed. Additionally, no contract files in the sample contained a written acquisition plan. Although the CO or program official may have conducted some aspects of acquisition planning, in general, OIG found no evidence that complete acquisition planning had been performed. For example, Contract BBG50-P-12-0092, totaling \$45,500 for “Original Writing, Reporting, Hosting,” did not contain any documentation to evidence that acquisition planning had occurred. OIG interviewed the CO, who stated that he was not a part of the selection process for choosing this vendor; therefore, he was not able to provide additional information regarding to what extent, if any, acquisition planning had occurred. OIG also interviewed the COR for this contract, who stated that the vendor was hired approximately 3–4 years prior and that the vendor’s contract had been renewed each year since.

In a second example, the file for Contract BBG38-F-11-0002, a purchase order for one shipment of diesel fuel totaling \$15,339, did not contain any documentation that acquisition planning had occurred. OIG interviewed the CO for the contract and found that the vendor had been chosen based on a master contract from the Department of Defense. However, the CO had never seen the master contract and was not aware of the reasons for procuring fuel through this vehicle, despite having awarded the contracts in this manner for 3 years. OIG determined that there was no assurance that utilizing the Department of Defense contract as a procurement mechanism for the purchase of fuel was the most beneficial strategy for BBG.

³⁰ FAR 2.101.

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None of the COs interviewed during our audit could elaborate on acquisition planning that occurred within CON. Specifically COs stated that they were not involved in any parts of acquisition planning. One CO stated that COs “depended on program officials” to perform all aspects of planning. Generally, COs were not involved in the acquisition process until a requisition was sent to CON, often with a vendor and price already identified.

Market Research Not Performed

According to FAR Part 2, market research is collecting and analyzing information about capabilities within the market to satisfy agency needs. FAR Part 10, “Market Research,” requires market research to be conducted for all acquisitions to ensure that agencies identify legitimate needs and evaluate trade-offs when acquiring items for acquisitions above and below the simplified acquisition threshold.³¹

OIG found that only one out of 34 contracts reviewed contained documentation that sufficient market research had been performed prior to awarding a contract. The other 33 contracts in OIG’s sample did not contain evidence to indicate that sufficient market research had been conducted. While a CO or program official may have conducted some aspects of market research, OIG found that, in general, market research had not been performed for each contract.

For example, Contract BBG50-P-12-0303, for a hotel room lease in Taiwan totaling \$45,000, contained a letter from the program office listing two other vendors with much higher prices than the vendor selected, but there was no documentation that the CO had done any research to determine whether other vendors were available. Additionally, the CO stated in an interview with OIG that the award to the specific vendor had been based on BBG historically using this vendor for a number of years, rather than performing planning activities or research to determine that the vendor was the best option.

No Policies or Procedures for Pre-Solicitation Requirements

Failure to comply with the FAR likely occurred for multiple reasons; OIG believes one reason was because CON did not have internal policies and procedures that provided guidance regarding pre-solicitation requirements. In our review of BBG’s policies, we did not find direction on how or to what extent acquisition planning and market research should be performed, nor did we find criteria establishing thresholds at which written plans must be prepared. OIG interviewed 15 COs who either stated that acquisition planning had not been performed, could not speak to whether planning had been performed, or stated that they did not have guidance related to the conduct of acquisition planning or market research. When asked why no acquisition planning or market research had been performed, one CO stated that she generally had relied on how acquisitions had been done in the past, often resulting in continued awards to long-standing contracts with familiar vendors. Furthermore, two COs stated that they

³¹ FAR 2.101 and FAR 10.001, respectively.

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had too many contracts to administer on a timely basis, leaving no time to perform planning activities or market research.

Conclusion

Without performing acquisition planning and market research as required by the FAR, BBG lacked key components to ensure successful procurements. Acquisition planning and market research are essential in promoting and providing for competition and in selecting the appropriate contract type in compliance with Federal regulations. Based on our review of selected contracts, OIG determined that there was no reasonable assurance that BBG obtained the best price for goods and services for any of the sampled contracts; therefore, BBG may not have met its needs in the most effective, economic, and timely manner. Further, OIG identified two examples within our sample of 34 contracts in which a contract had been signed and funds had been obligated, but the contract was never executed. Both of these situations could have occurred because of multiple reasons, including but not limited to, a lack of planning. Funds for Contract BBG50-F-12-0340, totaling \$402,350, had been obligated using FY 2012 funds. However, the contract had not been executed but was not subsequently terminated, and the \$402,350 had not been deobligated. For Contract BBG50-P-11-0560, totaling \$35,000, BBG expended a portion of the obligated funds. However, BBG did not utilize the services that were contracted, resulting in \$16,670 in funds that were not deobligated. OIG believes that if BBG had performed adequate acquisition planning procedures for both of these contracts, these funds, totaling \$437,350, may have been obligated for more appropriate contracts and utilized within their years of appropriation. By the end of OIG's fieldwork, BBG took action to deobligate the remaining funds related to these contracts.

By updating and implementing detailed policies and procedures for the type, extent, and manner in which acquisition planning and market research are to be performed, COs and program officials would have the tools necessary to adequately perform the pre-solicitation FAR requirements, and therefore, provide further assurance that BBG's procurement needs are met in the most appropriate manner and ensure that funds are obligated and used for intended purposes.

Recommendation 7. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting acquisition planning, in accordance with the Federal Acquisition Regulation. Specifically, criteria and thresholds should be established to dictate when a written acquisition plan is needed and guidance should establish what types of documentation should be maintained in the contract file.

Management Response: BBG concurred with the recommendation, stating that it "will draft an Acquisition Planning policy that complies with the FAR."

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance for conducting acquisition

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planning in accordance with the FAR, including criteria and thresholds to dictate when a written acquisition plan is needed and what types of documentation should be maintained in the contract file.

Recommendation 8. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting market research, in accordance with the Federal Acquisition Regulation. Specifically, criteria should be established to dictate the type and extent of market research to be performed for each procurement action and what types of documentation should be maintained in the contract file.

Management Response: BBG concurred with the recommendation, stating that it “will develop policies and procedures and implementation guidance for conducting and documenting market research, including the type and extent of market research” in accordance with the FAR.

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance for conducting market research, including criteria to dictate the type and extent of market research for procurements and what documentation should be maintained in the contract file.

Finding E. Competition Practices Did Not Comply With the Competition in Contracting Act or the Federal Acquisition Regulation

OIG identified three main areas in which BBG had not adequately complied with requirements to promote or provide for full and open competition in soliciting offers or awarding contracts. First, BBG published quarterly “sources sought” notices³² rather than publicizing individual contract actions. Second, BBG did not properly evaluate quotations or offers prior to awarding contracts. Third, BBG did not adequately justify other than full and open competition when awarding sole-source acquisitions. There were likely many reasons that BBG generally had not promoted competition; one reason being a lack of internal policies and procedures. Another reason was that BBG’s acquisition process was largely driven by the program offices, which disregarded, or were not aware of, FAR requirements. Without promoting competition when soliciting and awarding contracts, BBG did not ensure that the Government had received fair and reasonable prices for goods and services. In addition, without full and open competition, the potential for fraud, waste, and abuse exponentially increased.

³² FedBizOpps states that “the Sources Sought notice is a synopsis posted by a government agency that states they are seeking possible sources for a project. It is not a solicitation for work, nor is it a request for proposal.”

Competition in Contracting Act

Under the Competition in Contracting Act, 41 U.S.C. 3301(a), an executive agency in conducting a procurement for property or services shall:

- (1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and
- (2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

The Competition in Contracting Act allows for exceptions to the full and open competition requirement as specified in 41 U.S.C. 3303, 3304, and 3305 or as expressly authorized by statute. As provided in 41 U.S.C. 3301(c), the FAR shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government's requirements.

Inappropriate Use of Quarterly Sources Sought Notices

FAR Part 5, "Publicizing Contract Actions," establishes that COs publicize contract actions in order to increase competition, broaden industry participation in meeting Government requirements, and assist small business concerns in obtaining contracts and subcontracts. FAR 5.201 requires agencies to make notices of proposed contract actions available for acquisitions of supplies and services and requires COs to transmit a notice to the Government-wide point of entry, FedBizOpps.gov (FBO), for each proposed contract action expected to exceed \$25,000. Furthermore, FAR 5.204 requires COs to synopsise a proposed contract action before issuing any resulting solicitation.

OIG determined that BBG violated FAR requirements for publicizing contract actions by not transmitting a notice to the FBO for each proposed contract action. Based on a review of 34 contract files, OIG found that 17 contracts were awarded against a quarterly sources sought notice, rather than being individually announced, as required by FAR 5.201.

CON regularly used the quarterly sources sought notices as a vehicle for awarding contracts against, rather than seeking potential sources, which is their intended use. BBG published quarterly sources sought notices on FBO that generally covered two types of needs—broadcast services and journalists or stringers (who conduct freelance broadcasting assignments). Both types of quarterly sources sought announcements were general in description and included multiple assignment areas.

For example, the quarterly sources sought notice for journalists and stringers dated September 30, 2011, stated:

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The U.S. Broadcasting Board of Governors, International Broadcasting Bureau, Voice of America, and Office of Cuba Broadcasting are seeking qualified individuals for free-lance Radio, Television, Internet, and/or Multi-Media English and/or foreign language news broadcasting assignments in Washington DC; Miami, FL; and various overseas locations.... Assignments include script writing, editing, on-air announcing, technical and production services, photo editing, video journalism, graphic illustrating, producing programming using state of the art multi-media platforms, and audience mail analysis.

The announcement further stated that individuals interested in the free-lance English or foreign language news broadcasting assignments may submit written inquiries or statements of interest to the appropriate BBG organization. Although the quarterly sources sought announcements stated that “This Notice is not a [Request for Quotation] RFQ, [Request for Proposal] RFP, or [Invitation for Bid] IFB,” BBG purportedly entered into contracts with respondents to the sources sought notice.

CON officials initially acknowledged that awarding contracts against these quarterly notices was not in accordance with the FAR, and stated that they had obtained an opinion from the General Service Administration’s Acquisition Solutions stating that the practice was not in accordance with the FAR. OIG also contacted the General Service Administration regarding this matter, and a representative from its Office of Acquisition Policy stated that it is not allowable under the FAR to award contracts against a sources sought notice. However, BBG’s November 22, 2013, response to OIG’s Outline for Action states that the use of sources sought notices “is a valid interpretation of FAR requirements.”³³ OIG agrees with the General Service Administration’s determination that this practice is not a reasonable interpretation of the FAR. By awarding contracts against the quarterly sources sought notices, BBG is not adequately soliciting sources for specific services and is not in compliance with the FAR.

OIG could not determine with certainty why BBG had not complied with FAR requirements to sufficiently compete contract needs; however, one reason was likely because CON had not implemented updated policies and procedures to ensure that solicitation procedures complied with regulations.

BBG’s response to the Outline for Action also stated that the quarterly notices “allow for a nearly continuous, open, competitive announcement process for talent vendors.” Yet OIG found that BBG’s use of the quarterly notices to award contracts resulted in the opposite—a solicitation process absent any competition. Without adequately soliciting sources, BBG did not promote for full and open competition and may not have received products and services in the most efficient and economical manner.

³³ The Outline for Action response dated November 22, 2013, is presented in Appendix G; however, the quotes regarding the use of sources sought were derived from Enclosure 1 of the response, which OIG did not include in the Appendix.

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Recommendation 9. OIG recommends that the International Broadcasting Bureau, Office of Contracts, cease the use of quarterly sources sought announcements for awarding contracts.

Management Response: BBG concurred with the recommendation, stating that it had “communicated to the appropriate acquisition officials in the Agency to cease domestic use of the quarterly sources sought synopsis at the beginning of this fiscal year and advised overseas contracting officers to discontinue using the sources sought synopsis in April 2014.”

OIG Reply: OIG considers the recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has directed domestic and overseas COs to cease the use of the quarterly sources sought announcements, and that COs no longer utilize the announcements for awarding contracts.

Recommendation 10. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance to ensure compliance with the Competition in Contracting Act and Federal Acquisition Regulation regarding the publication of contract actions.

Management Response: BBG concurred with the recommendation, stating that it “will develop policies and procedures and implementation guidance to ensure compliance with the Competition in Contracting Act (CICA) and the FAR regarding publicizing contract actions.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance to ensure compliance with the Competition in Contracting Act and the FAR regarding the publication of contract actions.

No Evidence that Offers Were Evaluated

A key component of competition is obtaining quotations and offers to determine the best value. According to FAR Part 2, “best value” is the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to a requirement.³⁴ Further, FAR Subpart 8.4, “Federal Supply Schedules,” requires COs to obtain quotes from at least three contractors when placing an order on a Federal Supply Schedule³⁵ item. For simplified acquisitions, FAR 13.106-2 states that COs shall evaluate quotations or offers in an

³⁴ FAR 2.101.

³⁵ See FAR 8.405-1. FAR 8.402(a) also states that “the Federal Supply Schedule program is directed and managed by [the General Services Administration] GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying.”

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impartial manner, that quotations or offers shall be evaluated on the basis established in the solicitation, and that all quotations or offers shall be considered.

OIG determined that BBG had violated competition requirements outlined in FAR Part 6 and evaluations of quotations and offers for simplified acquisitions, as required by FAR 13.106. By using a quarterly sources sought notice for solicitation, BBG did not adequately receive or evaluate sources for competition. In addition, for those contracts that were awarded via other means than the quarterly sources sought notice, no documentation was maintained in the file to evidence that multiple offers had been evaluated. In total, documentation in the files for 27 of 34 contracts in our review indicated that the contracts had been awarded under full and open competition, but OIG could not determine that other offers were sufficiently evaluated prior to awarding the contract.

For example, OIG reviewed contract documentation for Contract BBG28-F-11-0031, totaling \$190,686, for broadcasting equipment from a Federal Supply Schedule and determined that it had not been appropriately competed. Only one quote was received for this solicitation, and the contract file did not include an explanation of why additional quotes were not obtained or the efforts made to obtain additional quotes. Program officials stated that the vendor was the only source offering the needed equipment, and therefore, three bids could not be obtained. However, they were unable to provide support for this statement.

There were likely many reasons why BBG COs did not adequately evaluate all quotations and offers; one reason being that BBG did not have internal policies and procedures to ensure that all offers were evaluated for each proposed contract action. OIG found that COs lacked guidance and direction for how to appropriately evaluate offers in order to promote competition. As a result, BBG had no reasonable assurance that it was getting the best value and the greatest overall benefit to the Government. Competition in contracting provides assurance that the Government has received a fair and reasonable price and encourages contractors to offer best-value proposals when bidding on Federal contracts, thereby reducing costs and protecting the interests of the taxpayers.

Recommendation 11. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop updated internal policies and procedures and implementation guidance to ensure that all offers are evaluated for each proposed contract action and adequately documented in the contract file.

Management Response: BBG concurred with the recommendation, stating that it “will update its policies and procedures and implementing guidance to ensure that all offers are evaluated for all proposed contract actions and adequately documented in the contract file.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG developed policies and procedures and implementation guidance to ensure that all offers are

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evaluated for each proposed contract action and adequately documented in the contract file.

Justifications for Other Than Full and Open Competition Not Sufficient

OIG determined that BBG had not adequately justified contracts awarded with other than full and open competition. Although competition is the preferred method of acquisition within the Federal Government, FAR Part 6.302 permits other than full and open competition under certain circumstances.³⁶ FAR Part 6 states that COs shall not commence negotiations for sole-source contracts or for contracts resulting from an unsolicited proposal and shall not award any contract without providing for full and open competition unless the CO justifies such actions in writing and the justification is approved by the agency authority.³⁷

Based on a review of 34 contracts, OIG found that seven of the contract files reviewed included documentation stating that they had been awarded as sole-source acquisitions. Of the seven, two did not include a justification for other than full and open competition (JOFOC), and four did not include a JOFOC that documented all items required by the FAR. In addition to the seven sole-source acquisition files, two files included statements that the contract was awarded under full and open competition but also included incomplete JOFOCs. Contracts that are awarded under full and open competition should not include JOFOCs.

For instance, OIG reviewed the contract file for Contract BBG50-J-12-0709, for a supply of new high-power vacuum tubes for transmitter stations, totaling \$284,661. The contract had been awarded as a sole-source acquisition. However, there was no documentation in the file detailing why no other vendors were available to provide the supplies, and the contract file did not include a JOFOC. The CO for the contract stated that there was no other vendor who could provide the same kind of tubes, but the CO did not document this fact in the file.

In another case, the file for Contract BBG50-C-11-0023, a lease for broadcasting transmission services totaling \$940,008, had an insufficient JOFOC. The contract was awarded as a sole-source acquisition under the circumstance that only one responsible source was available to satisfy agency requirements. The contract file included a JOFOC; however, the JOFOC did not contain sufficient evidence to satisfy that the vendor met the criteria. The JOFOC also did not adequately address all of the FAR requirements. For example, the FAR states that the file should include “a determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.” However, the JOFOC included in the file stated:

³⁶ The circumstances allowed by the FAR include: only one responsible source and no other supplies or services to satisfy agency requirement, unusual and compelling urgency, international agreement, authorized or required by statute, and national security.

³⁷ FAR 6.303-2 outlines the facts and rationale that must be included in written JOFOCs.

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The Contracting Officer for this procurement has determined that the anticipated cost...to the Government will be fair and reasonable. This determination is based on comparison to similar services acquired over the past two years.

OIG did not find evidence in the contract file that a comparison had been completed. Finally, OIG found that the contract file included conflicting information regarding competition. Specifically, a document in the file stated that the vendor was the eighth most popular radio station in Kyiv, and an email stated that two other stations were examined to provide the services but were not chosen due to lack of audience reach and availability of time slots.³⁸ However, the JOFOC stated that the justification for the sole-source acquisition was because “alternate means of broadcasting in this market have been blocked by government authorities.” There was no evidence that the remaining five stations had been examined for possible fulfillment of the contract or that other stations were “blocked by government authorities.”

There were likely many reasons that BBG had not adequately complied with requirements for justifying other than full and open competition; one reason being that BBG did not have internal policies and procedures detailing how to do so. COs lacked guidance for complying with FAR competition requirements, as evidenced by the inclusion of conflicting competition documents in contract files. By not completing or insufficiently completing JOFOCs, BBG had no reasonable assurance that contracts awarded as sole-source acquisitions should have been awarded as such.

Recommendation 12. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance to ensure that justifications for other than full and open competition are adequately documented and only utilized in accordance with Federal Acquisition Regulation guidance.

Management Response: BBG concurred with the recommendation, stating that it “will develop policies, procedures, and implementing guidance” covering pertinent Competition in Contracting Act and FAR requirements. The BBG further stated that “implementing guidance will require that Justifications For Other Than Full and Open Competition be included in contract files in accordance with FAR 4.803(a)(2).”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG developed policies and procedures and implementation guidance to ensure that JOFOCs are adequately documented and utilized in accordance with Federal regulations.

³⁸ OIG notes that this information was obtained via email documentation and that there were no documents in the file evidencing the review of two radio stations.

Acquisition Process Driven by IBB Program Offices

Another reason competition largely did not occur was because contracting within BBG was driven by the program offices rather than by CON. OIG found that offers and quotations were not evaluated because of the program offices' influence and pressure on COs to award the contract to the contractor that was pre-selected by the program office. Specifically, BBG officials explained the typical process for identifying and obtaining a contractor: Program officials generally identified a need for a particular service, obtained sources through reference or word-of-mouth within the broadcasting community, interviewed candidates, and selected the candidate who best fit their need. In general, documentation of this process was not maintained. The program office then provided a resume, SOW, and requisition to CON. Certain COs required program officials to submit three resumes for candidates as documentation that multiple candidates were evaluated. However, OIG found that this was an exercise in "papering the file," that is, including documentation in the file, rather than a true attempt to promote full and open competition because resumes included in the files did not always reflect qualified candidates.

Because acquisitions were driven by the program offices, many COs with whom we talked stated that they were frustrated because they felt that they were unable to do their jobs in accordance with Federal regulations. Further, they felt as though CON management did not provide support when they tried to "fight back" against program office demands. Many COs explained that they received push back from program offices and were often forced by upper management in CON to award contracts without adequately promoting competition. For example, a number of COs stated that they had refused to sign contracts because the contracts did not comply with all applicable Federal regulations. In these cases, OIG found that the SPE had signed the contracts for COs when they had refused to sign themselves. For example, Contract BBG50-P-11-0009, totaling \$99,000 awarded to a contractor for organizing town hall meetings and training sessions in Nigeria, was signed by the SPE rather than the CO who administered the contract. The CO stated that she did not sign the contract because it had not been competed and the steps necessary for a complete JOFOC had not been performed. The SPE signed the contract, but the CO performed the administration of the contract.

During an interview, the SPE admitted to OIG that he had signed contracts that did not comply with the FAR, and stated that his actions were due to pressure he received from program offices. Senior staff within CON also stated that they had not been able to provide support to their COs or "push back" against program offices because BBG upper management did not acknowledge COs as having authority and did not place value on complying with Federal regulations for acquisitions. For example, Contract BBG50-P-11-0068, totaling \$25,000 for the creation of a large-scale social media initiative, did not meet FAR requirements for competition or pricing. Specifically, the Senior Strategist within the program office who requested the vendor had insisted on a quick turnaround time and had refused to compete the contract. The CO that was originally assigned to this contract stated that she had refused to sign the contract because she did not feel comfortable with the lack of competition. Documentation in the contract file showed that a senior IBB official sent emails to the SPE, pressuring them to issue the contract more quickly, by reiterating, "[T]his is of extremely high priority to the

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governors.” At one point, the SPE wrote an email stating, “We will make the award as soon as possible, but I am not circumventing the law for you or anyone else.” However, multiple senior IBB officials were copied on the email, and the contract was signed the day after the email from the SPE was sent, even though a finalized SOW had not been prepared and without competition or a fair and reasonable price determination. According to the SPE, he signed the contract as a result of pressure from senior IBB management.

