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(U) Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements

MANAGEMENT ASSISTANCE REPORT

(U) Summary of Review

(U) During an audit of the Department of State's (Department) aviation program, the Office of Inspector General (OIG) discovered that the Bureau of Medical Services (MED) awarded a sole-source contract (SAQMMA16C0077) in April 2016, on the basis of one contractor's unique capability to conduct aeromedical biocontainment evacuations. Although the contract did contain provisions relating to some peripheral services that were attendant to the specialized aeromedical biocontainment evacuations, the Department did not—at least until its response to a draft of this report—suggest that any of these services themselves justified a sole-source, non-competitive award.

(U) OIG found that MED never used the unique capability for an actual aeromedical biocontainment evacuation. Instead, from the time the contract was awarded, the aircraft was used exclusively for other activities, such as evacuations not requiring biocontainment or for the deployment of hurricane response teams. On two occasions MED held training events related to aeromedical biocontainment evacuations. Except for these two events, MED provided no documentation evidencing the aircraft's use for its unique and critical biocontainment capability.

(U) In September 2017, the Contracting Officer modified the aeromedical biocontainment evacuation contract on the basis of a recommendation from MED to stipulate that the aeromedical aircraft based in Africa could be used as an air taxi to transport Department employees between Kenya and Somalia. OIG determined that since the modification, the Kenya to Somalia air transport service was the primary use of the aircraft. This use did not require the unique biocontainment evacuation capability upon which the justification for the sole-source procurement was based. To the contrary, this change in the purpose of the contract—from emergency, biocontainment evacuation services to providing essentially commercial air taxi services—constituted such a significant change in the scope of the contract that it required full and open competition under the Competition in Contracting Act.

(U) OIG does not question at this time that a sole-source award for the biocontainment evacuation capability was warranted in 2016 or that at least some other services could be properly included as part of that contract. OIG also recognizes the need to develop and maintain this unique evacuation capability at the time of the original contract award, especially in the context of the 2014 Ebola outbreak in West Africa. However, on the basis of the actual missions assigned to these aircraft from the time of the 2016 award forward and the nature of the modification, OIG concludes that the 2017 modification was improper. That modification permitted the aircraft to be used almost exclusively for routine, non-emergency missions unrelated to the unique capability that had justified the sole-source award. As a result, the Department has used the sole-source contract for other services at higher costs to the taxpayer than would have been incurred using competed sources or the Department's own aircraft. OIG also notes that, in the course of evaluating the Department's response, it learned that the Department of Defense (DOD) has aircraft with biocontainment evacuation capability; this factor also casts doubt on the appropriateness of the modification.

(U) OIG determined that MED used the aircraft for a range of purposes beyond that justifying the sole-source procurement for two primary reasons. First, the critical need for aeromedical biocontainment evacuations subsided when the Ebola crisis ended in 2016.¹ According to the Contracting Officer's Representative (COR), rather than have the two aeromedical aircraft sit idle, the Department decided that the aircraft—one of which is based in the United States and the other in Africa—would be used for other purposes. Second, MED believed that using the aircraft for such other purposes would allow for cost savings and provide other value to the Department. However, MED's cost analysis and value-added analysis do not support these conclusions. To the contrary, using other Department-owned aircraft would have saved money and provided more value to the Department.

(U) As a result of the September 1, 2017, modification and attendant deviation from the original purpose and sole-source justification for the procurement, the Department has not taken advantage of aviation assets that the Department owns and that could have been used for air taxi services in Africa. Accordingly, MED expended funds imprudently. OIG estimates the Department can put approximately \$24 million in taxpayer funds to better use by not exercising the next 2 option years of contract SAQMMA16C0077.

(U) OIG also found that MED did not comply with Federal aviation regulations and Department aviation policies that govern use of Commercial Aviation Services (CAS). Specifically, relevant regulations require agencies to maintain oversight of various aspects of the flight program and to report on costs of these CAS.² Although the services procured under SAQMMA16C0077 qualified as CAS, MED did not comply with the requirements for establishing Flight Program Standards and did not report the cost and use of CAS aircraft, as required. Furthermore, Department policies allow the use of CAS only when it is more cost effective than using Department-owned aircraft and require the Aviation Governing Board (AGB) to approve aviation contracts. OIG found that using MED's aeromedical biocontainment evacuations contract for air taxi services was not more cost-effective than using Department-owned aircraft and that the AGB, moreover, did not approve the contract. These deficiencies occurred, in part, because MED incorrectly believed that the aircraft it uses did not have to

¹ (U) On January 14, 2016, the World Health Organization declared the end of the outbreak of Ebola virus disease in Liberia and stated that all known chains of transmission have been stopped in West Africa. Additionally, on March 29, 2016, the World Health Organization issued the following statement: "[The] Ebola transmission in West Africa no longer constitutes an extraordinary event, that the risk of international spread is now low, and that countries currently have the capacity to respond rapidly to new virus emergencies. Accordingly, in the Committee's view the Ebola situation in West Africa no longer constitutes a Public Health Emergency of International Concern and the Temporary Recommendations adopted in response should now be terminated. The Committee emphasized that there should be no restrictions on travel and trade with Guinea, Liberia and Sierra Leone, and that any such measures should be lifted immediately." The World Health Organization reiterated that flare-ups may occur but stated that, at that time, the disease no longer constituted an international emergency. Since then, according to the Centers for Disease Control and Prevention, three additional Ebola outbreaks have occurred, all within the Democratic Republic of the Congo.