Conclusion

The lack of adequate competition was likely the result of many factors, including BBG not establishing or enforcing adequate policies and procedures governing the competition process, as well as undue influence from BBG program offices. By not promoting competition, BBG had no reasonable assurance that it had received a fair and reasonable price for goods and services. Furthermore, the lack of competition resulted in the appearance of favoritism in awarding contracts. OIG believes that a lack of competition because of influence from program offices circumvents the Competition in Contracting Act requirement for full and open competition; increases the potential for corrupt practices to occur; and increases the risk of fraud, waste, and abuse.

Recommendation 13. OIG recommends that the Director of Global Operations provide guidance to all offices within the International Broadcasting Bureau to explain the role of the Office of Contracts and the requirement for all acquisitions to comply with the Competition in Contract Act and follow the Federal Acquisition Regulation, and to reinforce the authority of the Senior Procurement Executive.

Management Response: BBG concurred with the recommendation, stating that “the Director of Global Operations has issued a memorandum to all agency staff involved in the acquisition process, explaining and emphasizing the importance of the role of the Office of Contracts, and affirming the requirement that all acquisitions comply with the Competition in Contracting Act (CICA), the Federal Acquisition Regulation, and all other applicable acquisition-related laws, regulations, policies and procedures.”

The BBG further stated that the Director issued a second memorandum to all employees “reminding them that the aforementioned laws, regulations, policies, and procedures define the responsibilities and authorities of all individuals/agency elements involved in the agency’s acquisition processes” and highlighted duties particularly relevant to the SPE.

OIG Reply: OIG considers this recommendation closed. BBG provided OIG with the two internal memoranda signed by the Director of Global Operations that address the importance of the Federal procurement process and pertinent regulations. The first memorandum was addressed to all BBG COs and purchase cardholders, reminding them of the need to comply with pertinent Federal and BBG regulations, policies, and procedures and stated that if they are

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...receiving undue pressure from IBB, VOA, or OCB officials to conclude any acquisition actions in a manner that is not consistent with the FAR, agency policies and procedures, or any other applicable laws, rules, and regulations, s/he shall report the matter to the Senior Procurement Executive (SPE) immediately. The SPE will investigate the matter and, as necessary and required, report the matter to the IBB Chief of Staff and to me [the Director].

COs and purchase cardholders were also reminded that they are “accountable for all of the documents they sign regardless of whether their signatures result from inappropriate influence from others and whether or not the inappropriate influence was reported.”

The second memorandum was addressed to all BBG employees, reminding them of the need to comply with pertinent Federal and BBG regulations, policies, and procedures; of the responsibilities and authorities of the SPE, COs, CORs, and agency employees; and that employees who unduly pressure contracting officials to circumvent the FAR “will be subject to disciplinary action, up to and including removal.”

OIG considers the two memoranda to be sufficient to meet the intent of the recommendation.

Recommendation 14. OIG recommends that the International Broadcasting Bureau hold comprehensive training to ensure that all employees involved in the acquisition process are aware of the Competition in Contracting Act and Federal Acquisition Regulation as it relates to competition, as well as the implications of noncompliance.

Management Response: BBG concurred with the recommendation, stating that it will “establish an enhanced training curriculum covering the [Competition in Contracting Act] CICA and FAR as it relates to competition as well as the implications of noncompliance” with these regulations.

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has updated its training curriculum and administered a course covering the Competition in Contracting Act and the FAR as it relates to compliance with competition requirements and the implications of noncompliance.

Finding F. Contract Pricing Determinations Did Not Comply With the Federal Acquisition Regulation

OIG determined that 30 of the 34 contracts reviewed, totaling approximately \$3.5 million, did not have appropriate price determinations performed by the CO as required by the FAR. Instead, the COs allowed each program office to determine its own rates. Contract files included documentation stating that prices had been determined using the outdated POV

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Handbook or had no documentation stating how prices had been determined. There were likely many reasons why contract prices were not appropriately determined or documented, including outdated policies or procedures to guide COs on how to appropriately determine contract prices, and because program offices often pre-determined contract pricing independent of CON. As a result, BBG had no assurance that contracts were priced appropriately, resulting in \$3.5 million in unsupported contract actions.

FAR Requirements for Contract Pricing Determinations

FAR 15.402 states that COs shall purchase supplies and services from responsible sources at fair and reasonable prices. Generally, when certified cost or pricing data is not required,³⁹ the CO should establish the reasonableness of the offered prices by obtaining other relevant data, such as data from sources other than the offeror. No additional data is necessary if the price was based on adequate competition. For simplified acquisitions, FAR 13.106-3 states that “before making [an] award, the contracting officer must determine that the proposed price is fair and reasonable.” The FAR further states, “If only one response is received, include a statement of price reasonableness in the contract file.”⁴⁰

POV Handbook Contract Pricing Rates

As stated in prior findings, OIG did not identify any current policies or procedures related to the acquisition process. However, OIG did note that some contract file documentation referred to the POV Handbook when making determinations of contract price reasonableness. With regard to contract price determinations, the POV Handbook states: “Payment appropriate for contractor services is determined based on the nature of the assignment, the expertise of the contractor, and budgetary constraints... **The price schedule in Part IV (page IV-1) is not current and may not be used as a guide to determine fair and reasonable rates for contractor services. It is provided only as a guide for budgetary and planning purposes** [emphasis added].” Part IV of the POV Handbook lists five genres and multiple types of job positions with specific detailed job responsibilities for each genre. For example, the POV Handbook entry for the genre of Television Producer/Writer/Researcher/Reporter states:

Prices per story are determined by Contracting Officer and based on the complexity of the story, amount of research required, number of shoot and edit days, and the amount of original production verses stock or Government furnished news footage.

³⁹ Per FAR 15.403-1, certified cost and pricing data is not required for purchases of commercial items, items under the simplified acquisition threshold, or when agreed-upon prices were based on adequate competition.

⁴⁰ Per FAR 13.106, the CO may base the statement on market research; comparison of the proposed price with prices found reasonable on previous purchases; current price lists, catalogs, or advertisements; a comparison with similar items in a related industry; the CO’s personal knowledge of the item being purchased; comparison to an independent Government estimate; or any other reasonable basis.

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Program Duration Price per Assignment(s)

Up to two minutes	\$75.00 – \$250.00
Two to five minutes	\$200.00 – \$550.00
Five to 10 minutes	\$300.00 – \$1,000.00
10 to 30 minutes	\$500.00 – \$1,500.00
30 to 60 minutes	\$700.00 – \$2,500.00

Sufficient Contract Price Determinations Not Performed

Because full and open competition was generally not utilized within BBG acquisitions, COs should have obtained and maintained documentation of other data sources to make a determination of contract price reasonableness. However, OIG found that 30 of 34 contracts reviewed, totaling approximately \$3.5 million, all of which should have had a contract price determination, did not have an appropriate price determination performed by the CO. Of the 30 contract files without adequate contract price determinations, 21 contained insufficient documentation and 9 contained no documentation. COs stated that they had often accepted the proposed rate of the program office instead of conducting their own analysis to determine whether contract prices were fair and reasonable.

For example, 13 of 34 files included a document titled “Price Proposal” to support contractor rates. This document, an example of which is provided in Figure 1, simply states the vendor name, position, and rate request with a reference to the POV Handbook.

Figure 1. Example of Contract Price Proposal

Price Proposal
Talent Contractor
POV Handbook Labor Category IVC-2M
Voice of America, Afghanistan Service – Karwan Project

I hereby request a rate of \$300 per assignment IVC-2M –Producer/
Writer/Researcher/Translator Services as a Contractor for VOA’s South Asia Division.

Date: 9/14/10



Signature of Proposer

Source: BBG file for Contract BBG39-A-10-0541.

In addition, OIG found that 4 of 34 contracts reviewed included a form in the contract file titled “Fair and Reasonable Price Determination,” which was typically prepared and reviewed by the CO. This form generally stated:

I (Buyer) am recommending award to [Contractor]. I used one or more of the following check price analysis techniques compared to the quoted price of \$____. The quoted price was similar enough to the comparative price to conclude that the quotation is fair and reasonable.

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This form typically also made reference to the POV Handbook for pricing information. For example, the file for Contract BBG50-D-10-0016, which totaled \$85,200, contained a Fair and Reasonable Price Determination form, which stated that the POV Handbook was used to make the fair and reasonable price determination.

There were likely many reasons why COs did not determine whether contract prices were fair and reasonable. For example, COs did not have appropriate guidance on how to make contract price determinations, and they generally allowed program offices to pre-select vendors and contract prices. Because of a lack of management support in CON, it was the general practice of the COs to accept whatever price was proposed by the program office. For instance, when asked by OIG how he made price determinations, one CO replied, “Who am I to tell the program office how much to pay the contractor? It’s their money!”

Conclusion

As a result of the lack of sufficient price determinations, BBG had no reasonable assurance that contract prices were appropriate or that the Government was receiving the best value for the services provided. In addition, leaving contract pricing determinations to the program offices opened the door for fraud, waste, and abuse.

Recommendation 15. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop comprehensive policies and procedures and implementation guidance that directs contracting officers how to determine and document whether contract prices are fair and reasonable.

Management Response: BBG concurred with the recommendation, stating that its CON will “develop comprehensive policies and procedures that adhere to all FAR requirements on how to determine and document that contract prices are fair and reasonable” and will “issue implementation guidance mandating that contracting officers follow those policies and procedures.” BBG further stated that this guidance “will also include examples of prohibited practices, such as allowing any Agency official other than the contracting officer to make a determination that the contract price is fair and reasonable.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that CON has developed policies and procedures and implementation guidance that directs COs on how to determine and document whether contract prices are fair and reasonable.

Recommendation 16. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document contract price determinations.

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Management Response: BBG concurred with the recommendation, stating that its CON will “update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document contract price determinations.” The BBG further stated that the training “will emphasize how to conduct price analysis and provide examples of prohibited practices, such as using outdated pricing information.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has updated its training curriculum and administered a course covering contract price determinations.

Recommendation 17. OIG recommends that the International Broadcasting Bureau, Office of Contracts, review each of the contracts notated in Table 1 of Appendix A of the audit report to determine whether the contract price was fair and reasonable in accordance with Federal regulations. For each contract in which the price was determined not to be fair and reasonable, assess whether the contract can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contract. If the contract cannot be ratified, legal advice must be obtained to determine a resolution.

Management Response: BBG partially concurred with the recommendation, stating, “The Office of Contracts will review each of the contracts notated in Table 1 of Appendix A of the audit report to determine whether the contract price was fair and reasonable in accordance with the FAR.” However, BBG further stated that “there is no legal or regulatory authority requiring ratification of validly awarded contracts whose prices were subsequently unilaterally deemed too high by the Government solely due to the Government’s failure to conduct appropriate cost or price analysis at the time of price negotiation to determine the prices being agreed to were fair and reasonable.” BBG concluded that its CON “will use the results of its review in its development of comprehensive policies and procedures that adhere to all FAR requirements on how to document and determine prices are fair and reasonable discussed in response to Recommendation 15.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has reviewed each of the contracts notated in Table 1 of Appendix A to determine whether the contract price was fair and reasonable and that BBG has used the results of this review in its development of policies and procedures regarding determinations of fair and reasonable contract prices.

Finding G. Contractor Responsibility Determinations Did Not Comply With the Federal Acquisition Regulation

OIG found that none of the 34 contract files reviewed contained evidence that a sufficient contractor responsibility determination was made, as required by the FAR. The lack of contractor responsibility determinations may have occurred, among other reasons, because BBG did not have policies and procedures to provide guidance to COs on how to conduct responsibility determinations and had inappropriate policies and procedures in place that exempted certain vendors from registering in the Central Contractor Registration (CCR).⁴¹ As a result, BBG did not have reasonable assurance that contracts were awarded to qualified, responsible, and eligible vendors.

Federal Requirements for Contractor Responsibility

Federal Government regulations require agencies to ensure that the contractors they propose to employ are responsible to do business with the Government. FAR 9.104-1 states that, to be determined responsible, a prospective contractor must have, for example:

- Adequate financial resources to perform the contract, or the ability to obtain them;
- A satisfactory performance record; and
- The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.

FAR 4.1102 states that contractors shall be registered in the CCR, except for “[c]ontract actions at or below \$25,000 awarded to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration.” This means that any foreign vendor awarded a contract for more than \$25,000 should be registered in the CCR.⁴²

FAR 9.104 states that, in general, the CO must make a responsibility determination using pre-award surveys, past performance information, information on financial resources, or other information from one or more of the following Federal Government sources:

- CCR – collects information about the company, including general information, the type of organization, business type, goods and services provided, financial and payment information, and points of contact.

⁴¹ The CCR was the primary supplier database for the U.S. Federal Government until July 30, 2012. The CCR collected data from suppliers, validated and stored this data, and disseminated it to various Government acquisition agencies. On July 30, 2012, the CCR transitioned to the System for Award Management e-procurement system, which was launched to combine Federal procurement systems into one new system. The first phase included functionality from three systems, to include the CCR and the EPLS.

⁴² This section of the FAR was modified on December 20, 2012. Prior to this date, FAR 4.1102 stated, “Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for...Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration.”

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- Excluded Parties List System (EPLS) – identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and nonfinancial assistance and benefits.
- Federal Awardee Performance and Integrity Information System – provides users access to integrity and performance information from the Contractor Performance Assessment Reporting System, as well as proceedings and suspension/debarment information.
- Past Performance Information Retrieval System – provides timely and pertinent contractor past performance information to the Federal acquisition community for use in making source selection decisions. The FAR requires Federal agencies to post all contractor performance evaluations in this system.

Contractor Responsibility Determinations Not Sufficient

OIG reviewed 34 contracts and determined that none contained adequate evidence that a contractor responsibility determination was made. OIG found that 26 files contained a printout demonstrating that the contractor had been registered in the CCR or the EPLS (or contained both documents), while 8 files had no documentation relating to contractor responsibility determinations. Although obtaining information from either CCR or EPLS would be part of the process to assess contractor responsibility, these databases do not include all of the information that a CO would need to make a determination on whether a contractor is sufficiently responsible to perform work for the Government. OIG found no other evidence in the contract files showing that COs had performed other duties to ensure that contractors were responsible.

One of the reasons that BBG did not determine contractor responsibility was that it had inappropriately exempted certain vendors from registering in the CCR. In order for contractors to register in the CCR, they are required to have a Data Universal Numbering System (DUNS) number.⁴³ BBG's internal policy memorandum titled, "Generic Data Universal Numbering System (DUNS) Numbers for Foreign Contractors," dated January 12, 2007, states:

The Office of Federal Procurement Policy (OFPP) recognized the difficulty in meeting the above requirements [CCR registration] when circumstances such as the following exist:

- The foreign contractor is unable to obtain a DUNS number because access to the Internet is restricted, connections are unstable or telephone connections are limited or nonexistence in rural areas.
- When there are security concerns relative to a contractor who operates under an alias identity when obtaining news stories from the field, and obtaining DUNS numbers would jeopardize their identity and possible safety.

⁴³ A DUNS number is a unique, nine-digit number assigned to U.S. Government contractors and grantees and used for all procurement-related activities

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- When the contractor refuses to obtain the DUNS number and is the only source available to provide the Agency with the required services or supplies (such as utilities and telecommunication services).
- A foreign vendor that resides and works in a communist country or where the United States does not have diplomatic relations with that country, such as Iran and Cuba.

OFPP has granted authority for IBB to utilize a generic DUNS number for foreign contractors without previously assigned numbers. The number is 123456787 and is registered in CCR as “Miscellaneous Foreign Contractors.”

However, OIG determined that this guidance was not in use, and rather than applying each of the criterion above to each individual contract, BBG policy was to waive the requirement of CCR registration for all foreign vendors.⁴⁴ Specifically, OIG found that five contractors in our sample were improperly exempted from CCR registration. Three of those five files contained memorandums that stated the following:

BBG does not require foreign prospective contractors to be registered in the CCR because it is impractical to obtain CCR registration due to [any] or all of the possible time consuming reasons:

- a. Mak[ing] (several) overseas telephone calls requesting foreign contractors to register.
- b. Waiting 7–10 days for CCR approvals to complete.
- c. Hesitation [of] foreign contractors to provide their banking information to CCR when [the] Contracting Officer should have this information already.

The reasons listed on this memorandum neither agreed with BBG’s internal policy, nor did they validate that CCR registration was “impractical.” In another example, documentation for Contract BBG50-C-11-0023, awarded to a broadcasting company in the Ukraine for \$940,008, stated that the “[Contractor] is exempt from registration on the Central Contractor Registration (CCR) database, based on the fact that awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration. [Contractor] has indicated to the Overseas Contracting Officer that it would be impractical for them to register in the CCR system.” There was also a memorandum in the file titled, “Observations based on research about using DUNS number,” which was signed and dated by an overseas CO. The memorandum stated that the “IBB priority is to have [an] easy working system without useless administrative barriers.” The memorandum went on to exempt all affiliates in the region from CCR registration, regardless of contract size or type.

⁴⁴ OIG also noted that in BBG’s COR training presentation dated June 2013, the following statement was made: “CCR not necessary for any micro-purchase or purchases made overseas <\$25k,” which is contrary to the FAR requirement that excludes overseas purchases under \$25,000, only if it is impractical to register.

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For this example, OIG found that the contractor did not meet any of the exception criteria listed in BBG's internal policy memorandum. Specifically, the foreign contractor did not have restricted access to the Internet as they were a major broadcasting company; there were no security concerns related to a contractor operating under an alias and further, per the contract, all BBG programming must be attributed as such; the Ukraine was not a communist country; and there was no indication that the contractor refused to obtain a DUNS number. OIG found no documentation in the contract file to support the determination that it would be impractical for this foreign vendor to obtain a DUNS number and register in the CCR, especially when receiving a contract award valued at almost \$1 million.

In addition to having an outdated policy related to overseas contractors registering with CCR, BBG also lacked appropriate policies and procedures to otherwise guide COs on how to make responsibility determinations for vendors.

Conclusion

The process of registering with the CCR is not a "useless administrative barrier" as suggested by one BBG CO, and for many overseas contracts, registration is now required by the FAR. The BBG policy related to CCR registration did not appear to be in use. The requirement for contractor registration in the CCR database is prescribed to "(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and (b) Establish a common source of vendor data for the Government." CCR registration provides the CO with a source of information to make contractor responsibility determinations, and a vendor's refusal to disclose information required for CCR registration, such as a tax identification number, could indicate that the vendor is not responsible.

As a result of the lack of contractor responsibility determinations, BBG had no reasonable assurance that it had awarded contracts to responsible vendors. This could put the BBG at risk of funding companies or individuals who may not be able to adequately complete contract requirements, or who are not responsible to do business with the Government. Not identifying and documenting that the BBG is doing business with responsible vendors is even more of a problem because of the lack of contract oversight that OIG identified. Therefore, BBG should implement appropriate policies and procedures to ensure that contractors are not inadvertently exempted from providing important information and that COs can make informed decisions on responsible contractors.

Recommendation 18. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to provide guidance to contracting officers on the type and extent of contractor responsibility determinations to be made for each award and the types of documentation that should be maintained in the contract file.

Management Response: BBG concurred with the recommendation, stating that it "will develop and implement policies and procedures for contracting officers about the type

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and extent of contractor responsibility determinations that must be made for each award as well as the documentation that must be maintained in each contract file.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed and implemented policies and procedures to provide guidance to COs on the type and extent of contractor responsibility determinations to be made for each award and the documentation to be maintained in the contract file.

Recommendation 19. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its policies and procedures for contractor requirements for the Data Universal Numbering System and registration within the Central Contracting Registry to ensure that these procedures are in accordance with the Federal Acquisition Regulation.

Management Response: BBG concurred with the recommendation, stating that it “will update its policies and procedures regarding contractor requirements for Data Universal Numbering System and registration in the System for Award Management to ensure these procedures comply with the FAR.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed and implemented policies and procedures for contractor requirements for the DUNS and registration within the System for Award Management that are in accordance with Federal regulations.

Recommendation 20. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document responsibility determinations and to only allow exemptions under clearly defined circumstances in accordance with the Federal Acquisition Regulation or Office of Federal Procurement Policy guidance.

Management Response: BBG concurred with the recommendation, stating that it “will update its training curriculum accordingly.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has updated its training curriculum and administered a course covering contractor responsibility determinations in accordance with Federal regulations.

Finding H. Contract Administration Practices Did Not Comply With the Federal Acquisition Regulation

OIG determined that BBG had not provided adequate contract administration. Specifically, OIG identified four main areas in which contract administration did not comply with FAR requirements: CON did not ensure that CORs were designated throughout the lifecycle of all contracts; quality assurance procedures were not performed; contractors were assigned to administer or oversee contracts; and contractor performance was not adequately documented. These areas of contract administration were likely lacking due to many reasons, including that relevant BBG policies and procedures did not exist, leaving contracting personnel with no guidance to properly execute contract oversight. Without policies and procedures to ensure sufficient contract oversight, BBG allowed contractors to perform inherently Governmental functions, had no reasonable assurance that contract terms and conditions were achieved, and could not verify that funds were spent appropriately, resulting in questioned costs and the increased risk of contract fraud, waste, and abuse.

Inadequate Designation of Contracting Officer's Representatives

The CO is responsible for ensuring compliance with the requirements of the FAR. The CO has the option of designating a COR, and FAR 1.602-2 requires that all CORs be designated in writing. CORs assist in the technical monitoring and administration of a contract and are responsible for ensuring that contractors meet the contract's terms and conditions. However, if the CO does not designate a COR, the CO retains full responsibility of contract administration and oversight. A COR must be a Government employee and certified in accordance with the OMB's Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) requirements.⁴⁵

OIG determined that CORs were not always designated appropriately by the CO. OIG reviewed 34 contracts and found that 25 contracts did not have a designated COR. Eight of 25 contracts that did not have a designated COR identified a technical point of contact or Authorized Representative of the Contracting Office. Although these individuals were not formally designated as CORs, according to the BAM, they were responsible for carrying out the functions of a COR. Therefore, the employees should have been formally designated as a COR as required by the FAR. None of the remaining 17 contracts had anyone assigned to oversee the contract other than the CO. In the absence of a designated COR, COs stated that they ceded oversight authority to staff in the program office, although there was no documented evidence of this.

⁴⁵ The FAC-COR Program requirements are governed by the OMB Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives memorandum, which revised the competency requirements for CORs to establish a risk-based, three-tiered certification program that better reflects the important role of the COR.

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One possible reason that BBG COs did not regularly designate CORs was because they did not have official internal policies for how or when to do so. According to CON officials, the Office of Policy within CON drafted a policy in March 2012 that required CORs to be designated in writing for every contract. The policy was submitted to other BBG offices for review and approval in June 2012; however, as of July 2013, the program offices had not approved this policy.

BBG took some additional steps to establish procedures related to COR designation. Specifically, CON developed an internal training presentation and related documents for CORs designated as Level I by the FAC-COR standards. These training materials included a “Draft COR Level I Delegation Letter for BPA” that was updated in March 2013. OIG reviewed this draft letter and determined that it met the requirements of a COR designation letter. However, OIG believes that BBG must mandate that COs either appropriately designate a COR or maintain complete oversight of the contract. Ensuring that a CO properly designates a COR would minimize the risk that contract oversight is overlooked and ensure that CORs who are designated are fully aware of their roles and responsibilities in ensuring adequate oversight of contracts.

Recommendation 21. OIG recommends that International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance, which ensure that contracting officer’s representatives (COR) are designated for every contract, and that this documentation clearly defines the COR’s roles and responsibilities and is maintained in the contract file.

Management Response: BBG concurred with the recommendation, stating that it “has issued a new policy that requires CORs to be designated for every contract” and that the “policy defines the COR’s roles and responsibilities, and requires that a copy of the designation be maintained in the contract file.”

OIG Reply: OIG considers this recommendation closed. BBG provided OIG with a memorandum titled “IX BAM 164 Designation of Contracting Officers’ Representatives and Implementation of BBG Federal Acquisition Certification for Contracting Officer’s Representatives,” dated November 20, 2013. The policy states, “all contracts, purchase orders, Blanket Purchase Agreements (BPAs), call orders, delivery orders, and other acquisition vehicles placed under a Federal Supply Schedule shall have a COR designated in writing, if a COR will have responsibility for contractor performance or invoice processing.” The policy, which also outlines the COR responsibilities, states that contractors are not eligible to be designated as CORs and that a copy of the designation letter should be maintained in the official contract file. OIG considers this sufficient to meet the intent of the recommendation.

Sufficient Quality Assurance Was Not Performed

Quality assurance activities include inspection, acceptance, warranty, and other measures associated with quality requirements. FAR Part 46 prescribes steps agencies should take to

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ensure that supplies and services acquired under Government contract conform to the contract's quality and quality requirements. However, "the type and extent of contract quality requirements needed depends on the particular acquisition."⁴⁶

OIG identified deficiencies in BBG's performance of quality assurance measures. Specifically, OIG found that certain services contracts lacked quality assurance surveillance plans. OIG also found that quality assurance inspection procedures were not documented for critical items. Further, OIG found that contract files for broadcasting services did not contain evidence that quality assurance measures were performed. BBG had no internal policies or procedures related to quality assurance, which may have been why COs and other contracting personnel did not implement sufficient quality assurance techniques. Because BBG had no quality assurance policies or procedures, there was no reasonable assurance that it received products or services that it had paid for and under the terms of the contract. A lack of quality assurance procedures puts BBG at risk for fraud, waste, and abuse.

Quality Assurance Surveillance Plans

FAR 46.103 requires that COs include appropriate quality requirements in each contract, such as quality assurance surveillance plans for services contracts. Surveillance plans set forth the procedures and guidelines that the contractor should use in ensuring the required performance standards or services levels are achieved. It should also describe methods used to monitor performance and identify the required documentation and the resources to be employed. FAR 46.401 states that the quality assurance surveillance plan should be prepared in conjunction with the SOW and should specify all work that requires surveillance and the method of surveillance required. Contracts under the simplified acquisition threshold also require quality assurance. FAR 46.404 states that when determining the type and extent of quality assurance under the simplified acquisition threshold, the CO shall consider the "criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work."

OIG reviewed 18 services contracts and did not observe any documentation that a quality assurance surveillance plan had been prepared. For example, OIG reviewed the file for Contract BBG50-P-11-0009, totaling \$99,000 for a contractor's service to implement an education project in Africa, and found no evidence of a quality assurance surveillance plan. In reviewing the invoices for this contract, OIG found that 1) the contractor had been paid on November 23, 2010, for work that was to be completed from November 15 through November 30, 2010, (i.e., the contractor was paid prior to fully performing the required work) and 2) the contractor had been paid the full monthly rate of \$16,500, but the invoice was for services performed for only half of the month.⁴⁷ A quality assurance surveillance plan should be used to ensure that work is complete prior to payment.

⁴⁶ FAR 46.201.

⁴⁷ The OIG team determined this by reviewing all associated invoices for this contract, which showed that each month the contractor was paid \$16,500 for 30 days' worth of work.

Quality Assurance Inspections

FAR 46.102(a) requires that agencies ensure that contracts include inspection and other quality requirements that are determined necessary to protect the Government's interest. Agencies may perform inspection both at the source and at the destination of supplies and services. Additionally, FAR 46.203 states that the extent of contract quality requirements should be based upon the classification of the contract item, as determined by its technical description (commercial or military-federal), complexity (complex or noncomplex), and criticality of the application. An item is considered critical if its failure could jeopardize a vital agency mission.

OIG found that no documentation existed to evidence that an inspection had been conducted under quality assurance activities for any of the 34 contracts reviewed, and specifically, that no quality assurance inspections had been documented for critical items. For example, the file documentation for Contract BBG50-J-12-0709 totaled \$284,661 to purchase vacuum tubes used to broadcast from transmitting stations. Although the required clauses for inspection and acceptance were included in the contract terms and conditions, the contract file did not contain any evidence that quality assurance measures had been developed or performed in accordance with FAR 46.401. BBG had no reasonable assurance that the tubes had been delivered or met contract specifications. A failure of the vacuum tubes would prevent broadcasts from being transmitted, which would jeopardize the BBG mission, and more importantly, raise the risk of misuse of taxpayer dollars.

Quality Assurance for Broadcasting Contracts

FAR 46.201 also states that "the contracting officer shall include in the solicitation and contract the appropriate quality requirements." Of 34 contracts OIG reviewed, three contracts were for broadcasting services. The broadcasting contracts contained lease agreements with the contractor that allowed BBG to run programming in target countries through that contractor's transmission facilities. Each contract included pricing information for the broadcasting station's service fee and statements similar to the following:

The above-stated fee, when applied to the actual number of broadcast hours performed by the broadcaster during each billing cycle, shall result in monthly payments being proportionately reduced when necessary.

This statement ensured that the broadcast fee to be paid to the contractor would be proportionally reduced for failure to broadcast the BBG programs. However, none of the three broadcasting services contract files contained evidence that quality assurance was performed to determine service disruption hours. For example, file documentation for Contract BBG50-C-11-0023 required the broadcaster to maintain accurate records of broadcast times and gave BBG the option to install a computerized Remote Monitoring System to record the broadcast of BBG programs. OIG did not find any evidence in the contract file to indicate that BBG had reviewed the records of broadcast times or had installed the Remote Monitoring System. OIG also noted that none of the monthly invoices had been reduced for failed transmissions, also signifying a

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potential misuse of taxpayer funds. In addition to the three broadcasting contracts, OIG noted a similar issue with a contract for a lease of a satellite transponder which facilitated video and audio transmission throughout the world.

No Policies for Quality Assurance

Quality assurance deficiencies may have occurred for a multitude of reasons, including insufficient quality assurance policies and procedures. Therefore, COs and those administering contracts did not have the guidance to implement the appropriate procedures to ensure quality assurance requirements were being met.

When supplies and services do not abide by the contractual quality assurance requirements, the CO has the authority to take action, including rejecting the item or requiring corrective actions from the contractor. However, appropriate action can only occur if contracting officials perform adequate quality assurance as is necessary per the acquisition. Without quality assurance measures, BBG may be paying contractors for broadcasting programs that never aired or for other goods and services that were not received.

The lack of sufficient quality assurance steps may result in inadequate contractor performance, cost overruns, delays in receiving goods and services, and unclear roles and responsibilities. For example, as previously discussed in this finding, OIG found that, for Contract BBG50-P-11-0009, had appropriate quality assurance procedures been identified, and had the BBG developed its method for how it would monitor the contractor's performance via a quality assurance surveillance plan, the contractor would not have received payment without proof of services furnished or prior to the completed work, and would not have been paid an additional \$8,250 for work days not completed.

Recommendation 22. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance to ensure that contracting officers and contracting officer's representatives are fully aware of the type and extent of quality assurance procedures that should be performed in accordance with the Federal Acquisition Regulation and the type of documentation that should be maintained in the contract file as supporting evidence of quality assurance.

Management Response: BBG concurred with the recommendation, stating that it "will develop and issue policies, procedures and implementing guidance reflecting the requirements of the FAR Part 46 entitled Quality Assurance." BBG further stated that "contracting officers and CORs will be trained to comply with both FAR Part 46 and FAR Subpart 4.8 entitled Government Contract Files." Finally, BBG stated that it had implemented a new Satellite Monitoring Policy, in response to OIG's concern regarding quality assurance for broadcasting services contracts.

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG developed

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policies and procedures and implementation guidance to ensure that COs and CORs are fully aware of the type and extent of quality assurance procedures required in accordance with the FAR for all contracts and the type of documentation to be maintained in the contract file.

Recommendation 23. OIG recommends that the International Broadcasting Bureau, Office of Contracts, review Contract BBG50-P-11-0009 and determine whether the contractor was paid an extra \$8,250 for work not performed. If this cost is determined unallowable, the Office of Contracts should seek reimbursement from the contractor.

Management Response: BBG concurred with the recommendation, stating that

the contractor was required to deliver six equally-priced but undefined “units” at \$16,500.00 per unit. The contract did not specify that the “units” were months (although that may have been what the parties intended), nor is it clear what did constitute a “unit” under the contract. Although the pricing was based on six units, the contract called for a period of performance of November 15, 2010 through April 30, 2011 – a period of 5 ½ months (167 days), not six months.

BBG asserts that the contractor in fact delivered six units, or town hall meetings (and other matters), which is what the BBG paid for, at the total amount of \$99,000 (\$16,500 per “unit” x 6 units). The BBG concluded, upon review of the contract file, that “there was no evidence that the contractor over-charged BBG in total for the contract.” Therefore, BBG would “not seek reimbursement from the contractor.”

OIG Reply: OIG considers this recommendation resolved. However, OIG notes that upon further review of the contract, our concerns about the ambiguities within the contract language and the inability to determine the definition of a “unit” within this contract remain. Specifically, OIG agrees with the BBG that Section B of the contract listed a quantity of six “units” at a unit price of \$16,500, for a total cost of \$99,000, and that the original period of performance was November 15, 2010, through April 30, 2011, or 5 ½ months. However, OIG further adds that Section C (the SOW) for this contract listed the following duties to be performed under the contract:

- Manage, direct and compensate an editorial team across Northern Nigeria responsible for 10 stories a month on education issues.
- Organize **four** [emphasis added] town hall meetings on education across Nigeria.
- Arrange and supervise four, two-day training sessions for a total of 60 journalists on education issues in advance of the Town Hall Meetings.

OIG is concerned with BBG’s assertion that six “units,” or town hall meetings, were delivered when the SOW only required four. Therefore, we will only consider closing

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this recommendation when OIG reviews and accepts documentation showing that six town hall meetings were delivered.

Contractors Performed Inherently Governmental Functions for the South Sudan Language Service

FAR Subpart 7.5 prohibits contractors from performing inherently governmental functions, such as the awarding or administration of contracts. FAR 2.101 defines an inherently governmental function as “a function that is so intimately related to the public interest as to mandate performance by Government employees” and “includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government.” FAR 7.503 lists examples of functions considered to be inherently governmental or those that should be treated as such, including “awarding contracts,” “administering contracts,” and “determining whether contract costs are reasonable, allocable, and allowable.”

OIG determined that contractors performed inherently governmental functions in conjunction with the South Sudan language service. Specifically, one contractor was assigned as a COR and in this capacity reviewed and approved contractor invoices (or timesheets) and administered contracts. Another contractor entered into a lease agreement on behalf of BBG, and there was no evidence that the contractor paid the lease and miscellaneous other expenses.

Specifically, Contract BBG50-P-12-0092, totaling \$45,500; and Contract BBG39-A-11-0553, totaling \$70,400, were awarded to individuals to provide nonpersonal services such as writing, reporting, and hosting for VOA’s South Sudan language service in Juba, South Sudan. Another nonpersonal services contractor acted as the Authorized Representative of the Contracting Office for both contracts, which was synonymous with a COR at that time. OIG found one contract listed the other nonpersonal services contractor as the Authorized Representative of the Contracting Office and that he had reviewed and approved all of the contractor invoices or timesheets relating to both BBG50-P-12-0092 and BBG39-A-11-0553. A program office official stated that because there were no U.S. Government personnel on the ground in Juba, she had to rely on a contractor to approve and certify contractor invoices. The program office depended on the contractor’s review and approval of those contractor invoices or timesheets for other contractors before submitting the contractor invoices for payment. OIG considers the approval and certification of contractor invoices or timesheets to be “determining whether contract costs are reasonable, allocable, and allowable” and therefore, an inherently governmental function. A nonpersonal services contractor may not be assigned as a COR because the duties of a COR are inherently governmental.

In addition, while reviewing Contract BBG39-A-11-0553, OIG discovered Contract BBG50-P-13-0600, a related contract with the same individual, which totaled \$16,075 and had the following description, “Southern Sudan Project Coordinator.” Upon further review, OIG determined that the file contained an excel spreadsheet that included rent and various

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miscellaneous expenses, which totaled \$16,075. OIG also identified a document in the file which stated:

Dear [Contractor],

This letter is to confirm the agreement reached between Free Voice and Voice of America, whereby VOA will rent office space in Free Voice's compound in Juba from 1 January 2013. VOA will pay Free Voice a monthly rent of \$2350 [for 6 months], which will include office space for VOA staff, as well as use of the studio and internet connection.

OIG determined that these two documents created a lease agreement between the BBG and Free Voice, although the letter was addressed to a nonpersonal services contractor. In essence, the contractor had awarded the lease agreement to Free Voice, which is an inherently governmental function. BBG paid the contractor \$16,075 for rent and miscellaneous expenses, and the contractor, theoretically, would then pay Free Voice in the same amount. However, OIG determined that this contractor had terminated his relationship with BBG in February 2013, even though the full 6 months of rent was paid to the contractor on December 21, 2012, in advance of rent payments for January through June 2013. The program office official acknowledged that receipts for office rent payment were not required and could provide no documentation that the \$16,075 had actually been used for rent and other miscellaneous expenses. Further, the CO for this contract stated that he had been unaware that the contractor had entered into a lease agreement on behalf of VOA. Even though the documents detailing the lease between the contractor and Free Voice were located in the contract documentation, the CO admitted that he had not read contract documentation prior to signing the contract and had believed that the contract was actually for services.

OIG could not determine with certainty why the contractors were used to perform inherently governmental functions; however, it could have occurred because of a lack of oversight by the CO, a lack of training for the COR, and the absence of policies and procedures over the administration of services contracts. As a result, BBG had no reasonable assurance that functions were being performed in accordance with Federal regulations or that funds were spent in accordance with contract terms and conditions. Additionally, OIG identified one contract for a lease agreement totaling \$16,075 that includes unsupported costs and, if unallowed, should be returned to the U.S. Government.

Recommendation 24. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop policies and procedures and implementation guidance to ensure that contractors are not performing inherently governmental functions.

Management Response: BBG concurred with the recommendation, stating that it "shall develop policies, procedures and implementation guidance to prevent contractors from performing inherently governmental functions." Specifically, BBG stated that it had

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begun drafting a policy to implement Federal policy regarding the performance of inherently governmental and critical functions, and would incorporate this policy into the BAM “to ensure contractors do not perform inherently governmental functions.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG developed policies and procedures and implementation guidance to ensure that contractors are not performing inherently governmental functions.

Recommendation 25. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop policies and procedures and implementation guidance to ensure that documentation is required for all contractor expenses to provide evidence that the funds were expended in an appropriate manner.

Management Response: BBG concurred with the recommendation, stating that it “shall develop policies, procedures, and implementation guidance to ensure that documentation is required for all contractor expenses so that federal funds are disbursed in an appropriate manner.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG developed policies and procedures and implementation guidance to ensure documentation is required for all contractor expenses.

Recommendation 26. OIG recommends that the International Broadcasting Bureau, Office of Contracts, determine whether the \$16,075 in unsupported costs for Contract BBG50-P-13-0600 were allowable, and if determined unallowable, recover those costs from the contractor.

Management Response: BBG concurred with the recommendation, stating that it will “determine if BBG received the services specified, and whether the appropriate vendor was paid the appropriate amount for those services.” BBG further stated that if the payment or any part is determined to be inappropriate, it will “recover the appropriate amounts from the contractor.”

OIG Reply: Although BBG concurred with the recommendation, OIG considers this recommendation unresolved because the CO had not yet made a determination on the allowability of the unsupported costs. This recommendation can be resolved when the CO makes a determination regarding whether the \$16,075 in unsupported costs for Contract BBG50-P-13-0600 were allowable, and subsequently closed when OIG reviews and accepts documentation showing the actions taken regarding this contract.

No Evidence That Performance Evaluations Were Performed

FAR 42.1502(a) requires that past performance evaluations be prepared for contracts or orders with a period of performance, including options, exceeding 1 year and that interim evaluations be performed as specified by the agency. FAR 42.1501 also requires that the performance evaluation contain information such as the contractor's record of conforming to contract requirements, the contractor's adherence to contract schedules, and history of reasonable and cooperative behavior and commitment to customer satisfaction. Additionally, according to FAR 42.1503, agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office, and where appropriate, end users of the product or service.

OIG determined that BBG had not adequately documented the performance of contractors. Specifically, 7 out of 34 contracts were above the simplified acquisition threshold, and none had evidence that performance evaluations had been performed. For example, OIG reviewed documentation for Contract BBG50-C-11-0072, totaling \$3,926,880 for broadcasting services during the scope of our audit, and included six option years totaling \$14,452,247. OIG found that the CO had not completed a performance evaluation of the contractor for the first two option years, and OIG did not find evidence that any performance monitoring occurred.

OIG found a document titled "Contract/Option Year(s) Renewal Evaluation Form," in two contract files reviewed as part of our sample; however, this form was a standard template and did not adequately evaluate the contractor's performance. The form provided no specific performance information or rating tool that could be used in determining how the contractor was performing in comparison to the SOW. Instead, the evaluation consisted of five questions, four of which required only a "yes" or "no" answer, and a fifth that asked whether the agency wished to renew the contract. In addition, the form did not allow the CO or other contracting official to elaborate on the performance of the contractor. Having only yes and no questions does not explain the actual performance of the contractor in a way useful to other contracting staff.

OIG recognizes that the lack of appropriate performance evaluations may have occurred for a number of reasons, including but not limited to, BBG not having internal policies and procedures for how or to what extent to conduct evaluations of contractors. OIG interviewed CORs to determine how they provided oversight of contractors and monitored performance. One COR stated that he held weekly meetings with contractors and had informal one-on-one meetings every 7–10 weeks. While this is a good practice, OIG found no documentation of such meetings and no documentation of the contractor's performance. COs and CORs did not have adequate guidance for how to conduct performance evaluations, and there was no cohesion between CON and the program offices regarding how performance should be evaluated or how past performance evaluations should be considered when making future contracting decisions.

Performance monitoring can assist COs in determining whether vendors are qualified to be Government contractors and past performance information can assist COs in future source-selection processes. Without conducting performance evaluations, BBG may have awarded

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contracts to contractors who were not responsible and did not meet the necessary qualifications to receive Government contracts. The lack of performance evaluations also made BBG vulnerable to fraud, waste, and abuse in its contracting for supplies and services.

Recommendation 27. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance that direct program officials regarding the use and extent of performance evaluations, including the use of rating tools and clear indicators of performance.

Management Response: BBG concurred with the recommendation, stating that it “has drafted a policy regarding the use of the Contractor Performance Assessment Retrieval System (CPARS) for evaluation of contractor performance over the Simplified Acquisition Threshold (SAT)” and that “a policy for acquisitions below the [simplified acquisition threshold] SAT will be developed.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance that directs program officials regarding the use and extent of performance evaluations, including rating tools and clear indicators of performance.

Recommendation 28. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance so that contracting officers are aware of how to utilize past performance evaluations when assessing potential contractors.

Management Response: BBG concurred with the recommendation, stating that it “will develop policies and procedures regarding the use of contractor performance evaluations in the award process.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance regarding the use of past performance evaluations when assessing potential contractors.

Finding I. Contracting Officers and Contracting Officer’s Representatives Did Not Receive Required Training

OIG determined that BBG COs and CORs had not received mandated training for maintaining certifications to authorize and administer contracts. Specifically, COs are required to accumulate 80 continuous learning points every 2 years to maintain their certifications, and CORs are required to have specific training requirements dependent on the level of COR certification held. There were likely multiple reasons why COs and CORs had not met or maintained mandated training requirements, including but not limited to the lack of adequate

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policies, procedures, or tracking mechanisms to ensure that training had been completed. As a result, COs authorized contracts on behalf of the BBG without proper authorization to do so, and CORs performed contract administration without adequate knowledge of how to effectively provide contract oversight.