² (U) Commercial Aviation Services include contracting for full services (i.e., aircraft and related aviation services for exclusive use).

comply with applicable Federal regulations or Department policy. Even MED acknowledges, however, that the General Services Administration (GSA) informally opined that the services provided under SAQMMA16C077 should be considered CAS and were therefore subject to relevant regulations and policies. Additionally, MED does not have sufficient contract oversight officials. The lack of oversight provided by an individual with technical aviation expertise poses safety risks to Department personnel.

(U) OIG made seven recommendations to address the deficiencies identified in this report. On the basis of the Deputy Under Secretary for Management's response to a draft of this report, who also responded on behalf of MED and the Bureau of Administration, OIG considers three recommendations resolved pending further action, three recommendations unresolved, and one recommendation closed. The Bureau of International Narcotics and Law Enforcement Affairs (INL) provided a separate response, in which they concurred with the coordinating actions required for the three recommendations made to INL.

(U) A synopsis of the Deputy Under Secretary for Management's and INL's comments and OIG's reply follow each recommendation in the Results section of this report. The Deputy Under Secretary for Management's response to a draft of this report is reprinted in its entirety in Appendix C, which includes general and technical comments. INL's response to a draft of this report is reprinted in its entirety in Appendix D. OIG's reply to the Deputy Under Secretary for Management's general comments concerning the audit findings is presented in Appendix E.

(U) OIG concludes with a few preliminary comments regarding that response, much of which seems to misconstrue OIG's position.

(U) First, OIG does not, at this time, question the 2016 sole-source award for the biocontainment evacuation capability. OIG also does not, at this time, independently question the various other uses for which the contract was employed up until the time of the modification. OIG does, however, question the modification in light of those other uses—none of which related to biocontainment evacuation. This fact should have alerted the Department of the need to reconsider its use of this contract. Instead, the Department expanded the contract and thereby committed itself to a potentially long-term obligation for routine services at costs that were originally established through a contract that was procured as a non-competitive, sole-source procurement.

(U) Second, although the Department has now asserted that the original sole-source contract was intended to be used broadly and encompassed a wide-range of services outside of biocontainment evacuation, the supporting documents do not substantiate this claim and, indeed, raise other concerns. The "Justification for Other than Full and Open Competition" (JOFOC) enabling the sole-source award generally declared a Department need for "multimission aircraft and aviation support services." The substantive justification set forth in

that document, though, that explained why a sole source award was necessary, however, pertained only to an aeromedical biocontainment evacuation capability and related services necessary to sustain that capability. That is, all of these additional services related to emergency situations. The substantive justification contained no discussion or explanation for combining or “bundling”³ contract requirements into a “total package approach” to include services not a part of an aeromedical biocontainment evacuation system (ABCS) capability or related emergency evacuation services. Moreover, in assessing the Department’s response, OIG conducted additional analysis that raised other concerns. For example, contrary to the Department’s assertions, it failed in 2016 to consider other companies that could potentially provide the non-ABCS services, and, MED did not at that time fully evaluate whether other sources within the government, such as the DOD could meet the Department’s needs at lower cost. The possible availability of ABCS capability elsewhere in the government and the possible availability of suitable lower-cost sources for non-ABCS services were outside the scope of the audit. This information, however, reinforces OIG’s recommendations to take a different approach going forward, and we specifically advise the Department to consider other resources—governmental and non-governmental— that may have become available since the original contract was awarded.

(U) Finally, even though much of the Department’s response invokes national security and policy concerns and argues that it is essential for the Department to have a means of evacuating personnel from its East Africa posts, OIG does not and never has suggested that the Department should forego any needed capabilities. OIG moreover does not purport to question the Department’s programmatic, policy decisions. OIG’s point is much more limited: modifying a sole source contract for biomedical evacuation services is not the appropriate way to obtain these other services that the Department now says are essential for its mission. Those services should be obtained through existing government resources or through an appropriate competitive contract.

³(U) The term “bundling” is most commonly used in Federal small business law. “Bundling of contract requirements” is defined in the Small Business Act (SBA) to mean “consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern....” 15 U.S.C. § 632(o)(2). The term “bundling” is also used more loosely, however, as a synonym for the “total package approach”—that is, combining divisible components of an agency procurement requirement into one contract awarded to a single vendor able to provide every component, even though other vendors might be able to provide one (but not every) individual component if the procurement were divided into multiple contracts. *Masstor Systems Corp.*, B-211240 (Comp. Gen. Dec. 27, 1983). The Department’s response appears to use “bundling” in the latter sense. In this report OIG uses “bundling” interchangeably with “total package approach” and not as the term is defined in the SBA.