Training for Contracting Officers

The Federal Acquisition Certification in Contracting (FAC-C) program establishes core requirements for education, training, and experience for contracting professionals in civilian agencies. OMB issued a memorandum dated January 20, 2006,⁴⁸ outlining requirements for the FAC-C program. The memorandum states that the Chief Acquisition Officer for each agency shall establish agency-specific requirements for tying warrant levels to certification levels based on agency needs. Specifically, the program requires that COs accumulate 80 continuous learning points every 2 years to maintain their certifications. This requirement ensures that contracting staff stay current in the laws, regulations, policies, and processes that impact the Federal contracting environment. BBG had an internal policy requiring training for COs, titled “BBG Contracting Warrant/Certification System,” which mirrored the FAC-C certification requirements.

OIG obtained and reviewed training files for four COs that awarded contracts within our sample and determined that three had not completed training in accordance with the FAC-C program and the BBG Contracting Warrant/Certification System. For example, OIG found one CO’s training file included only one training certificate, which was for a training course that the CO completed in 1989. The second CO’s file showed that the last completed procurement training was in 2008. However, this CO received an updated Certificate of Appointment on October 22, 2010, even though the CO had not completed required training. The third CO’s file showed that the CO had not completed any training to maintain her warrant within the past 2 years.

There were likely many reasons why COs had not met training requirements, including BBG’s failure to adequately track and maintain CO training hours. Although the Office of Policy within CON maintained training files for each CO, it did not have a system for tracking their training course completions in order to determine whether COs were deficient in training requirements. In addition, BBG did not have policies or procedures to establish a course of action when COs failed to meet training requirements.

By not ensuring sufficient training for COs, BBG was at risk that COs may award contracts without sufficient knowledge of the FAR and other Federal contracting requirements. During interviews with various COs, it was apparent that they often lacked critical knowledge necessary for awarding and administering contracts and authorizing Federal funds. Until detailed internal policies and procedures, as well as a system for tracking training, are developed and implemented, the BBG will have no reasonable assurance that COs are able to award and

⁴⁸ OMB Memorandum, “The Federal Acquisition Certification in Contracting Program,” January 20, 2006.

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administer contracts in compliance with laws and regulations, therefore putting the BBG at risk for fraud, waste, and abuse.

Recommendation 29. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track contracting officers' training so that pertinent parties can be informed of missing training and resulting expired warrants.

Management Response: BBG concurred with the recommendation, stating that it "has developed and implemented a system to track contracting officer's training." BBG further stated that it has also drafted a new policy that "includes provisions that will make it easier for the Agency to track contracting officers' training and take appropriate action when a contracting officer has not completed required training." BBG plans to finalize this policy and incorporate it into the BAM.

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed and implemented a system to track CO training so that appropriate actions can be taken when a CO is missing training.

Recommendation 30. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, to ensure that contracting officers obtain and maintain training requirements for compliance with the Federal Acquisition Certification for Contracting Officer program, including a course of action when requirements are not met.

Management Response: BBG concurred with the recommendation, stating that "the policies and procedures for the BBG Contracting Officer Warrant System (COWS) have been drafted and are being reviewed."

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures to ensure that COs obtain and maintain training requirements, including a course of action when requirements are not met.

Training for Contracting Officer's Representatives

The COR plays a critical role in providing contract oversight and ensuring that contractors meet contract requirements; therefore, it is important that CORs receive training in contract administration. FAR 1.602-2(d)(2) requires that CORs receive and maintain certification in accordance with FAC-COR guidance. The FAC-COR program outlines three levels of COR certification with varying requirements for training, expertise, and continuous learning, depending on the types of contracts being managed. In order to receive certification and perform the functions of a COR, the employee must:

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1. Complete competency-based core training and assignment-specific training.
2. Complete experience requirements for Level II and III certifications.
3. Participate in continuous learning to maintain certification.

CON primarily used Level I CORs, which were generally appropriate for low-risk contract vehicles such as supply contracts. A Level I COR requires 8 hours of training and no previous experience in order to be certified. Level I CORs must also obtain eight continuous learning points every 2 years in order to maintain their FAC-COR certification.

OIG found that designated CORs did not consistently receive training as required by the FAR and FAC-COR program. This may have occurred for a number of reasons; one being that BBG did not have adequate internal policies and procedures to ensure that CORs were meeting requirements. BBG provided OIG with a copy of its internal COR training documents, including a COR I training handout dated March 2013 and a COR Level I training PowerPoint dated June 2013. However, OIG was not able to determine whether CORs received continuous learning points for attending these internal training courses because BBG did not adequately track training completed by CORs. OIG found that BBG did have a list of active CORs, dated June 13, 2013; however, this list did not specify each COR's certification level, the continuing education points or hours earned, or the date the training was completed.

Without ensuring that CORs were receiving and maintaining required training as outlined in the FAC-COR guidance, BBG had no reasonable assurance that CORs were prepared and capable of overseeing contracts. BBG needs a process to track training and policies and procedures to mandate training requirements for CORs. A lack of training for CORs puts BBG at risk of inadequate contract oversight, which increases the risk of fraud, waste, and abuse.

Recommendation 31. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, including a comprehensive training program, to ensure that contracting officer's representatives obtain and maintain training requirements in compliance with the Federal Acquisition Certification for Contracting Officer's Representatives program.

Management Response: BBG concurred with the recommendation, stating that "the policies and procedures for the BBG Contracting Officer Representatives (COR) program have been updated" and that "these policies and procedures establish required COR training and require CORs to obtain and maintain FAC-COR certification."

OIG Reply: OIG considers this recommendation closed. BBG provided OIG with a memorandum titled "IX BAM 164 Designation of Contracting Officers' Representatives and Implementation of BBG Federal Acquisition Certification for Contracting Officer's Representatives," dated November 20, 2013. This memorandum included attachments that detailed a comprehensive training curriculum, which was in compliance with FAC-COR requirements. OIG considers this sufficient to meet the intent of the recommendation.

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Recommendation 32. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track training for contracting officer's representatives so that pertinent parties can be informed of missing training and resulting expired certifications.

Management Response: BBG concurred with the recommendation, stating that it had updated and implemented the BAM, and the updated policy "requires CORs to register their training within the Federal Acquisition Institute Training Application System (FAITAS), which allows the Agency to monitor each COR's compliance with training and certification requirements."

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing BBG's process for ensuring that CORs are registering their training within the Federal Acquisition Institute Training Application System and showing how it will monitor each COR's compliance with training and certification requirements within this system.

Finding J. Contract File Maintenance Practices Do Not Comply With the Federal Acquisition Regulation

OIG determined that BBG had not adequately maintained documentation in contract files as required by the FAR. As reported throughout the Audit Results section of the report, based on a review of 34 BBG contract files, OIG found that none of the contracts included crucial details of the acquisition. This may have occurred because BBG did not have adequate internal controls for contract file maintenance. Specifically, BBG did not have internal policies and procedures regarding contract file requirements, and there was a general lack of knowledge by COs regarding documentation required to be maintained in contract files. Effective information management is crucial to maintaining the integrity of the procurement and providing assurance that the CO performed the acquisition process in compliance with Federal regulations. Failing to develop and implement policies and procedures for maintaining proper contract files exposed the BBG to financial risk, particularly where application of contract terms were an issue. In addition, poor contract file administration impaired the ability of the BBG to take proper and timely action to protect its interests, increasing the risk of fraud, waste, and abuse.

Required Documentation Not Included in Contract Files

FAR 4.802(a) states that a contract file "should generally consist of (1) the contracting office contract file that documents the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office; (2) the contract administration office contract file that documents actions reflecting the basis for and the performance of contract administration responsibilities; and (3) the paying office contract file that documents actions prerequisite to, substantiating, and reflecting contract payments." FAR 4.801 states that the documentation in contract files shall be sufficient to constitute a complete history of the transaction for the purpose of (1) providing a

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complete background as a basis for informed decisions at each step in 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 congressional inquiries.

As reported throughout the Audit Results section of the report, OIG reviewed 34 contract files and found that none of the contract files contained sufficient documentation to support the acquisition functions performed by the CO. The major deficiencies OIG found included a lack of the following:

- documentation of acquisition planning and market research
- documentation that evidenced the evaluation and selection of offers
- documentation that evidenced full and open competition was performed
- documentation of a JOFOC for sole-source contracts
- statement of price reasonableness, when required
- determination of contractor responsibility
- delegation of contract administration
- documentation of quality-assurance procedures
- documentation of performance evaluations, when required

Inconsistent and Outdated Policies and Procedures and Lack of Contracting Officer Knowledge

There may have been many reasons why COs had not adequately maintained required documentation in contract files. OIG identified as one of them inconsistent and outdated policies and procedures for contract file maintenance. For example, the BAM Part IX identified a detailed listing of documents required for COs to maintain in contract files; however, CON officials and COs indicated that certain sections of the BAM were no longer used.⁴⁹ OIG also reviewed the contract file documentation requirements within the BAM and found them to be outdated. For example, the BAM included a requirement to keep a “copy of synopsis to Commerce Business Daily for announcement of proposed procurements.” The Commerce Business Daily was the predecessor of FBO and publication ceased on January 4, 2002.

In addition, OIG concluded that another reason why contract file maintenance deficiencies existed was COs’ lack of knowledge regarding the documents that must be maintained in contract files. For example, one CO asked OIG what documentation she should be placing into contract files. Many other COs stated that they had determined what documentation to keep in the file by reviewing old contract files.

Without an accurate history of contract actions within the official contract file, the BBG was unable to maintain the integrity of the procurement, ensure that contract decisions were adequately supported, or provide assurance that the CO performed the acquisition process in

⁴⁹ Although CON officials and COs indicated that the BAM was no longer used, OIG did not identify and formal indication that this administrative manual should no longer be considered as an official policy manual.

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compliance with Federal regulations. Further, failing to document all requirements of an acquisition puts both the BBG and the COs at legal risk. Policies, procedures, and well-trained COs are necessary to ensure that all aspects of the contract lifecycle are recorded.

Recommendation 33. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update policies and procedures and develop implementation guidance that mandates the documentation to be included in each type of contract file.

Management Response: BBG concurred with the recommendation, stating that it “will update policies and procedures mandating the documentation to be included in each type of contract file.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed policies and procedures and implementation guidance that mandates the documentation to be included in each type of contract file.

Recommendation 34. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to periodically perform quality control reviews of official contract files to determine compliance with internal guidance and the Federal Acquisition Regulation.

Management Response: BBG concurred with the recommendation, stating that it “will develop policies and procedures to periodically perform quality control reviews of official contract files to determine compliance with internal guidance and the FAR.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has developed and implemented policies and procedures to periodically perform quality control reviews of official contract files to determine compliance.

Recommendation 35. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are periodically trained on the required contents for the official contract file.

Management Response: BBG concurred with the recommendation, stating that it will update its training curriculum “to ensure that contracting officers and other responsible contracting officials are periodically trained on the required contents for the official contract file.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has updated its

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training curriculum and administered a course covering required contents for the official contract file.

Finding K. Contracting Officers Exceeded Delegated Authority

OIG identified two instances in which COs authorized contracts above their warrant authority.⁵⁰ This may have occurred, among other reasons, because the COs who entered into the contracts had no oversight from CON and because there were no internal controls to prevent the COs from signing above their warrant levels. As a result, the COs created unauthorized commitments, and BBG must ratify both contract actions in accordance with FAR Subpart 1.602-3.

Federal Regulations Regarding Contracting Authority

FAR Subpart 1.602-1(a) states, “Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated them. Contracting officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority.” An unauthorized commitment occurs when a Government representative enters into an agreement for which he or she lacks the authority to do so. As a result, the contract must be ratified, which entails the act of approving an unauthorized commitment by an official who has the authority to do so, as long as certain conditions are met.

Contracting Officers Exceeding Delegated Authority

From our sample of 34 contracts, OIG identified two contracts in which the COs exceeded their warrant authority. For example, OIG reviewed Contract BBG28-F-11-0031, totaling \$190,686 for audio-visual equipment. OIG found that the CO’s warrant authority stated, “Level I – Contracting Authority, Limited to Simplified Acquisition Not To Exceed \$100,000,” which was less than the cost of the contract. OIG also reviewed Contract BBG50-J-12-0709, totaling \$284,661 for vacuum tubes used to broadcast to transmitting stations. OIG obtained the “BBG Domestic Warrants” listing from CON and found that the warrant amount for the CO who had awarded this contract was \$150,000, resulting in the contract amount far exceeding the amount of the CO’s delegated authority. Per the CO, she was the only person within CON to have a requisite knowledge base of the vacuum tubes, so she performed the acquisition.

According to program office officials, one reason that this occurred was because the CO who had signed Contract BBG28-F-11-0031 (now retired) was embedded within VOA and did not report to any supervisors in CON or to the SPE. Upon further inquiry, OIG found that other COs residing within program offices and the OCB were provided with little, if any, oversight by CON. In addition, BBG COs were able to exceed their delegated authority because there were

⁵⁰ A warrant is defined as a document that confers authority or justifies an act; within BBG, the SPE delegates contracting authority through warrants, which authorize the CO to enter into certain contracts by types or dollar amounts.

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no internal controls to prevent them from doing so. For example, other Federal agencies implement system controls that do not allow COs to authorize contracts unless they have the appropriate authority.

As a result of the COs exceeding their warrant authorities, the COs created unauthorized commitments. Although supplies and services for both contracts were provided to and accepted by the Government, BBG must assess whether these unauthorized commitments can be ratified using the authority in FAR 1.602-3. If so, both contracts must be ratified by the SPE because the contract values exceeded the warrant levels of the COs who originally signed the contracts. If the contracts do not meet all the requirements in FAR 1.602-3(c), and are therefore declared nonratifiable commitments, then BBG must obtain legal advice to determine a resolution.

Recommendation 36. OIG recommends that the International Broadcasting Bureau, Office of Contracts, assess whether the unauthorized commitments related to Contract Nos. BBG28-F-11-0031 and BBG50-J-12-0709 can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contracts. If the contracts cannot be ratified, legal advice must be obtained to determine a resolution.

Management Response: BBG concurred with the recommendation, stating that Contract Nos. BBG28-F-11-0031 and BBG50-J-12-0709 “will be processed for ratification using the ratification authority in the FAR.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has ratified Contracts BBG28-F-11-0031 and BBG50-J-12-0709.

Recommendation 37. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and appropriate internal controls to ensure that contracting officers cannot sign above their warrant levels.

Management Response: BBG concurred with the recommendation, stating that its internal policy “reminding contracting officers about adherence to their warrant levels has been drafted and is being reviewed. The Acting SPE will ensure that internal controls are in place and will ensure that each CO is aware of dollar limitations on their contracting warrant.” BBG further stated that a “CO who signs above his/her warrant level may have his/her contract warrant revoked or suspended.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing the finalization of its internal policy reminding COs about adherence to their warrant levels, and the specific internal control mechanisms the Acting SPE will ensure are in place to ensure that COs cannot sign above their warrant levels.

Recommendation 38. OIG recommends that the Director of Global Operations develop and implement an updated reporting structure for contracting officers that are embedded

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in program offices to ensure that all contracting officers are provided with proper oversight by the Office of Contracts.

Management Response: BBG concurred with the recommendation, stating that it “will update the reporting structure for contracting officers who are currently embedded in program offices to ensure proper oversight by the Office of Contracts.”

OIG Reply: OIG considers this recommendation resolved. This recommendation can be closed when OIG reviews and accepts documentation showing that BBG has updated the reporting structure for COs that are embedded in program offices and that the COs are properly overseen by CON.

List of Recommendations

Recommendation 1. OIG recommends that the Board of Governors develop an action plan to implement and track a restructuring of the acquisition process within the International Broadcasting Bureau to ensure that all procurements comply with Federal and agency procurement policies. The action plan must have measurable goals and milestones.

Recommendation 2. OIG recommends that the Board of Governors develop and implement enforcement mechanisms to ensure accountability for compliance with the action plan developed in response to Recommendation 1. This must include regular monitoring and evaluation of the acquisition function and compliance with the action plan.

Recommendation 3. OIG recommends that the Director of Global Operations adhere to the conditions stated in 22 U.S. Code 6206 for hiring personal services contractors; specifically, a determination of resources needed should be made; the Director should approve the employment of each personal services contractor; and contract length, including options, should not exceed 2 years.

Recommendation 4. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to award and administer personal services contracts in accordance with the statutory requirements as defined by the Personal Services Contracting Pilot Program.

Recommendation 5. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with the Office of the Chief Financial Officer, develop and implement policies and procedures to ensure that funds are available at the beginning of the period of performance for each contract, which should include the tracking of contract period of performance and the maintenance of appropriate documentation within the contract file. If funds are not available for the entire term of a contract because of a continuing resolution, a subject to availability clause should be included in the terms and conditions of the contract, per the Federal Acquisition Regulation.

Recommendation 6. OIG recommends that the International Broadcasting Bureau develop and implement fund control regulations, obtain approval from the Office of Management and Budget for the fund control regulations, and post the fund control regulations on its Web site, as required by Office of Management and Budget Circular A-11.

Recommendation 7. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting acquisition planning, in accordance with the Federal Acquisition Regulation. Specifically, criteria and thresholds should be established to dictate when a written acquisition plan is needed and guidance should establish what types of documentation should be maintained in the contract file.

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Recommendation 8. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting market research, in accordance with the Federal Acquisition Regulation. Specifically, criteria should be established to dictate the type and extent of market research to be performed for each procurement action and what types of documentation should be maintained in the contract file.

Recommendation 9. OIG recommends that the International Broadcasting Bureau, Office of Contracts, cease the use of quarterly sources sought announcements for awarding contracts.

Recommendation 10. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance to ensure compliance with the Competition in Contracting Act and Federal Acquisition Regulation regarding the publication of contract actions.

Recommendation 11. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop updated internal policies and procedures and implementation guidance to ensure that all offers are evaluated for each proposed contract action and adequately documented in the contract file.

Recommendation 12. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance to ensure that justifications for other than full and open competition are adequately documented and only utilized in accordance with Federal Acquisition Regulation guidance.

Recommendation 13. OIG recommends that the Director of Global Operations provide guidance to all offices within the International Broadcasting Bureau to explain the role of the Office of Contracts and the requirement for all acquisitions to comply with the Competition in Contract Act and follow the Federal Acquisition Regulation, and to reinforce the authority of the Senior Procurement Executive.

Recommendation 14. OIG recommends that the International Broadcasting Bureau hold comprehensive training to ensure that all employees involved in the acquisition process are aware of the Competition in Contracting Act and Federal Acquisition Regulation as it relates to competition, as well as the implications of noncompliance.

Recommendation 15. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop comprehensive policies and procedures and implementation guidance that directs contracting officers how to determine and document whether contract prices are fair and reasonable.

Recommendation 16. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document contract price determinations.

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Recommendation 17. OIG recommends that the International Broadcasting Bureau, Office of Contracts, review each of the contracts notated in Table 1 of Appendix A of the audit report to determine whether the contract price was fair and reasonable in accordance with Federal regulations. For each contract in which the price was determined not to be fair and reasonable, assess whether the contract can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contract. If the contract cannot be ratified, legal advice must be obtained to determine a resolution.

Recommendation 18. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to provide guidance to contracting officers on the type and extent of contractor responsibility determinations to be made for each award and the types of documentation that should be maintained in the contract file.

Recommendation 19. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its policies and procedures for contractor requirements for the Data Universal Numbering System and registration within the Central Contracting Registry to ensure that these procedures are in accordance with the Federal Acquisition Regulation.

Recommendation 20. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document responsibility determinations and to only allow exemptions under clearly defined circumstances in accordance with the Federal Acquisition Regulation or Office of Federal Procurement Policy guidance.

Recommendation 21. OIG recommends that International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance, which ensure that contracting officer's representatives (COR) are designated for every contract, and that this documentation clearly defines the COR's roles and responsibilities and is maintained in the contract file.

Recommendation 22. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance to ensure that contracting officers and contracting officer's representatives are fully aware of the type and extent of quality assurance procedures that should be performed in accordance with the Federal Acquisition Regulation and the type of documentation that should be maintained in the contract file as supporting evidence of quality assurance.

Recommendation 23. OIG recommends that the International Broadcasting Bureau, Office of Contracts, review Contract BBG50-P-11-0009 and determine whether the contractor was paid an extra \$8,250 for work not performed. If this cost is determined unallowable, the Office of Contracts should seek reimbursement from the contractor.

Recommendation 24. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop

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policies and procedures and implementation guidance to ensure that contractors are not performing inherently governmental functions.

Recommendation 25. OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop policies and procedures and implementation guidance to ensure that documentation is required for all contractor expenses to provide evidence that the funds were expended in an appropriate manner.

Recommendation 26. OIG recommends that the International Broadcasting Bureau, Office of Contracts, determine whether the \$16,075 in unsupported costs for Contract BBG50-P-13-0600 were allowable, and if determined unallowable, recover those costs from the contractor.

Recommendation 27. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance that direct program officials regarding the use and extent of performance evaluations, including the use of rating tools and clear indicators of performance.

Recommendation 28. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance so that contracting officers are aware of how to utilize past performance evaluations when assessing potential contractors.

Recommendation 29. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track contracting officers' training so that pertinent parties can be informed of missing training and resulting expired warrants.

Recommendation 30. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, to ensure that contracting officers obtain and maintain training requirements for compliance with the Federal Acquisition Certification for Contracting Officer program, including a course of action when requirements are not met.

Recommendation 31. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, including a comprehensive training program, to ensure that contracting officer's representatives obtain and maintain training requirements in compliance with the Federal Acquisition Certification for Contracting Officer's Representatives program.

Recommendation 32. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track training for contracting officer's representatives so that pertinent parties can be informed of missing training and resulting expired certifications.

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Recommendation 33. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update policies and procedures and develop implementation guidance that mandates the documentation to be included in each type of contract file.

Recommendation 34. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to periodically perform quality control reviews of official contract files to determine compliance with internal guidance and the Federal Acquisition Regulation.

Recommendation 35. OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are periodically trained on the required contents for the official contract file.

Recommendation 36. OIG recommends that the International Broadcasting Bureau, Office of Contracts, assess whether the unauthorized commitments related to Contract Nos. BBG28-F-11-0031 and BBG50-J-12-0709 can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contracts. If the contracts cannot be ratified, legal advice must be obtained to determine a resolution.

Recommendation 37. OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and appropriate internal controls to ensure that contracting officers cannot sign above their warrant levels.

Recommendation 38. OIG recommends that the Director of Global Operations develop and implement an updated reporting structure for contracting officers that are embedded in program offices to ensure that all contracting officers are provided with proper oversight by the Office of Contracts.

Scope and Methodology

The Department of State (Department), Office of Inspector General (OIG), Office of Audits, conducted this performance audit to evaluate whether the Broadcasting Board of Governors (BBG) had adequate acquisition policies and procedures, and to assess the efficacy of those policies and procedures. OIG sought to determine whether the BBG was in compliance with Federal regulations for conducting selected acquisition functions, including contract oversight, in support of the BBG mission.

OIG conducted fieldwork for this performance audit from June 2013 to December 2013 at BBG's Office of Contracts (CON). OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its audit objective. OIG believes that the evidence obtained provides a reasonable basis for its findings and conclusions based on the audit objective.

To obtain background for this audit, OIG researched and reviewed Federal laws and regulations, as well as internal BBG policies and procedures related to acquisitions. Specifically, OIG reviewed the Federal Acquisition Regulation (FAR), Office of Management and Budget (OMB) policies,¹ and the International Broadcasting Act of 1994. In addition, OIG reviewed BBG policies and procedures including the Broadcasting Board of Governors Acquisition Regulation, the Broadcasting Administrative Manual, the Contracting for Talent & Other Professional Services Handbook, and various acquisition-related policy memorandums.

To gain an understanding of the pre-solicitation, pre-award, and contract administration phases of BBG's acquisitions, OIG interviewed officials within the BBG and reviewed and analyzed contract documentation. Specifically, OIG interviewed officials within CON, including the Senior Procurement Executive, Branch Chiefs, including the Branch Chief from the Policy and Procurement Analysis Branch, contracting officers, and contracting specialists. OIG also interviewed contracting officer's representatives (COR) and other officials from BBG program offices who were involved with the administration and oversight of contracts and contractors. In addition, OIG interviewed officials from the Office of the Chief Financial Officer (CFO) to understand the coordination and communication between CON and this Office. Finally, OIG interviewed senior officials within the International Broadcasting Bureau (IBB), including the Office of General Counsel, to obtain additional insights regarding the acquisition process and BBG's internal oversight procedures.

¹ OMB Circular A-11, *Preparation, Submission, and Execution of the Budget*; OMB Policy Memorandum, *Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives*, September 6, 2011; and OMB Policy Memorandum, *The Federal Acquisition Certification in Contracting Program*, January 20, 2006.

Prior Reports

From 2011 to 2013, OIG issued four audit and inspection reports regarding the BBG that had procurement-related findings:

- A September 2013 OIG inspection report, *Inspection of Voice of America Latin America Division* (ISP-IB-13-49), found that CON did not have original contract files in one central location and did not maintain a comprehensive list of current contracts; CORs were involved in too many steps of contract administration; and administrative officers followed up on payments instead of contracting officers.
- A February 2012 OIG audit report, *Report on Survey of Broadcasting Board of Governors Suspension and Debarment Process* (AUD-CG-12-24), determined that the BBG did not have sufficiently detailed suspension and debarment policies and procedures and that the BBG was unable to provide data from which to select a sample of contracts and grants to review.
- A September 2011 OIG inspection report, *International Broadcasting Bureaus Germany Transmitting Station* (ISP-IB-11-66), found a lack of internal controls and inadequate separation of duties between requestors who suggested a vendor and also conducted procurement competitions.
- A June 2011 OIG inspection report, *Inspection of International Bureau Botswana Transmitting Station* (ISP-IB-11-52A), identified issues with inadequate training on procurements and incorrect procedures for using blanket purchase agreements.

Use of Computer-Processed Data

OIG used computer-generated data obtained from BBG to ascertain the population of acquisitions performed by BBG. However, after conducting tests of the data, we determined that the data was not reliable. To assess the reliability of computer-processed data, OIG interviewed officials knowledgeable about the data, reviewed existing documentation related to the data sources, and performed some tracing to source documents. BBG officials agreed that the data might not have been reliable and could not explain inconsistencies identified by OIG. We obtained access to BBG's accounting system, Momentum, in order to verify information found in the contract files, and also found data inconsistencies. OIG also performed a reconciliation of data provided by BBG to information on awards obtained via a query of USASpending.gov.² OIG found significant differences between the two data sources. Specifically, there were more contracts reported in USASpending.gov than in the listing provided by BBG. This gave rise to the concern that the data provided by BBG was not accurate or complete. Although the universe of contracts provided by BBG was not reliable, OIG believes that the data from the contracts selected for review was sufficient to support the findings and the evidence obtained provides a reasonable basis for determining the deficiencies identified in the report. Specifically, the

² USASpending.gov is the official Government Web site created by OMB to provide the public with a searchable database of Federal awards. BBG stated that it provides data, which is garnered from the BBG, to the administrator of the Web site periodically.

deficiencies identified were supported by documentary and/or testimonial evidence provided by BBG officials.

Work Related to Internal Controls

To assess the adequacy of internal controls related to policies, procedures, and processes used for BBG acquisitions and compliance with Federal regulations, OIG took the following actions:

- obtained and reviewed the policies, procedures, and processes for BBG acquisitions
- interviewed BBG personnel responsible for BBG acquisitions
- reviewed contract files for significant deficiencies and noncompliance with Federal regulations

OIG identified a number of significant internal control weaknesses, which are summarized the Audit Results section of the report. BBG lacks numerous policies and procedures for awarding and administering contracts in accordance with Federal regulations, which increases the potential for fraud, waste, and abuse. Additionally, as a result of our analysis of contract files and identification of severe internal control deficiencies, several contracts within our sample were referred to the OIG's Office of Investigations for further review.

Detailed Sampling Methodology

OIG's sampling objective was to determine whether BBG awarded contracts in accordance with the FAR and provided appropriate oversight of contracts. OIG developed a sample that appropriately represented the total population of domestically awarded contracts by the BBG, but excluded contracts awarded by the BBG's three grantees.

Identification of the Universe

OIG requested that BBG provide a list of all domestic contracts awarded during fiscal years 2011 and 2012. However, OIG found that BBG did not maintain a list of contracts. Instead, BBG was able to provide a list of contract actions³ with associated contract numbers from its accounting system, which included 27,468 contract actions totaling \$213,145,026 funded by BBG during fiscal years 2011 and 2012. According to BBG officials, this listing was created via a query from its accounting system using coding data; however, BBG officials could not answer questions concerning the data pull, such as specifics on the coding data. For example, each transaction within the accounting system had a specific contract number in the format of BBG50-D-11-XXXX. The two digits after BBG are supposed to represent the entity from which the contract originated, such as Voice of America (VOA) or the Office of Cuba

³ Contract actions within Momentum represent obligations, modifications, and de-obligations. One contract typically has multiple contract actions.

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Broadcasting (OCB). OIG found multiple two-digit codes that could not be accounted for, and inconsistencies within the use of these codes. Because this coding data was used to create the query, OIG had significant concerns regarding the completeness and accuracy of the listing provided by the BBG. In addition, other data within the listing could not be defined by BBG. For example, one column heading, “Bureau,” had acronyms for BBG office names, but some of these could not be defined by BBG officials.

Due to additional concerns regarding the BBG listing of contract actions, OIG performed a second data reliability test. Specifically, we obtained and reviewed a listing of contracts awarded by BBG from USASpending.gov for the same time period to assess the reliability of the project universe used for the sample design, and noted that the data did not match. For fiscal year 2011, there was a 3 percent difference in total dollar amount; however, for fiscal year 2012, USASpending.gov had approximately \$153 million in positive contract actions, while the listing provided by BBG had \$107 million; a 43 percent difference. The Chief of the Policy and Procurement Analysis Branch within CON stated that this disparity was due to the fact that USASpending.gov included overseas contract actions rather than domestic only. However, during initial meetings, multiple BBG officials contradicted that statement by stating that procurement data entry into USASpending.gov was incomplete and behind schedule.

Based on inconsistencies with the data provided by the BBG, in conjunction with the data reliability tests performed, OIG had significant concerns regarding the completeness of the listing provided by BBG. Nevertheless, OIG determined that contracts could be selected for review based on the data provided and the contracts selected represent a sample that could be used to support our findings and recommendations.

Selection of Contracts

OIG selected domestic contracts awarded by BBG during fiscal years 2011 and 2012 for review via judgmental sampling. Specifically, the team judgmentally selected 34 contracts for this audit; 22 firm-fixed-price⁴ or indefinite-delivery indefinite-quantity⁵ contracts and 12 blanket purchase agreements,⁶ all of which we refer to as “contracts” throughout the report.⁷ To obtain a broad sample selection, OIG used the following criteria in selecting the 34 contracts: type of contract, contract purpose, dollar amount of award, risk level of vendor, allotment name, and program office. OIG selected a range of contract values throughout many IBB program offices for a variety of purposes, and included high-risk vendors, such as foreign contractors or those previously suspended or debarred. The 34 selected contracts are shown in Table 1

⁴ As defined by FAR 16.202-1, “a firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract.”

⁵ FAR 16.501-2 states that an indefinite-delivery indefinite-quantity contract is one that may be used to acquire supplies or services when exact times and exact quantities of future deliveries are not known at the time of the contract award.

⁶ Two contracts were removed from the original selection because once obtaining documentation, OIG discovered that they were awarded in fiscal year 2010 and were therefore outside of the scope of the audit.

⁷ OIG requested and reviewed all documentation relating to each sample selection, which in some instances included multiple contracts with the same vendor.

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Table 1. Sample Selection of BBG Contracts

	Vendor Name	Contract Number ^a	Program Office and Description	Amount ^b
1	Globecast America, Inc.	BBG50-C-11-0072	TSI Satellites	\$3,926,880
2	Teleradiokompania Radio-ERA LLC	BBG50-C-11-0023 ^c	IBB - RFE/RL Leases	940,008
3	CGI Federal, Inc.	BBG50-F-12-0340 ^c	CFO	402,350
4	Gallup Organization	BBG50-J-12-0706 ^c	Strategic Plan and Performance	321,621
5	Thales Components Corporation	BBG50-J-12-0709 ^c	TSI Procurement	284,661
6	Christie Digital Systems USA, Inc.	BBG28-F-11-0031	TSI - TV Maintenance	190,686
7	DTR/H&D Joint Venture	BBG50-D-09-0131 ^c	TSI Engineering Operations	161,990
8	Christopher Irwin Design	BBG39-A-11-0487 ^c	VOA - Worldwide English	123,600
9	Distill, Inc.	BBG50-C-12-0012 ^c	IBB - Office of New Media	120,000
10	Sterling Computers Corporation	BBG50-F-12-0326	TSI Technology	116,137
11	Sani Malumfashi	BBG50-P-11-0009 ^c	VOA – Mozambique	99,000
12	Gueye Khalilou	BBG50-P-11-0278 ^c	VOA - Democratic Republic of Congo	96,000
13	Dewi Jeffrey	BBG50-D-10-0016 ^c	VOA - East Asia and Pacific Division	85,200
14	Elizabeth Pfozter	BBG39-A-12-0190 ^c	VOA Central News Division	81,250
15	Amina Kamal Khan	BBG50-D-11-0043 ^c	VOA - South Asia Division	72,520
16	Michael Onyiego	BBG39-A-11-0553 ^c	VOA - Southern Sudan	70,400
17	Momin Khan Wahedi	BBG39-A-10-0541 ^c	VOA - Afghan Star	63,600
18	Emil Guliyev	BBG28-A-12-0031 ^c	VOA - Near East and Central Asia	60,030
19	Jose Alpizar	BBG45-A-11-0101 ^c	OCB - Broadcasting to Cuba	54,300
20	Drexel Heritage Furniture	BBG50-F-12-0190	TSI Proceeds of Sale	50,454
21	Sussan Bahriyekta	BBG50-A-12-0006 ^c	IBB - Office of Policy	50,350
22	Charlton Doki	BBG50-P-12-0092 ^c	VOA - South Sudan	45,500
23	Howard Garden Suites	BBG50-P-12-0303 ^c	VOA - East Asia and Pacific Division	45,000
24	Verizon Wireless	BBG39-J-11-0095 ^c	VOA - Persian News Network	44,927
25	Mariama Crandall	BBG50-A-11-0600 ^c	IBB - Office of Marketing and Program Placement	42,000
26	Marvellous Nyahuye	BBG50-A-11-0300 ^c	VOA - Africa Division	40,039
27	Annick Nsabimana	BBG50-A-12-0341 ^c	VOA - Burundi	35,000
28	Windstar Technologies, Inc.	BBG50-P-11-0560 ^c	CFO	35,000
29	AudioNow	BBG50-C-11-0027 ^c	IBB - Latin America Networking	30,800
30	Citizen Global	BBG50-P-11-0068 ^c	BBG	25,000
31	Garba Suleiman	BBG50-P-11-0290 ^c	Hausa Health	20,000
32	Potter Oil and Tire, Inc.	BBG38-F-11-0002 ^c	TSI - Greenville Transmitting Station	15,339
33	Narval Mbila Ndambo	BBG50-A-12-0338 ^c	VOA - Kinshasa Citizens Journalists	13,050
34	JKarpiy Andriy	BBG50-C-11-0050 ^c	VOA Leases - Headquarters	12,000
TOTAL FUNDING FOR 34 BBG CONTRACTS				\$7,774,692

Source: OIG generated based on data provided by BBG.

^a “Contract Number” represents the number assigned to the individual contract with the vendor.

^b “Amount” represents the amount of funding obligated for the selected contract only; many vendors had multiple contracts with BBG during the same time period.

^c Per review of contract file, OIG determined that no fair and reasonable price determination was made.

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In addition to the contracts selected above, OIG selected an additional five personal services contracts (PSC) in order to determine what differences, if any, there were between personal and nonpersonal services contracts (in conjunction with Finding B and Finding C). BBG provided OIG with a list of 43 PSCs as of March 20, 2013, within the Office of Strategy and Development and three VOA divisions—Africa, South Asia, and the Persian News Network. OIG judgmentally selected one additional PSC contract from each program office, and two from South Asia because 30 of the 43 PSCs were in the South Asia Division. The five additional contracts selected are shown in Table 2.

Table 2. Additional Sample Selection of Personal Services Contracts

	Vendor Name	Contract Number	Program Office	Amount
1	Locked-on Communications, LLC	BBG50-D-12-0035	VOA - Persian	\$104,000
2	Muhammad Ilyas Khan	BBG50-D-12-0044	VOA - South Asia	71,965
3	Nafisa Hoodbhoy	BBG50-A-12-0536	VOA - South Asia	37,200
4	Ngathie Diop	BBGCONBC001	OSD - West Africa	32,500*
5	Christopher Gande	BBG51-A-13-00001	VOA - Africa	20,547*
TOTAL FUNDING FOR 5 PSC CONTRACTS				\$266,212

Source: OIG generated based on data provided by BBG.

* OIG determined obligation amount using information from contract file because the information was not located in the contract listing provided by the BBG.

Analysis of Services Contracts

In order to determine whether contracts were properly labeled as nonpersonal services contracts, the Office of Inspector General (OIG) applied the six criteria identified in Federal Acquisition Regulation (FAR) 37.104(d) to each sample contract; performed a comparison between the contracts labeled “personal services contract” (PSC) and those labeled “nonpersonal services contract;” and interviewed agency officials, to include contracting officers (CO), contracting officer’s representatives (COR), and other program officials. OIG also took into account whether “contractor personnel were subject to the relatively continuous supervision and control of a Government employee,” and found that 14 of the 16 contractors were subject to continuous supervision from Broadcasting Board of Governors (BBG) employees or other nonpersonal services contractors who were performing inherently governmental functions, and ultimately that an employee/employer relationship existed.¹ See Table 1 below for the results of our analysis. Please note that the “OIG Analysis” column includes only key factors in our determination.

Table 1. Analysis of Contracts Labeled as Nonpersonal Services Contracts

	Contract #	Contract Label	Position	OIG Analysis
1	BBG39-A-11-0553	Nonpersonal services	Editor/Stringer Coordinator	Contractors performed a combination of these similar job functions as listed in the column to the left, all of which were identical to duties performed by full-time BBG employees and PSCs with similar positions.
2	BBG50-P-12-0092	Nonpersonal services	Host/Reporter	
3	BBG50-A-12-0341	Nonpersonal services	Reporter/Editor	
4	BBG50-A-11-0600	Nonpersonal services	Producer/Writer/Researcher/Reporter	In addition, these services were provided at BBG sites, both domestic and abroad. The contractors were under continuous Government supervision and provided these services for multiple years. Tools, such as computers, software, and cell phones were provided to the contractors by BBG, and all services were in direct support of the BBG mission. OIG spoke with COs and CORs related to some of these contracts, none of whom could elaborate on a difference in treatment between personal and nonpersonal services contractors, or full-time employees.
5	BBG28-A-12-0031	Nonpersonal services	Journalist	
6	BBG50-A-12-0006	Nonpersonal services	Producer	
7	BBG50-A-12-0338	Nonpersonal services	Producer/Writer/Researcher/Reporter	
8	BBG50-D-10-0016	Not indicated	Journalist	
9	BBG39-A-10-0541	Not indicated	Producer/Writer/Researcher/Reporter	

¹ We could not determine whether the remaining two contracts were personal or nonpersonal in nature.

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Table 1. Analysis of Contracts Labeled as Nonpersonal Services Contracts (continued)

	Contract #	Contract Label	Position	OIG Analysis
10	BBG50-P-11-0009	Nonpersonal services	Coordinator of Nigeria Education Project	Contractor coordinated the Nigerian Education Project, which included managing, directing and compensating a team of reporters in Nigeria and setting up all aspects of town hall meetings. He had provided this service under the direct supervision of a BBG employee since 2007.
11	BBG50-P-11-0278	Nonpersonal services	Coordinator for DRC HIV/AIDS Program	Contractor coordinated the Democratic Republic of Congo (DRC) French to Africa Service, which included providing deliverables (edited stories) for the DRC Health Radio Program. This included “maintaining a network of stringers,” which means providing payment to and overseeing overseas reporters. He had provided these services under the direct supervision of a BBG employee since 2011.
12	BBG39-A-11-0487	Nonpersonal services	E-learning Producer	Contractor was charged with writing and developing specific language exercises and activities for a BBG website. The COR stated that he was the contractor’s supervisor and that he provided constant supervision since 2010.
13	BBG39-A-12-0190	Nonpersonal services	Web/Graphic Designer	Contractor was charged with web and graphic design, which included working with the Central News Desk editors and writers to adapt news stories to an online format. She had provided these types of services under the supervision of BBG since 2000. The COR stated the only difference in supervision between this contractor and his full-time employees with the same job title was that the contractor used a sign-in sheet.
14	BBG45-A-11-0101	Nonpersonal services	Lead Audio Technician	Contractor was charged with providing general studio operations services, which included working in conjunction with the program technical director to create a final recorded or live-to-air product ready for broadcast. He had provided these services under the direct supervision of a BBG employee since 2005.

Federal and Broadcasting Board of Governors Policies Governing Obligating or Expending Federal Funds

There are specific Federal and Broadcasting Board of Governors (BBG) policies and procedures that govern the appropriate use of Federal Funds.

The United States Code and Government Accountability Office Guidance

The Anti-Deficiency Act (ADA) prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, apportionment, or certain administrative subdivisions, such as allotments, of those funds. The relevant sections of the U.S. Code are as follows:

31 U.S.C. 1517(a): An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding—(1) an apportionment; or (2) the amount permitted by regulations prescribed under section 1514 (a) of this title.

31 U.S.C. 1514(a): The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to—(1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reappropriations of the appropriation; and (2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reappropriation.

The Government Accountability Office's (GAO) *Principles of Federal Appropriations Law*, Third Edition, Volume II, GAO-06-382SP, February 2006 (Red Book), provides an interpretation of the above cited clauses, as follows:

Subsection 1517(a)(2) makes it a violation to obligate or expend in excess of an administrative subdivision of an apportionment to the extent provided in the agency's fund control regulations prescribed under section 1514. The importance of 31 U.S.C. § 1514 becomes much clearer when it is read in conjunction with 31 U.S.C. § 1517(a)(2). Section 1514 does not prescribe the level of fiscal responsibility for violations below the apportionment level. It merely recommends that the agency set the level at the highest practical point and suggests no more than one subdivision below the apportionment level. The agency thus, under the statute, has a measure of discretion. If it chooses to elevate

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overobligations or overexpenditures of lower-tier subdivisions to the level of Antideficiency Act violations, it is free to do so in its fund control regulations.

At this point, it is important to return to OMB Circular No. A-11. Since agency fund control regulations must be approved by OMB (id. § 150.7), OMB has a role in determining what levels of administrative subdivision should constitute Antideficiency Act violations. **Under OMB Circular No. A-11, § 145.2, overobligation or overexpenditure of an allotment or suballotment are always violations** [emphasis added]. Overobligation or overexpenditure of other administrative subdivisions are violations only if and to the extent specified in the agency's fund control regulations. See 31 U.S.C. §§ 1514(a), 1517(a)(2).

Based on the above excerpts from GAO's Red Book, taken in conjunction with 31 U.S.C. 1517(a), 31 U.S.C. 1514(a), and relevant sections of the Office of Management and Budget Circular No. A-11, overobligation, which would include obligation in the advance of an allotment or suballotment, is in fact a violation of the ADA, with additional limitations dictated by the agency's fund control regulations.

BBG's Fund Control Regulation

OIG was provided with the Broadcasting Administrative Manual (BAM), Title 7, Part 100, Accounting Principles and Standards," as the BBG's fund control regulation. The BAM, Title 7, Section 104, "Fund Control," states that the control of appropriations is exercised by allotment authorities, which are delegations of authority made by the Director, Office of Budget, to issue allotments. The section defines the fund control principles applicable to the agency, including the following:

- Advices of Allotment are issued by the Director, Office of Budget, in conformance with approved financial plans, and within the amounts and limitations of apportionments or reapportionments made by the Office of Management and Budget.
- The Director, Office of Budget, is responsible for assuring with respect to all funds, including trust funds, that:
 - appropriate accounting is performed to provide for accurate disclosure of the status of all appropriations and other forms of obligational authority in terms of apportionments, allotment authority, allotments, operating allowances, obligations, and disbursements;
 - allotments do not exceed apportionments and reapportionments; and
 - amounts recorded and reported as obligations are valid obligations as defined by law in accordance with Section 1311 of the Supplemental Appropriations Act of 1955.
- Each official who receives an allotment of funds is responsible for:
 - restricting obligations to the amounts available in such allotments;

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- o identifying an obligation with the applicable appropriation or fund and allotment at the time it is incurred;
 - o certifying funds are available before the applicable obligation documents are released and recorded;
 - o authorizing payments when goods are received or constructive receipt occurs (e.g., issuance of a receiving report or notice that services had been received); and
 - o reviewing unliquidated obligations and deobligating them when appropriate.
- Obligations incurred or disbursements made in excess of the amount permitted by an allotment constitutes a violation of the Anti-Deficiency Act as amended.

Federal Acquisition Regulation on Contract Funding

Contracting prior to funding availability is also addressed in Federal Acquisition Regulation (FAR) Part 32, *Contract Financing*, which states, “No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall—

- a) Obtain written assurance from responsible fiscal authority that adequate funds are available, or
- b) Expressly condition the contract upon availability of funds in accordance with 32.703-2.”¹

This section of the FAR provides specific instructions for when funding is not secured at the beginning of a fiscal year, such as those fiscal years when the U.S. Government continued to operate under continuing resolutions. Specifically, FAR 32.703-2 states, “The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes the clause at 52.232-18, Availability of Funds.” The clause at 52.232-18 states:

Funds are not presently available for this contract. The Government’s obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

¹ FAR 32.702.

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Appendix D

Office of Inspector General Outline for Action



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

SEP 26 2013

Mr. Richard M. Lobo
Director, International Broadcasting Bureau
330 Independence Avenue, SW
Washington, DC 20237

Dear Mr. Lobo:

The Department of State, Office of Inspector General (OIG), Office of Audits, is currently conducting an audit of the Broadcasting Board of Governors (BBG) acquisition functions. The objective of this audit is to determine whether BBG is in compliance with Federal regulations for conducting selected acquisition functions, including contract oversight, in support of the BBG mission.

OIG's Office of Audits analyzed internal BBG policies and procedures, interviewed officials within BBG's Office of Contracts, and reviewed 34 contracts to determine compliance with Federal regulations. Based on the preliminary results of the audit work performed, OIG identified areas of concern within the Office of Contracts that require your immediate attention. These areas include significant noncompliance with the Federal Acquisition Regulation and violations of the Anti-Deficiency Act. These findings are presented in the enclosed report *OIG Outline for Action: Management Attention Needed To Improve Broadcasting Board of Governors Acquisition Functions* (AUD-CG-IB-13-43, September 2013).

Although the recommendations will be included in a report on BBG acquisition functions, immediate action is needed to address the issues identified in the enclosure. Therefore, please provide a response to the recommendations within 10 days of the date of this correspondence.

If you have any questions, please contact Norman P. Brown, Acting Assistant Inspector General for Audits, by email at brownnp2@state.gov or at (202) 284-2600, or Melinda M. Perez, Director, Contracts and Grants Division, by email at perezmm@state.gov or (703) 284-2698.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Geisel".

Harold W. Geisel
Acting Inspector General

Enclosure: As stated.

cc: U.S. Representative Edward R. Royce, Chairman, Committee on Foreign Affairs
U.S. Representative Eliot L. Engel, Ranking Member, Committee on Foreign Affairs

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**OIG Outline for Action:
Management Attention Needed To Improve
Broadcasting Board of Governors Acquisition Functions**

Office of Inspector General (OIG) audit procedures identified notable areas of concern within the Broadcasting Board of Governors (BBG) Office of Contracts, including noncompliance with the Federal Acquisition Regulation (FAR), a lack of contract oversight, and Anti-Deficiency Act (ADA)¹ violations. Specifically, OIG determined that the FAR was not followed during the pre-solicitation, pre-award, and contract administration phases of the acquisition process, to include not adequately performing full and open competition or price determinations. In addition, BBG did not provide adequate oversight of the acquisition process, evidenced by a lack of contracting officer involvement, a failure to designate contracting officer representatives, and weak quality assurance procedures. Finally, OIG identified two practices that resulted in BBG repeatedly violating the ADA. Specifically, BBG entered into hundreds of personal services contracts without statutory authority, and contractors regularly worked without valid contracts in place. The following provides an overview of the specific areas of concern identified by OIG within the acquisition process.

Pre-Solicitation and Pre-Award Phases. OIG determined that the following pre-solicitation and pre-award phase requirements were not appropriately performed in accordance with the FAR:

- Acquisition planning (*FAR 7.102*) – not appropriately performed.
- Market research (*FAR 10.001(a)*) – not appropriately performed.
- Full and open competition (*FAR 6.101*) – not appropriately performed.
- Justification for Other Than Full and Open Competition (*FAR 6.301*) – not appropriately performed.
- Price Determination (*FAR 13.106-3 and FAR 15.402(a)*) – not appropriately performed.
- Evaluation of Quotations/Offers (*FAR 13.106-2*) – not appropriately performed.
- System for Award Management (*FAR 4.1102*) – registration in the system was not required for overseas contractors.²
- Contract Files (*FAR 4.801(b) and 4.802(a)(1)*) – lack of documentation in or absence of contract files.

Specifically, OIG found that many BBG contracts were not awarded on a competitive basis and noted that BBG awarded service contracts from a quarterly “Sources Sought” announcement on FedBizOpps.gov (FBO), which is not in compliance with the FAR requirement for publicizing contract actions. This FAR requirement states that “each proposed contract action” over \$25,000 must be posted on FBO;³ however, BBG policy states that “the Office of Contracts will publish FBO notices on a quarterly basis on behalf of IBB organizations seeking potential sources for

¹31 U.S.C. § 1341, “Limitation on expending and obligating amounts,” and 31 U.S.C. § 1342, “Limitation on voluntary services.”

²Prospective contractors, including foreign vendors receiving funding over \$25,000, are required to register in the System for Award Management, and were previously required to register in the Central Contractor Registry.

³FAR 5.201, “Synopsis of Proposed Contract Actions.”

announcing, scripting, production services, etc.”⁴ Replies to these very broad “Sources Sought” announcements are referred to the requesting office for evaluation, consideration, and selection, rather than posting a separate notice for each contract action. BBG officials acknowledged that this practice was not in accordance with the FAR.

In addition, OIG found that, based on an estimate provided by an agency official, BBG awarded approximately 660 services contracts that may have been personal in nature. FAR 37.104(b) prohibits the use of personal services contracts without explicit statutory authority. BBG does have statutory authority to enter into personal services contracts,⁵ but the statute limits this authority to 60 personal services contracts. Of the approximate 660 contracts which may have been for personal services, 44 were appropriately classified as personal services contracts while the approximate 616 remaining contracts may have been inappropriately defined as non-personal services contracts or not defined at all, even though the contracts may have been identical in nature to those classified as personal services contracts. BBG’s handling of services contracts is a violation of the ADA, which prohibits “employing personal services exceeding that authorized by law.”

Contract Administration Phase. OIG determined that contract administration phase requirements, to include contract oversight, were not consistently performed in accordance with the FAR:

- Contracting Officer Responsibilities (*FAR 1.602-2*) – contracting officers have little to no involvement in contract administration.
- Designation of Contracting Officer’s Representatives (COR) (*FAR 1.602-2(d)*) – CORs not regularly designated; contractors designated as CORs.
- Contractor Performance Information (*FAR 42.15*) – performance evaluations of contractor performance not prepared when required.
- Quality Assurance (*FAR 46.1*) – quality assurance procedures not always performed or documented.
- Contract Files (*FAR 4.801(b)* and *4.802(a)(2)*) – lack of documentation in or absence of contract administration files.

Specifically, OIG found that contractors regularly worked without valid contracts in place, as the majority of services contracts reviewed had been signed by the contracting officer after the period of performance had begun. This occurred because a lack of contract oversight resulted in a lapse in period of performance, whereby the contract expiration dates had passed unnoticed, but contractors had continued to work. In these cases, the contracting officer would grant a “pre-approval” for the vendor to work until funds had been secured for the subsequent contract. Often the “pre-approval” time period was less than 1 week; however, OIG noted multiple instances in which contractors worked for 4–16 weeks without a valid contract in place. To further exacerbate the problem, contracting officers stated that contractors may not have been aware that they were working without a valid contract in place. This is also a violation of the ADA, which

⁴“Contracting for Talent and Other Professional Services Handbook,” 2010, pg. 1-2, 4.a.1.

⁵22 U.S.C. § 6206, “Personal Services Contracting Pilot Program.” [Pub. L. 113-6, Div. F, Title I, Sec. 1101].

states that an agency may not “involve [the] government in a contract or obligation for the payment of money before an appropriation is made.”⁶

Conclusion. As a result of significant FAR noncompliance, BBG acquisitions reflected limited or no competition as program offices had generally pre-selected the vendors and had pre-determined the prices; included incorrect statements of work that did not accurately represent the true requirements of the acquisition; inconsistently used contract vehicles to procure products or services; and were improperly awarded for some personal services, which is an ADA violation. Further, because of the lack of contract oversight and deficient evaluation and quality assurance procedures, BBG had little to no assurance that products or services were provided as dictated in the contract terms and conditions; vendors may not have been held accountable for poor performance; deficiencies with contract execution may not have been identified; and contractors often worked without a valid contract in place, which is also an ADA violation.

As such, OIG has determined that the execution of the acquisition process requires your immediate attention to ensure that contracting officials have the incentive and management support to properly implement the FAR, to provide appropriate contract oversight, and to avoid ADA violations.

Recommendation 1. OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of personal services contracts that violate the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, “Reports on violations.”

Recommendation 2. OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of pre-approval for contracts, which violates the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, “Reports on violations.”

Recommendation 3. OIG recommends that the Director of the International Broadcasting Bureau obtain the assistance of outside experts in Federal acquisition and contracting to conduct an acquisition assessment within the Office of Contracts. The assessment should include, at a minimum: a determination of the extent and full impact of noncompliance with Federal Acquisition Regulation; an action plan for the development and implementation of policies and procedures that ensure acquisition functions are performed in accordance with the Federal Acquisition Regulation; a training curriculum for all contracting officials to enhance education of acquisition regulations and policies; and performance evaluation standards for all pertinent contracting officials which hold officials accountable for the implementation of acquisition policies and procedures.

⁶Office of Management and Budget Circular No. A-11, Part 4, §145.6 states, “You may not obligate against anticipated budgetary resources before they are realized even though the anticipated budgetary resources have been apportioned. If you incur an obligation against an anticipated budgetary resource, such as anticipated spending authority from offsetting collections, then you will have a violation of the Anti-Deficiency Act.”

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Appendix E

Broadcasting Board of Governors First Response to Outline for Action

Broadcasting Board of Governors

INTERNATIONAL BROADCASTING BUREAU



September 30, 2013

Dear Mr. Geisel,

The Broadcasting Board of Governors (BBG) has received your letter dated September 26, 2013 regarding the ongoing audit of the BBG's acquisition functions. We have been informed that the purpose of the audit is to determine whether the Agency is in compliance with Federal regulations pertaining to selected acquisition functions, including contract oversight and administration in support of our mission.

Your letter states that the Office of Inspector General's Office of Audits has identified areas of concern that require immediate attention. These areas are described generally as significant non-compliance with the Federal Acquisition Regulations and violations of the Anti-Deficiency Act, and are noted in enclosure report OIG Outline for Action: Management Attention Needed to Improve Broadcasting Board of Governors Acquisition Functions (AUD-CG-IB-13-43, September 2013).

Let me assure you that I and the BBG senior management team take the matters in this report very seriously, and that we have taken initial steps to understand the scope of the issues raised. I have directed my Chief of Staff, General Counsel and Chief Financial Officer to immediately reach out to your team to best understand the basis of the findings, prepare responses to each of the three recommendations, and develop an appropriate action plan that will fully address the matters raised in the report.

Thank you for your dedicated service as Deputy and Acting Inspector General for the State Department and Broadcasting Board of Governors for the past five years. We greatly appreciate the OIG's guidance and the support that you and your team have provided for the vital mission of U.S. international broadcasting.

Sincerely,

Richard Lobo
Director

CC: The Honorable Edward R. Royce
The Honorable Eliot L. Engel
The Honorable Kay Granger
The Honorable Nita M. Lowey
The Honorable Claire C. McCaskill
The Honorable Ron Johnson
The Honorable Patrick Leahy
The Honorable Lindsay Graham

330 Independence Avenue, SW

Washington, DC 20237

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Broadcasting Board of Governors Second Response to Outline for Action

Broadcasting Board of Governors

INTERNATIONAL BROADCASTING BUREAU



Mr. Steve A. Linick
Inspector General
Office of the Inspector General
Department of State
Washington, DC

Dear Mr. Linick:

Thank you for the opportunity to comment on the results to date of the Office of Inspector General's audit of the BBG's acquisition functions. We look forward to working with your Office to address both the immediate issues you have raised and any other issues you identify while completing your review.

We appreciate the information that you provided to us at our initial meeting last week on the issues introduced in the *Outline for Action*. As you have pointed out, the issues involved in the assessment of the BBG's procurement function are complex and fact-dependent. Therefore this response is preliminary in nature. In the weeks ahead, we will provide you with additional information and engage in further discussion in the hope that we might lead you to modify some of your more critical preliminary findings.

The BBG's procurement function is structured to assist the agency to meet its unique statutory mission under the International Broadcasting Act of 1994, *as amended*. 22 USC § 6201 *et seq.* This mission includes the creation, production and global distribution of news and information in 61 languages across a myriad of technology platforms "consistent with the broad foreign policy objectives of the United States." *Id.* §§ 6202(a)(1), 6204(a)(3). The agency requires assistance from individuals with a wide variety of technical and journalistic talent – many of whom are native speakers of the languages in which we broadcast and knowledgeable about the markets we serve.

While many Federal agencies are heavily dependent on the use of contractors, their mission requirements and the ways in which they use contractors are unique. This is certainly true for the BBG. As U.S. national security and interests evolve, so do both the markets the BBG serves and the mix of personnel required to support that service. BBG no longer broadcasts to once key Eastern European countries, but has surged broadcasts to Asia, the Middle East, and more recently Africa, where pockets of extremism threaten stability and freedom. BBG requires a flexible personnel structure to adjust to these emerging hotspots, for both humanitarian and U.S. policy needs. Thus, the BBG and its predecessor, the U.S. Information Agency, have greatly benefited from the broad range and diverse mix of contractors supporting these programs.

330 Independence Avenue, SW

Washington, DC 20237

The Voice of America (VOA) in particular has a long and successful history of using contractors. Willis Conover, internationally renowned during the Cold War for his programs on American jazz, produced programming for VOA to air to audiences behind the Iron Curtain. He was not an employee, but was one of the best known VOA contributors. Throughout much of VOA's history, purchase-order vendors or "POVs" such as Mr. Conover allowed the United States government to benefit from outside expertise and carry out the VOA Charter effectively and economically, in no small part due to having the capability to vary the program hours and content as needed.

More recently, the BBG sought expanded personnel authority to contract with Personal Services Contractors (PSCs), recognizing a need to have a more direct supervisory role in a portion of its contract workforce. Pursuant to an Administration request to Congress, limited PSC authority was granted in 2003. The BBG established a separate PSC program after gaining this statutory authority, and has monitored the number of PSCs employed in order to remain under the ceiling established by this legislation.

The *OIG Outline for Action* states that, because the agency's POVs – whose contracts did not identify them as PSCs – were awarded contracts and supervised in the same manner as PSCs, the agency has exceeded its authorization to employ PSCs. The BBG agrees that we must take immediate steps to ensure that our contracts properly define the work required, and that non-personal service and personal service contracts be implemented in accordance with associated statements of work in all cases. Subject to further study, however, we submit that errors in contract implementation that resulted in ambiguity between contract designations as PSCs or non-PSCs should not be interpreted as the Agency's exceeding its statutory mandate, nor as a violation of the Anti-Deficiency Act (ADA). In this regard, we look forward to a discussion with the OIG about the relevant legal authorities pertaining to the Federal Acquisition Regulation (FAR) provisions on personal service contractors.

Notwithstanding any difference of views that we may have with respect to the personal services prohibition, however, given the results of your work to date, we fully recognize the need for greater diligence in the drafting and implementing better oversight of some contracts. Over the past decade, the BBG has addressed the distinctions among contractors and has run mandatory training programs for all managers, reminding them of the need to be diligent in respecting the specific terms of contracts. We believe this must be done with greater urgency and better oversight.

Beginning in FY 2012, the IBB Director spearheaded an effort to improve communications with contractors and evaluate possible new strategies for securing contracted products and services by contracts. Some of the specific achievements that resulted from this initiative include: instituting bi-weekly contractor office hours with staff from the IBB Office of Contracts; implementation of an improved electronic invoice processing system; and regular mandatory training for Contracting Officers and their Representatives. Additionally, IBB staff is working closely with VOA senior leadership to evaluate new strategies for securing the best talent available for our media needs. One of these strategies might require the agency to move some of its non-PSC workforce to PSCs, in which case the agency would seek legislation to raise its cap on the number of PSCs.

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The BBG will begin an immediate review of its contracts and its policies to ensure the proper distinction between PSCs and other service contracts. In addition, prior to the start of this audit, the agency's Office of Contracts began a review of its contract templates and their use to ensure that the PSC/POV designations are strictly followed. These efforts are ongoing, and will be accelerated.

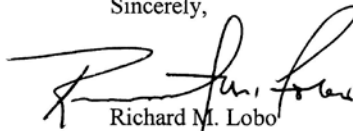
In our discussion last week, we pledged to provide you with additional information on the agency's contract pre-approval process and appreciated your acknowledgment that contract pre-approval by itself does not violate the ADA, but make the agency more vulnerable to such a violation. It is agency policy not to pre-approve contracts absent an appropriation of funds. We hope to demonstrate agency compliance with the aforementioned policy for OIG's consideration and appreciate OIG's re-evaluation of its finding of an ADA violation.

While we are asking you to consider new information, nonetheless, pursuant to your current findings, the agency is taking immediate action to respond to the recommendations in the *Outline*. Pursuant to Recommendations 1 and 2, the agency will begin a review to identify any personal services contracts. Again, per our discussion last week, we look forward to further conversations with you on whether shortfalls in contract administration and oversight warrant an ADA violation. We also appreciate your agreement that punitive administrative action may not be warranted if there is no evidence of intent to violate either the FAR or the ADA.

With respect to Recommendation 3, the agency agrees that it will benefit from the assistance of outside experts in Federal acquisition and contracting to: conduct an assessment within the Office of Contracts; evaluate compliance with the FAR; and assist in the development of uniform performance evaluation standards, policies, and training to enhance agency implementation of acquisition regulations and policies. We have begun the process to acquire such assistance.

We fully understand the magnitude of the effort the agency must undertake to tighten its acquisition policies and ensure proper contract implementation. We look forward to continuing dialogue with you as we move forward on these issues.

Sincerely,



Richard M. Lobo
Director

Broadcasting Board of Governors Third Response to Outline for Action



Broadcasting Board of Governors

INTERNATIONAL BROADCASTING BUREAU

November 22, 2013

Mr. Steve A. Linick
Inspector General
Office of the Inspector General
Department of State
Washington, DC

Dear Mr. Linick:

BBG appreciates this opportunity to provide additional information to the Office of Inspector General (OIG) in connection with its audit of BBG's procurement function. BBG wishes to work with the OIG to reach a shared understanding of the legal and regulatory parameters framing BBG's mission and the procurement activities that BBG undertakes to pursue it.

BBG's objectives in providing this additional information to OIG are two-fold:

- To further inform OIG about the requirements of BBG's unique mission and authorities, as well as our understanding of the flexibility that underpins the Federal Acquisition Regulation (FAR).
- To explain why BBG does not agree with the OIG's conclusions, provided in its Outline for Action, that BBG's procurement activities have resulted in reportable violations of the Antideficiency Act (ADA).

I. BBG has Unique Operational Requirements

The OIG's Outline for Action does not discuss the context in which BBG's procurement activities take place or the structure and organization of those activities. But these factors are essential to any analysis of whether or not the BBG's procurement activities are being performed "appropriately". BBG's mission requires the Agency to engage in a very large number of very small transactions. While BBG's contract administration can certainly be improved, BBG would benefit most from OIG's consideration of which particular documentation (or other perceived) errors are material either in terms of supporting the BBG mission or achieving other important public policy goals.

By statute, the BBG has a global, technology-based, foreign policy-driven mission. The breadth of BBG's mission is enormous: the creation, production and global distribution of news and

information programming in 61 language services across a wide variety of technology platforms including shortwave, AM and FM radio, television, internet, mobile phones and other forms of social media. The International Broadcasting Act requires the BBG to engage in news-gathering and reporting activities on a global basis, to produce programming as radio, television, internet and social media packages, and to do so in a way that meets "the highest professional standards of broadcast journalism." 22 USC § 6202(a)(7). The BBG must do so on a 24/7 basis and its federal agency programmers do so in 45 different languages. The Act also requires BBG to be able to provide "surge" capacity to meet the requirements of US foreign policy, Id. § 6202(b)(4). The Act mandates use of technologies needed to establish a "significant audience" and research capacity to validate that such audiences consume their news and information, but also that the "broadcasting elements receive the highest quality and cost effective delivery services." Id. § 6202(a)(7). In short, the statute that defines BBG's mission is specific in requiring dynamic, high quality and technologically sophisticated performance on a global basis.

From a procurement perspective, an important consequence of BBG's mission parameters is that BBG must engage in a very large number of small but varied transactions to acquire, in a timely way, the many specialized products and services that the Agency requires for its operations. These transactions must be executed quickly and efficiently to deliver today's news on the technology platforms used by our audiences. BBG broadcast markets reflect current US foreign policy priorities. This increasingly means supporting programming to counter extremism, requiring fast start-ups in emerging, critical hotspots such as Mali. At the heart of BBG's procurement activities is the need for nimbleness, speed and flexibility.

For this reason, the International Broadcasting Act endows the Board with express authority to procure goods and "services . . . to the extent considered necessary to carry out the functions of the Board." Id. § 6204(a)(10). While there is no dispute that BBG, like other federal agencies, must comply with the FAR, such compliance is also a means to two greater ends: achievement of the mission and the realization of established public policy goals. It is always possible, if not inevitable, that mistakes will be made in administering a procurement function like BBG's where the Agency must engage in a very large number of very small transactions. Correcting those errors in contract administration that are material to accomplishment of the mission or to compliance with public policy should be given priority.

BBG does not agree with an interpretation of the FAR that unduly restricts the flexibility that BBG requires to implement its complex mission. We respectfully request the OIG take this flexibility and the parameters of BBG's mission into account in reaching any conclusion as to whether certain procurement practices are "appropriately performed".

II. Discretion In Procurement

BBG understands that OIG's Outline for Action is "preliminary" and is based on a review of only 34 out of thousands of contracts that BBG concludes each year. The Outline itself contains few of the details that may perhaps be needed for BBG to understand fully OIG's analysis and the factual and legal bases of OIG's conclusions.

One topic that deserves further exploration is the scope of Agency discretion in executing its obligations under the FAR. In BBG's view, there are reasonable and legally permissible adaptations of the procurement mechanisms described in the FAR that help the Agency to respond nimbly to mission requirements. This is not to say that BBG has always made the right choices or that contract administration cannot be improved. However, the FAR gives Agency officials discretion to adapt procurement tools to meet the Agency's needs. It is important, therefore, that we engage in further discussion with OIG on specific BBG deviations from the FAR, and why OIG believes the deviation is an impermissible exercise of the Agency's discretion.

The FAR's stated purpose is to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives". (FAR 1.102(a)). The FAR envisions a broad interpretation of its provisions to provide the best possible product or service to the customer. "All participants in the System are responsible for making acquisition decisions that deliver the best possible product or service to the customer." (FAR 1.102-1(b)).

In furtherance of this objective, the FAR provides discretion to agency officials. (1.102-2(c)). The acquisition team (which includes representatives of the technical, supply, and procurement communities, the customers they serve, and the contractors) "must be empowered to make acquisition decisions within their areas of responsibility...[possess] the authority to make decisions...and be prepared to perform the functions and duties assigned." (1-102-4(c)). Accordingly, the FAR authorizes an acquisition team to use strategy, policy or procedure to advance the best interests of the government even if the strategy, policy or procedure is not specifically addressed in the FAR as long as it is not prohibited by law. (1-102-4(e)).

A further discussion of the Agency's legal assessment of this flexibility and how it relates to Agency contracting practices is attached in Enclosure 1 for OIG's consideration and to inform our ongoing dialogue.

III. Personal Services Contractors

In its Outline for Action, OIG states: "OIG found that, based on an estimate provided by an Agency official, BBG awarded approximately 660 services contracts that may have been personal in nature." We understand that OIG auditors reviewed approximately 20 POV contracts -- which are for "non-personal services" -- and compared them with certain contracts that by their terms, were expressly deemed to be "personal service contracts" (PSCs). BBG's understanding is that the OIG auditors then asked various Contracting Officers and program administrators if they understood the difference between the PSCs and POVs. The auditors reported a general lack of awareness of the difference between the two categories among Agency officials. Because of the similarities in the PSC and POV contracts, the OIG auditors extrapolated that the POV contracts are the same as PSC contracts. Furthermore, according to the OIG auditors, the POV contracts appear to meet the criteria that fall within the prohibition on personal service contracting in FAR 37.104.

BBG believes that OIG's conclusion that BBG is impermissibly contracting for personal services and has violated the ADA is premature and incorrect. The FAR prohibition on personal service contractors contains many legal terms of art that have been both adjudicated in court and the subject of extensive study and interpretation.

BBG respectfully requests that OIG take into account these perspectives, discussed below and in Enclosure 2, in considering whether BBG's use of POVs violates the personal services contracting prohibition in the FAR. This is not to say that BBG believes that the Agency could not improve the management and administration of its workforce, including its talent vendors. The Director of the International Broadcasting Bureau (IBB) has undertaken a number of initiatives to study better ways for the Agency to fulfill its need to complement the talents and capabilities of BBG's federal employees with contractors.

The FAR prohibition bars the Agency from concluding contracts for "personal services" in the absence of express statutory authority to do so. According to the FAR, a personal services contract creates an "employer-employee relationship" between the contractor and the federal government. Under the FAR, an "employer-employee relationship" is characterized "when contractors are subject to the relatively continuous supervision and control of a Government officer or employee."

But the FAR provision has also been criticized by a large number of federal procurement law experts. To begin with, the FAR provision prohibits the creation of an "employee-employer" relationship by contract, which as a matter of law, is impossible to do. A 2007 Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress stated (at 402) ("Advisory Panel"), for example, "the current FAR prohibition of PSCs focuses on the concern that government supervision of contractor personnel would act to create an employer-employee relationship between the government and contractor[] personnel. However, this concern is based upon a misguided premise, since a contract cannot confer employee status upon contractor personnel in the absence of appointment to federal service." The report cites a number of US Supreme Court cases, including US v. Testan, 424 US 392, 402 (1976) that clearly establish that a person cannot become a federal employee, consistent with the Appointments Clause of the Constitution and Title V of the US Code, until one has been appointed by a federal official. The Advisory Panel concludes:

"[T]he existing FAR prohibition on PSCs, which focuses upon the type of supervision provided to contractor personnel in an effort to preclude the creation of an employer-employee relationship is not compelled by applicable statutes and case law. Given the statutory definitions of a federal employee, as that definition has been interpreted by the courts, the activities that are currently barred as PSCs by the FAR would not create such an employer-employee relationship."

BBG can state categorically, therefore, that its contracts have not created employer-employee relationship between BBG and its POVs.

Beyond the FAR provision's "top-line" lack of coherence relating to the creation of employer-employee relationships, a closer inspection of the criteria listed in the provision reveals deep ambiguity as to the types of activities that are permissible and impermissible. The GAO, for

example, in analyzing the use of contractors at the Department of Defense stated that "the distinction between a personal services contract and a non-personal services contract is somewhat murky and requires a case-by-case analysis based on the facts of each circumstance." GAO, *Defense Contracting: Army Case Study Delineates Concerns With Use Of Contractors As Contract Specialists*, (Mar. 2008) at 17. A legal scholar recently pointed out that, as early as 1959, government studies indicated that "the line between personal and non-personal contracts is far from clear Determining whether any given contract will . . . constitute an unauthorized procurement of personal services can be incredibly difficult. [The US Army Chief of Procurement Law in 1959] concluded . . . that 'in the future, as in the past it will be next to impossible to determine with any degree of certainty whether a given arrangement will offend the [personal service contractor] policy.'" Swan, "Dead Letter Prohibitions and Policy Failures: Applying Government Ethics Standards to Personal Services Contractors", 80 *Geo. Washington L. Rev.* 668, 678 (2012).

BBG believes that OIG should not require the agency to establish barriers in the workplace for the purpose of achieving purported "compliance" with the FAR's personal service provisions when compliance is, in fact, already being achieved. As the Acquisition Advisory Panel stated to Congress in 2007 (at 421): "When service contractor personnel and federal employees are working together on a project, there is no good reason to prohibit the federal employee in charge from giving directions or assignments directly to contractor personnel so they work as a team."

As mentioned above, we include these citations among a deeper legal analysis on these issues attached in Enclosure 2.

IV. Contract Pre-approvals

The OIG report states that "pre-approval" of contracts is a "violation of the ADA". Yet, the Court of Federal Claims recognized as recently as September 30, 2013 that an oral agreement can be binding on the Government unless expressly prohibited by the FAR so long such an agreement meets four basic elements: "(1) mutuality of intent to contract; (2) lack of ambiguity in offer and acceptance; (3) consideration; and (4) a government representative having actual authority to bind the United States in contract. *Sigma Construction, Inc. v. United States*, 2013 WL 5435052 (Fed.Cl. 2013)." So, it is clear there is strong evidence that pre-approval of contracts is permitted under the FAR so long as an appropriation is available. We understand that the OIG team has acknowledged that pre-approval, by itself, does not create an ADA violation.

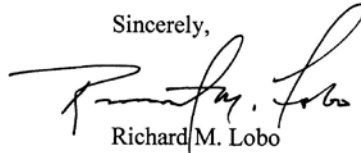
Further, we hope, that in the exchanges of information we have had with OIG since it issued the Outline for Action, we have allayed OIG concerns on many of the 34 contracts it reviewed during its fieldwork stage. Information provided by the BBG shows that eight of the "contracts" examined by OIG are inter-agency agreements (IAAs) with the Department of State. Unlike traditional contracts, these IAAs include reimbursable agreements, wherein BBG contracts for services that will be funded by other federal agencies. As these agreements do not incur obligations by BBG, they do not carry a risk of an ADA violation. Another eight of the "contract" numbers reviewed by OIG are Blanket Purchase Agreements (BPAs) or Task/Delivery Order Contracts. BBG uses several different vehicles, many of which

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are BPAs or Task/Delivery Order Contracts. These vehicles are not obligating events; rather, they set the terms and conditions surrounding future work, to be ordered through delivery orders, which are the obligating events, if needed. Furthermore, these documents do not represent a "pre-approval" of a contract by the Agency.

Again, we appreciate the opportunity to shed further light on BBG's unique news and information mission, and to provide significant legal analysis of how the Agency supports this mission through contract flexibilities, while remaining compliant with the FAR. We look forward to further discussion of these issues with the OIG.

Sincerely,



Richard M. Lobo
Director

Broadcasting Board of Governors Fourth Response to Outline for Action



**BROADCASTING BOARD OF GOVERNORS
UNITED STATES OF AMERICA**

January 2, 2014

Mr. Steve A. Linick
Inspector General
Office of Inspector General
U.S. Department of State

Dear Mr. Linick:

We want to thank you for the consideration shown by your audit team during its review of the Broadcasting Board of Governors' (BBG) acquisition function. The Board was briefed on the status of this audit at its meetings during the week of December 16, and we want to assure you of our commitment to address the issues raised in the Outline for Action, and ultimately, in your final report. We take these matters very seriously.

We also appreciate the flexibility your team has shown in examining new data presented by the agency to clarify its practices, and address concerns relating to certain provisions of the Anti-Deficiency Act. This audit is a complex one, examining the core of long-standing staffing practices utilized by the BBG and its predecessor agencies, which evolved to support the unique needs of maintaining a workforce dedicated to producing news in dozens of languages around the world.

Since receiving the Outline for Action on September 26, the agency has already moved to make changes. For example, agency management has directed contracting staff to immediately end any practice of so-called "pre-approval," and we are addressing the use of sources sought. We have also brought on an outside consulting firm to help us evaluate our practices with a view towards improving contracting on several different fronts.

The Board's Advisory Committee has asked for an update on management's proposed acquisition reforms, including with regard to staffing. As part of that effort, we have already asked that a working group, consisting of IBB and Voice of America senior staff members, present a preliminary action plan on staffing to the Board's Advisory Committee in January. The goal includes the design and implementation of a plan that fulfills the agency's mission requirements, while relying on legally available personnel and staffing procurement mechanisms and best practices. Agency management is prepared to brief the OIG team on the results of that meeting. We look forward to working with and keeping the OIG team informed throughout that process.

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As the OIG team agreed during meetings with our management team, changes to some longstanding practices cannot be made overnight, but will require time to plan and implement. Given the seriousness of the questions raised in the Outline for Action, we felt it important to share these preliminary strategies with you as we work to move the agency forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Shell", written in a cursive style.

Jeffrey Shell
Chairman

Broadcasting Board of Governors Response to Draft Report



Broadcasting Board of Governors

INTERNATIONAL BROADCASTING BUREAU

April 29, 2014

Mr. Norman P. Brown
Assistant Inspector General for Audits
Office of Inspector General
U.S. Department of State

Dear Mr. Brown:

Thank you for the opportunity to comment on the draft report entitled, "Audit of the Broadcasting Board of Governors Administration and Oversight of Acquisition Functions." We are pleased to note progress in addressing many of the issues identified by OIG in both the Outline for Action and in the draft report.

As referenced in earlier correspondence, the BBG has ended the use of "pre-approval" of contracts, and has communicated to the appropriate acquisition officials in the agency to cease domestic use of the quarterly sources sought synopsis. BBG has advised overseas contracting officers to discontinue use of sources sought synopses, effective this month. In addition, the agency has enlisted several contractors to assist with audit remediation efforts. In September, we contracted with a private audit firm to create a corrective action plan for addressing significant weaknesses in our contracting processes. We also retained the services of a consultant with more than 30 years of experience in Federal agency procurement law and operations in the U.S. and overseas. Both contractors are working with several internal task forces focused on improving contracting processes and operations. We believe this contract expertise will assist the agency in changing its acquisition "culture" and enhancing the professionalism of agency contract administration. Finally, the agency is working to update portions of the agency's Broadcast Administrative Manual (BAM) that address acquisitions.

In compliance with Recommendation 13, the Director of Global Operations has issued two memos – one to all agency offices involved in the acquisition process, explaining and emphasizing the importance of the role of the Office of Contracts, and affirming the requirement that all acquisitions comply with the Competition in Contracting Act and Federal Acquisition Regulation, and all other applicable acquisition-related laws, regulations, policies and procedures. The second memorandum issued by the Director was addressed to all employees reminding them that the aforementioned law, regulations, policies, and procedures define the responsibilities and authorities of all individuals/agency elements involved in the agency's acquisition process and are particularly relevant to the duties of the Senior Procurement Executive and contracting officers employees/agency elements requesting the contracting officer to acquire supplies or services and the contracting officer representatives. Copies of both memos

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are attached for your information (see Attachment 1 – Compliance with the FAR, for employees; and Attachment 2 – Compliance with the FAR, for contracting officers and purchase cardholders).

With respect to the recommendation in the Outline for Action regarding personal services contractors, the agency has begun work to transition from so-called Purchase Order Vendors (POVs) to one or more staffing agencies. In February, BBG issued a Request for Information (RFI) seeking firms potentially interested in providing broadcast journalism support services to submit capabilities statements and potential cost structures. The Agency received 12 submissions. The Agency is currently working on issuing a Request for Proposal to solicit bids from interested firms in order to implement this transition. Enclosure 1 to this letter, "Response to Draft Report Referencing BBG Compliance with Recommendations in Outline for Action," includes a further discussion and status update of Agency actions and analysis related to the recommendations in the Outline for Action. Enclosure 2, "Broadcasting Board of Governors Response Draft Report *Audit of the Broadcasting Board of Governors Administration and Oversight of Acquisition Functions*," provides the Agency response to each of the 38 recommendations in the OIG Draft Report.

We appreciate the expertise and professionalism of the OIG audit team throughout this audit, and look forward to consulting with them as we work toward full agency compliance with the Federal Acquisition Regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andre Mendes", is written over the word "Sincerely,".

Andre Mendes
Director of Global Operations

Enclosures: As Stated

Enclosure 1

**RESPONSE TO DRAFT REPORT REFERENCING BBG COMPLIANCE WITH
RECOMMENDATIONS IN OUTLINE FOR ACTION**

In the Outline for Action, the OIG made initial recommendations based on the OIG findings that the Agency may have exceeded its authority to hire personal service contractors (PSC), and that the Agency routinely engaged in a practice of so-called pre-approval, which ran the risk of entering into an obligation in advance of funds being available in an allotment. The Agency has already provided responses to these recommendations, and is looking to provide additional updated responses, including, as noted below, based on consultations with the Office of Management and Budget (OMB). In the meantime, given that the Draft Report indicates that the Agency has not yet complied with Recommendations 1 and 2 in the Outline for Action, the Agency wishes to provide the following update, to show Agency compliance, as appropriate. The Agency will continue to update the OIG and the Congress as this process continues.

Recommendation 1 (Outline for Action): *OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of personal services contracts that violate the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, "Reports on violations."*

The Agency takes the OIG's concerns very seriously. The Agency concurs that it cannot employ personal service contractors in excess of those authorized. While the Agency continues to assert, as a legal matter, that its use of independent contractors is consistent with the FAR, the Agency appreciates the risks identified by the OIG for any agency attempting to properly classify contractors. Therefore, the Agency has made a decision to transition away from the use of so-called Purchase Order Vendor (POV) contract vehicle and instead contract through one or more staffing agencies. This process is not designed to result in a change in the actual personnel which we currently utilize as independent contractors, but rather a large scale move away from the contracting vehicle which currently is most frequently utilized to bring them onboard.

As we discussed with the OIG, this transition is already underway, but will take time. In February 2014, the Agency began this process by issuing a Request for Information (RFI) seeking firms potentially interested in providing broadcast journalism support services to submit capabilities statements and potential cost structures. (That RFI is attached). The Agency received 12 submissions. The Agency is currently working on issuing a Request for Proposal to solicit bids from interested firms in order to execute this transition. The Agency is building out the timeline for a complete transition, and will update the OIG accordingly.

In the meantime, to mitigate the risks identified by the OIG, the Agency has sought authority from the Congress to employ up to "700 United States citizens or aliens" as personal service contractors. The Agency will also reissue clear guidance to each manager about the distinction between independent contractors and personal service contractors.

In the draft report, the OIG noted that the Agency informed the Congress regarding OIG's findings. However, the OIG has also asked that we file a report consistent with OMB circular A-11. In order to comply with the OIG's recommendation regarding notification, the Agency has discussed with OMB the possibility of submitting a circular A-11 report, notwithstanding the Agency's view, as a matter of law, that it has not exceeded its authority regarding PSCs, and there is no reportable violation of the Anti-Deficiency Act (ADA).¹ OMB has confirmed to the BBG that it considers the BBG to have begun a consultation process with OMB in accordance with section 145 of circular A-11. OMB is in the process of consulting internally and with the BBG on the draft report. The BBG will update the OIG as this process continues. If the determination from the current consultation process with OMB is that it is appropriate to report under the A-11 process, then we will do so accordingly. The Agency also wishes to make clear that it will, in any event, continue with the aforementioned restructuring of its contract workforce, to address the concerns raised by OIG.

Recommendation 2 (Outline for Action): *OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of pre-approval for contracts, which violates the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, "Reports on violations."*

As we have previously indicated, the Agency has ended the practice of pre-approval, and sent clear guidance to all employees that the practice will stop immediately.

In response to data provided by the BBG responding to the OIG's Outline for Action, the OIG, in the Draft Report, reported that it found that only a smaller subset of the original files actually concerned the OIG as apparently representing commitments in excess of that available in an allotment. The OIG also recognized in the Draft Report that if there are reportable violations under the Anti-Deficiency Act, they are at the allotment level, and did not assert that there were insufficient funds in the agency's appropriation or apportionment. While violations of an agency's own internal allotment are technical violations (as the Agency, at all times, had sufficient funds to cover these obligations), the Agency takes all violations (including these based on the Agency's own Funds Control Policy) very seriously, and is acting accordingly.²

¹ Regarding the latter, the OIG has said that to violate a cap on personal service contracts is to violate 31 USC 1342. However, the GAO Redbook makes clear that the term "personal services" in 31 USC 1342 does not refer to personal service contractors, but rather has a historical meaning related to accepting voluntary services, including from existing employees. See GAO Redbook page 6-95 ("the fundamental purposes embodied in section 1342 are to preserve the integrity of the appropriations process by avoiding 'coercive deficiencies' and augmentations"). The Agency wishes to reiterate that this is a technical point, and if the Agency believed it was violating the law, regardless of whether it was a reportable anti-deficiency act violation, it would cease the practice immediately.

² We also note, although it is a technical point, that these internal administrative divisions of funds at issue are more likely sub-allotments, as we initially divide (allot) the funds between the various entities (VOA, OCB, IBB, TSI, and the grantees). Funds were always available in these initial entity-level allotments. We are not contesting the OIG's assertion that violation of a sub-allotment (or allotment) can be a reportable violation of the ADA, but we just wanted to clarify this point.

Since receiving that Draft Report, the Agency has completed a deep dive to assess each of the contracts still flagged by the OIG in that report – i.e., (1) the four contracts (with a value of approximately \$51,000.00) which the OIG identified as containing commitments in excess of an allotment; and (2) the 24 contracts or blanket purchase agreements which the OIG found insufficient information to conclude whether or not there was a commitment in excess of an allotment.

As a result of that review, we have identified four contracts for which we cannot confirm that sufficient funds were available in an allotment at the time the agency incurred the obligation. If this is accurate, we will have exceeded the amount available in the corresponding allotment, which would be reportable violations of the ADA. We are conducting further internal investigations to confirm the facts in these cases. We have also gathered clear evidence to show that there were sufficient funds available in an allotment (at all times) with respect to all of the other (remaining) contracts identified by the OIG.

The Agency will conduct an additional review to verify these results, for purposes of fairness and due process. We will provide the OIG with our detailed analysis for each case where we have evidence to show that funds were (and were not) available in the allotment as of the time the agency incurred the obligation, so they will have the opportunity to validate our conclusions. If the final analysis confirms the existence of what the Agency has preliminary identified as potential violations of the ADA, we will follow the A-11 process and report accordingly.

Recommendation 3 (Outline for Action): *The OIG recommends that the Director of the International Broadcasting Bureau obtain the assistance of outside experts in Federal acquisition and contracting to conduct an acquisition assessment within the Office of Contracts. The assessment should include, at a minimum: a determination of the extent and full impact of noncompliance with Federal Acquisition Regulation; an action plan for the development and implementation of policies and procedures that ensure acquisition functions are performed in accordance with the Federal Acquisition Regulation; a training curriculum for all contracting officials to enhance education of acquisition regulations and policies; and performance evaluation standards for all pertinent contracting officials which hold officials accountable for the implementation of acquisition policies and procedures.*³

The Agency continues to fully concur with this recommendation. The Agency has already engaged the assistance of experts, as noted in our responses to the Outline for Action and the Draft Report, and will continue this process until all necessary tasks are completed. We will continue to update the OIG as to the Agency's progress.

³ Note: The OIG did not raise any issues with respect to BBG compliance with this recommendation in their Draft Report, but we wished to include reference to it here for the sake of completeness.

Enclosure 2

**Broadcasting Board of Governors Response
Draft Report *Audit of the Broadcasting Board of Governors Administration and Oversight of
Acquisition Functions***

BBG Responses to the Audit Observations and Recommendations

Recommendation 1. *OIG recommends that the Board of Governors develop an action plan to implement and track a restructuring of the acquisition process within the International Broadcasting Bureau to ensure that all procurements comply with Federal and agency procurement policies. The action plan must have measurable goals and milestones.*

Response: Concur. In response to OIG's Outline for Action Memo, BBG contracted with an outside expert to create a corrective action plan to improve the agency's acquisition processes including, but not limited to complying with all applicable Federal law and regulations. The BBG's action plan will include measurable goals and milestones. Additionally, the Board of Governors tasked a management working group to develop a new contracting structure for the agency. As a result, the agency began work to transition certain contractor personnel to staffing agencies by issuing a Request for Information (RFI) in February requesting firms potentially interested in providing broadcast support services to submit capabilities statements. After assessing the RFI submissions, the agency is in the process of preparing a Request for Proposal to procure its broadcast support services needs through one or more firms. This effort and its milestones will be included in the corrective action plan.

Recommendation 2. *OIG recommends that the Board of Governors develop and implement enforcement mechanisms to ensure accountability for compliance with the action plan developed in response to Recommendation 1. This must include regular monitoring and evaluation of the acquisition function and compliance with the action plan.*

Response: Concur. The Board of Governors will define a reporting protocol with the Interim Management Team to monitor and evaluate compliance with the corrective action plan. The Board of Governors will define enforcement mechanisms to ensure accountability and compliance. These measures will include a requirement that progress be tracked through monthly updates to the Board's Advisory Committee.

Recommendation 3. *OIG recommends that the Director of Global Operations adhere to the conditions stated in Title 22 U.S. Code Section 6206 for hiring personal services contractors; specifically, a determination of resources needed should be made; the Director should approve the employment of each personal services contractor; and contract length, including options should not exceed 2 years.*

Response: Concur. The agency will update the relevant portion of its Broadcasting Administrative Manual to incorporate all relevant conditions set out in 22 U.S.C. 6206 for BBG's Personal Services Contractor Pilot Program.

Recommendation 4. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to award and administer personal services contracts in accordance with the statutory requirements as defined by the Personal Services Contracting Pilot Program.*

Response: Concur. BBG will establish a training course covering award and administration of personal services contracts. Among other things, the training shall cover the requirements of 5 U.S.C. section 3109, 5 C.F.R. Part 304, FAR 37.104, BBG's Personal Services Contracting Pilot Program, and relevant provisions in BBG's BAM.

Recommendation 5. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with the Office of the Chief Financial Officer, develop and implement policies and procedures to ensure that funds are available at the beginning of the period of performance for each contract, which should include the tracking of contract period of performance and the maintenance of appropriate documentation within the contract file. If funds are not available for the entire term of a contract because of a continuing resolution, a subject to availability clause should be included in the terms and conditions of the contract, per the Federal Acquisition Regulation.*

Response: Concur. The agency will work collaboratively with stakeholders to develop and implement policies and procedures related to the issuance of contracts and the availability of funds clause at the beginning of the period of performance for each contract. This effort will include utilizing controls to monitor and manage contract status and period of performance. These policies will include a requirement for the contracting officer to include an "availability of funds clause" in every contract that BBG awards.

Recommendation 6. *OIG recommends that the International Broadcasting Bureau develop and implement fund control regulations, obtain approval from the Office of Management and Budget for the fund control regulations, and post the fund control regulations on its Web site, as required by Office of Management and Budget Circular A-11.*

Response: Concur. The BBG has begun drafting a new funds control regulation. The draft is being developed by the Office of the Chief Financial Officer and the Office of General Counsel. BBG will finalize a funds control regulation, seek OMB approval for this regulation, and post the final regulation on bbg.gov.

Recommendation 7. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting acquisition planning, in accordance with the Federal Acquisition Regulation. Specifically, criteria and thresholds should be established to dictate when a written acquisition plan is needed*

and guidance should establish what types of documentation should be maintained in the contract file.

Response: Concur. The Agency will draft an Acquisition Planning policy that complies with the FAR.

Recommendation 8. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance for conducting market research, in accordance with the Federal Acquisition Regulation. Specifically, criteria should be established to dictate the type and extent of market research to be performed for each procurement action, and what types of documentation should be maintained in the contract file.*

Response: Concur. BBG will develop policies and procedures and implementation guidance for conducting and documenting market research, including the type and extent of market research, and the date of performance for each procurement action in accordance with the Federal Acquisition Regulation (FAR).

Recommendation 9. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, cease the use of quarterly sources sought announcements for awarding contracts.*

Response: Concur. BBG communicated to the appropriate acquisition officials in the Agency to cease domestic use of the quarterly sources sought synopsis at the beginning of this fiscal year and advised overseas contracting officers to discontinue using the sources sought synopsis in April 2014. A copy of the communication is attached (see Attachment 3 – Communication on quarterly sources).

Recommendation 10. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance to ensure compliance with the Competition in Contracting Act and Federal Acquisition Regulation regarding the publication of contract actions.*

Response: Concur. BBG will develop policies and procedures and implementation guidance to ensure compliance with the Competition In Contracting Act (CICA) and the FAR regarding publicizing contract actions.

Recommendation 11. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop updated internal policies and procedures and implementation guidance to ensure that all offers are evaluated for each proposed contract action, and adequately documented in the contract file.*

Response: Concur. BBG will update its policies and procedures and implementing guidance to ensure that all offers are evaluated for all proposed contract actions and adequately documented in the contract file.

Recommendation 12. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop internal policies and procedures and implementation guidance, to ensure that*

justifications for other than full and open competition are adequately documented, and only utilized in accordance with Federal Acquisition Regulation guidance.

Response: Concur. BBG will develop policies, procedures, and implementing guidance covering CICA and FAR Part 6 entitled Competition Requirements, which includes FAR Subpart 6.3 entitled Other Than Full and Open Competition and FAR 6.303 entitled Justifications. The implementing guidance will require that Justifications For Other Than Full and Open Competition be included in contract files in accordance with FAR 4.803(a)(2). Please note that the Office of Contracts issued supplemental guidance to FAR Subpart 6.3 in Contracts Memo 01-01 dated April 12, 2001 (see Attachment 4 – Policy Memo 01-1 JOFOC). The Agency plans to update this policy memo and incorporate it into the BAM.

Recommendation 13. *OIG recommends that the Director of Global Operations provide guidance to all offices within the International Broadcasting Bureau to explain the role of the Office of Contracts and the requirement for all acquisitions to comply with the Competition in Contract Act and follow the Federal Acquisition Regulation, and to reinforce the authority of the Senior Procurement Executive.*

Response. Concur. The Director of Global Operations has issued a memorandum to agency staff involved in the acquisition process, explaining and emphasizing the importance of the role of the Office of Contracts, and affirming the requirement that all acquisitions comply with the Competition in Contracting Act (CICA), the Federal Acquisition Regulation, and all other applicable acquisition-related laws, regulations, policies and procedures. The Director has also issued a memorandum to all employees reminding them that the aforementioned laws, regulations, policies, and procedures define the responsibilities and authorities of all individuals/agency elements involved in the agency's acquisition processes and are particularly relevant to the duties of the Senior Procurement Executive, contracting officers, employees/agency elements requesting the contracting officer to acquire supplies or services and the contracting officer representatives.

Recommendation 14. *OIG recommends that the International Broadcasting Bureau hold comprehensive training to ensure that all employees involved in the acquisition process are aware of the Competition in Contracting Act and Federal Acquisition Regulation as it relates to competition, as well as the implications of noncompliance.*

Response: Concur. Following the further development of policies, procedures and implementation guidance, BBG shall establish an enhanced training curriculum covering the CICA and FAR as it relates to competition as well as the implications of noncompliance with CICA and FAR.

Recommendation 15. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop comprehensive policies and procedures and implementation guidance that directs contracting officers how to determine and document whether contract prices are fair and reasonable.*

Response: Concur. The Office of Contracts will develop comprehensive policies and procedures that adhere to all FAR requirements on how to determine and document that contract prices are fair and reasonable. The Office of Contracts will also issue implementation guidance mandating that contracting officers follow those policies and procedures. The guidance will also include examples of prohibited practices, such as allowing any Agency official other than the contracting officer to make a determination that the contract price is fair and reasonable.

Recommendation 16. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document contract price determinations.*

Response: Concur. The Office of Contracts will update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document contract price determinations. The training will emphasize how to conduct price analysis and provide examples of prohibited practices, such as using outdated pricing information.

Recommendation 17. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, review each of the contracts noted in Table 1 of Appendix A of the audit report to determine whether the contract price was fair and reasonable in accordance with Federal regulations. For each contract in which the price was determined not to be fair and reasonable, assess whether the contract can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contract. If the contract cannot be ratified, legal advice must be obtained to determine a resolution.*

Response: Concur in part. The Office of Contracts will review each of the contracts noted in Table 1 of Appendix A of the audit report to determine whether the contract price was fair and reasonable in accordance with the FAR. However, we note that there is no legal or regulatory authority requiring ratification of validly awarded contracts whose prices were subsequently unilaterally deemed too high by the Government solely due to the Government's failure to conduct appropriate cost or price analysis at the time of price negotiation to determine the prices being agreed to were fair and reasonable. Nor is there legal or regulatory authority permitting revising prices of validly awarded contracts. The same construct applies to validly awarded contracts whose prices are subsequently unilaterally deemed too low by the contractor. The Government and the contractor face the same risk. The Office of Contracts, however, will use the results of its review in its development of comprehensive policies and procedures that adhere to all Federal Acquisition Regulation requirements on how to document and determine prices are fair and reasonable discussed in response to Recommendation 15.

Recommendation 18. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to provide guidance to contracting officers on the type and extent of contractor responsibility determinations to be made for each award and the types of documentation that should be maintained in the contract file.*

Response: Concur. BBG will develop and implement policies and procedures for contracting officers about the type and extent of contractor responsibility determinations that must be made for each award as well as the documentation that must be maintained in each contract file.

Recommendation 19. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its policies and procedures for contractor requirements for the Data Universal Numbering System and registration within the Central Contracting Registry to ensure that these procedures are in accordance with the Federal Acquisition Regulation.*

Response: Concur. BBG will update its policies and procedures regarding contractor requirements for Data Universal Numbering System and registration in the System for Award Management to ensure these procedures comply with the FAR. The Office of Contracts has issued several memoranda on this subject, which will be updated and incorporate into the BAM.

Recommendation 20. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are appropriately trained to conduct and document responsibility determinations and to only allow exemptions under clearly defined circumstances in accordance with the Federal Acquisition Regulation or Office of Federal Procurement Policy guidance.*

Response: Concur. BBG will update its training curriculum accordingly.

Recommendation 21. *OIG recommends that International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance, which ensure that contracting officer's representatives (COR) are designated for every contract, and that this documentation clearly defines the COR's roles and responsibilities and is maintained in the contract file.*

Response: Concur. BBG has issued a new policy that requires CORs to be designated for every contract (see Attachment 5 – COR certification). The Agency has also updated and implemented BAM Title IX, Part 164 entitled Federal Acquisition Certification for Contracting Officers Representatives. The policy defines the COR's roles and responsibilities, and requires that a copy of the designation be maintained in the contract file. The policy currently requires that all contracts shall have a COR designated in writing, if a COR will have responsibility for contractor performance or invoice processing.

Recommendation 22. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance to ensure that contracting officers and contracting officer's representatives are fully aware of the type and extent of quality assurance procedures that should be performed in accordance with the Federal Acquisition Regulation, and the type of documentation that should be maintained in the contract file as supporting evidence of quality assurance.*

Response: Concur. BBG will develop and issue policies, procedures and implementing guidance reflecting the requirements of the FAR Part 46 entitled Quality Assurance. Further, contracting officers and CORs will be trained to comply with both FAR Part 46 and FAR Subpart 4.8 entitled Government Contract Files.

Specific to the concern that OIG found no evidence in several contract files for broadcast services that quality assurance was performed to determine service disruption hours, the agency can state without reservation that no break in service occurred. These broadcast services are constantly monitored (both domestically and overseas) for any break in service. Should there be a service disruption, the Director of Global Operations is immediately notified. That said, pursuant to the identification of this issue by OIG, BBG has established clear direction for submitting an annual Contractor Performance Evaluation to the Contracting Officer. A copy of the directive, as well as the Contractor Performance Evaluation form, is attached (see Attachment 6 – Satellite Monitoring Policy and Attachment 7 – Contractor Performance Evaluation).

Recommendation 23. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, review Contract No. BBG50-P-11-0009 and determine whether the contractor was paid an extra \$8,250 for work not performed. If this cost is determined unallowable, the Office of Contracts should seek reimbursement from the contractor.*

Response: Concur. The contract at issue called for the contractor – a Nigeria-based small business – to provide services in Nigeria. These services were related to holding town hall meetings and other matters. Although “tentative” dates were set for the town hall meetings, no mandatory dates or delivery schedule were specified in the contract.

This was a fixed-price contract for \$99,000.00. The contractor was required to deliver six equally-priced but undefined “units” at \$16,500.00 per unit. The contract did not specify that the “units” were months (although that may have been what the parties intended), nor is it clear what did constitute a “unit” under the contract. Although the pricing was based on six units, the contract called for a period of performance of November 15, 2010 through April 30, 2011 – a period of 5 ½ months (167 days), not six months.

The contractor delivered six units and BBG paid for six units. In its initial invoice, the contractor billed BBG \$16,500 for services performed in the month of November, 2010. That initial invoice was reviewed by BBG staff familiar with the contract and approved for payment. If we assume that services were provided at a consistent rate throughout the period of performance, the contractor may have over-charged for services performed in the month of November. But if we make that assumption, then it would also be true that the contractor under-charged for services performed in the months of December, January, February, March, and April. Over the course of the 5 ½ months contract performance period, however, the total amount invoiced to the Government was \$99,000 – the correct total amount called for in this fixed-price contract for six units.

BBG recognizes and appreciates that it was reasonable and appropriate to question the amount invoiced by the contractor for services performed in November. Upon review of the file, however, there was no evidence that the contractor over-charged BBG in total for the contract. Further, the contract's period of performance was extended for additional months, at no additional cost to the Government.

Under these circumstances, it has been determined that BBG will not seek reimbursement from the contractor.

Recommendation 24. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop policies and procedures and implementation guidance to ensure that contractors are not performing inherently Governmental functions.*

Response: Concur. BBG shall develop policies, procedures and implementation guidance to prevent contractors from performing inherently governmental functions. The Agency has begun drafting a policy to implement OFPP Policy Letter 11-01, entitled Performance of Inherently Governmental and Critical Functions, and will continue developing this policy and implement guidance that will be incorporated into the BAM to ensure contractors do not perform inherently governmental functions. Nevertheless, the information in BBG's possession demonstrates that hours were not relevant to how both contractors were paid under contracts BBG50-P-12-0092 and BBG39-A-11-0553. This is due to the fact that both contracts state that the contractors were paid by the assignment—not by the hour. As a result, both contractors submitted invoices which were approved and paid after two BBG employees signed off on those invoices and certified that "the goods and services on the invoice have been received by the BBG and are acceptable."

Recommendation 25. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, in coordination with Voice of America, English to Africa Language Service, develop policies and procedures and implementation guidance to ensure that documentation is required for all contractor expenses to provide evidence that the funds were expended in an appropriate manner.*

Response: Concur. BBG shall develop policies, procedures, and implementation guidance to ensure that documentation is required for all contractor expenses so that federal funds are disbursed in an appropriate manner.

Recommendation 26. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, determine whether the \$16,075 in unsupported costs for Contract No. BBG50-P-13-0600 were allowable, and if determined unallowable, recover those costs from the contractor.*

Response: Concur. The Office of Contracts will obtain documentation sufficient to allow the Contracting Officer to determine if BBG received the services specified, and whether the appropriate vendor was paid the appropriate amount for those services. In the event the payment or any part of the payment was inappropriate, BBG shall assign the Office of

the Chief Financial Officer and the International Broadcasting Bureau, Office of Contracts to recover the appropriate amounts from the contractor.

Recommendation 27. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance, which direct program officials regarding the use and extent of performance evaluations, to include the use of rating tools and clear indicators of performance.*

Response: Concur. BBG has drafted a policy regarding the use of the Contractor Performance Assessment Retrieval System (CPARS) for evaluation of contractor performance over the Simplified Acquisition Threshold (SAT) that is currently being reviewed. A policy for acquisitions below the SAT will be developed.

Recommendation 28. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and implementation guidance so that contracting officers are aware of how to utilize past performance evaluations when assessing potential contractors.*

Response: Concur. BBG will develop policies and procedures regarding the use of contractor performance evaluations in the award process.

Recommendation 29. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track contracting officer's training, so pertinent parties can be informed of missing training and resulting expired warrants.*

Response: Concur. BBG has developed and implemented a system to track contracting officer's training. The Agency currently maintains contracting officer warrants files. It also has drafted a new policy that establishes a new Contracting Officer Warrant System (COWS). The COWS policy includes provisions that will make it easier for the Agency to track contracting officers' training and take appropriate action when a contracting officer has not completed required training. The Agency will finalize this policy and incorporate it into the BAM.

Recommendation 30. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, to ensure that contracting officers obtain and maintain training requirements for compliance with the Federal Acquisition Certification for Contracting Officer program, including a course of action when requirements are not met.*

Response: Concur. The policies and procedures for the BBG Contracting Officer Warrant System (COWS) have been drafted and are being reviewed. The Agency will finalize this policy and incorporate it into the BAM.

Recommendation 31. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures, including a comprehensive training program, to ensure that contracting officer's representatives obtain and maintain training requirements in*

compliance with the Federal Acquisition Certification for Contracting Officer's Representatives program.

Response: Concur. The policies and procedures for the BBG Contracting Officer Representatives (COR) program have been updated and can be found at BAM Title IX, Part 164 entitled Federal Acquisition Certification for Contracting Officers Representatives (FAC-COR) (see also Attachment 8 – COR designation). These policies and procedures establish required COR training and require CORs to obtain and maintain FAC-COR certification.

Recommendation 32. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement a system to track contracting officer's representatives training, so pertinent parties can be informed of missing training and resulting expired certifications.*

Response: Concur. The Agency has updated and implemented BAM Title IX, Part 164 entitled Federal Acquisition Certification for Contracting Officers Representatives (FAC-COR). This policy requires CORs to register their training within the Federal Acquisition Institute Training Application System (FAITAS), which allows the Agency to monitor each COR's compliance with training and certification requirements.

Recommendation 33. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update policies and procedures and develop implementation guidance that mandates the documentation to be included in each type of contract file.*

Response: Concur. BBG will update policies and procedures mandating the documentation to be included in each type of contract file.

Recommendation 34. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop and implement policies and procedures to periodically perform quality control reviews of official contract files to determine compliance with internal guidance and the Federal Acquisition Regulation.*

Response: Concur. BBG will develop policies and procedures to periodically perform quality control reviews of official contract files to determine compliance with internal guidance and the FAR.

Recommendation 35. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, update its training curriculum to ensure that contracting officers and other responsible contracting officials are periodically trained on the required contents for the official contract file.*

Response: Concur. BBG is updating its training curriculum to ensure that contracting officers and other responsible contracting officials are periodically trained on the required contents for the official contract file.

Recommendation 36. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, assess whether the unauthorized commitments related to Contract Nos. BBG28-F-11-0031 and BBG50-J-12-0709 can be processed using the ratification authority in Federal Acquisition Regulation 1.602-3, and if so, ratify the contracts. If the contracts cannot be ratified, legal advice must be obtained to determine a resolution.*

Response: Concur. Contracting Officer's (CO's) warrants for GSA schedule orders normally allow for award up to the maximum order limitation of the schedule. In the matter of BBG28-F-11-0031, this language was inadvertently omitted from the warrant. Had it been placed in the CO's warrant, the CO would have had full authority to sign the contract. The CO has since retired. BBG28-F-11-0031 will be processed for ratification using the ratification authority in FAR.

In the matter of BBG50-J-12-07-0709, the CO's warrant has been reissued to allow award of delivery orders against BBG IDIQ contracts up to the maximum order limitation. This order will be processed for ratification using the ratification authority in the FAR.

Recommendation 37. *OIG recommends that the International Broadcasting Bureau, Office of Contracts, develop policies and procedures and appropriate internal controls to ensure that contracting officers cannot sign above their warrant levels.*

Response: Concur. The COWS policy reminding contracting officers about adherence to their warrant levels has been drafted and is being reviewed. The Acting SPE will ensure that internal controls are in place and will ensure that each CO is aware of dollar limitations on their contracting warrant. A CO who signs above his/her warrant level may have his/her contract warrant revoked or suspended. The Agency will finalize this policy and incorporate it into the BAM.

Recommendation 38. *OIG recommends that the Director of Global Operations develop and implement an updated reporting structure for contracting officers that are embedded in program offices to ensure that all contracting officers are provided with proper oversight by the Office of Contracts.*

Response: Concur. BBG will update the reporting structure for contracting officers who are currently embedded in program offices to ensure proper oversight by the Office of Contracts.

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