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(U) BACKGROUND

(U) The Office of Foreign Programs within MED is responsible for authorizing and managing medical evacuations of Department employees and their eligible family members.¹ According to a MED official, almost all Department medical evacuations are performed using commercial airlines. When non-commercial flight services are required, they are normally procured locally on an as-needed basis. However, as part of the Department's 2014 response to the Ebola outbreak, MED determined that the Department lacked access to medical evacuation services that could properly transport patients who had or potentially had Ebola. Because of the highly contagious nature of the disease and the lack of available treatment, medical evacuations needed to be handled in a controlled manner. The lack of access to proper medical evacuation services was a barrier to providing emergency care to U.S. Government personnel serving in the countries most affected by the Ebola outbreak. Furthermore, the Department believed that the lack of sufficient medical transport could discourage medical professionals from responding to the health crisis because the Department would not be able to effectively evacuate the health care professionals for medical treatment in the United States, if needed.

(U) In response to that determination, MED's Office of Operational Medicine awarded Phoenix Air Group, Inc. (PAG) two aeromedical biocontainment evacuation contracts—both in 2014.² Each of these contracts was for an on-call aircraft charter service for the Department to perform emergency movement of personnel and retrieve critically ill or exposed personnel. PAG has the capability to outfit its aircraft with an ABCS that allows for the safe transport of evacuees with highly communicable pathogens, such as Ebola. An ABCS is a soft plastic tent that is set up inside a steel frame. It is used for single patient movement and designed specifically for the aircraft used by PAG. According to a MED official, because an ABCS was a requirement for the transport of Ebola patients and PAG was the only company with this capability, both contracts were awarded as sole-source contracts. Figure 1 presents a sequence of photographs depicting the ABCS and the aircraft, a Gulfstream GIII, used by PAG to transport personnel exposed to highly communicable pathogens, such as Ebola.

¹ (U) 1 FAM 363.3a. "Office of Foreign Programs."

² (U) Contract SAQMMA14C0155 was awarded to PAG in August 2014 and the period of performance ended February 6, 2015; a total of \$6,806,572 was expended during this timeframe. Contract SAQMMA15C0022 was awarded in December 2014, the period of performance began February 7, 2015, and ended on May 7, 2016; a total of \$14,173,347 was expended during this timeframe.



(U) **Figure 1:** ABCS and the aircraft, Gulfstream GIII, used by to transport personnel exposed to highly communicable pathogens such as Ebola.

(U) **Source:** MED "White Paper 1 – Medical Evacuation of Patients with Highly Contagious Diseases - An Interagency Overview," 2014, and "White Paper 2 - Update to Medical Evacuation of Patients with Highly Contagious Diseases," 2014.

(U) In April 2016, the Bureau of Administration, on behalf of MED, entered into a new, \$60 million contract with PAG for aviation support services.³ The contract states that "[t]he objective of this contract is to obtain on-call aircraft services for use by [the Department] to perform emergency deployment of personnel and equipment, and retrieval of eligible personnel, including personnel that are critically ill and may or may not be infected with unique and highly communicable pathogens." The contract called for two chartered aircraft to be "on call" for the Department's use—one aircraft is based in Cartersville, GA, and the other in Dakar, Senegal.⁴

(U) The contract is comprised of 15 contract line item numbers which describe the different contract costs. Some of the costs remain fixed regardless of whether or not the aircraft is used; for example, monthly charges for a dedicated aircraft and flight crew (both domestically and abroad), and storage and maintenance of Government-furnished equipment. Other costs have a fixed unit price, but charges to the Department vary based on the number of missions flown, or other factors; for example, flight and labor hours, flight cancellations, and aircraft

³ (U) SAQMMA16C0077 was signed on April 4, 2016, and has a ceiling value of \$60 million. The sole-source contract has a 2-year base period and 3 option years. The Contracting Officer is from the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management, and the COR is from MED.

⁴ (U) SAQMMA16C0077 modification 11 changed the overseas contractor base from Dakar, Senegal, to Nairobi, Kenya.

reconfigurations. PAG bills the Department on a monthly basis for the fixed charges, and separately bills the Department for each mission based on the additional costs incurred.

(U) Department's Office of Aviation

(U) The Department's aviation program was created in 1976 to support narcotics interdiction and drug crop eradication programs and is managed by the Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation (INL/A).⁵ Since 1976, the aviation program has grown to include many different types of activities that are being performed using a large worldwide aircraft fleet extending from South America to Asia. The aircraft are generally used to conduct official Department business, for counter-narcotics or law enforcement operations, or other foreign assistance purposes.⁶ The mission of INL/A, also known as the Air Wing, is to provide aviation management, expertise, and resources to strengthen law enforcement, support counter-narcotics and counter-terrorism efforts, and provide safe and efficient aviation support to meet all Department aviation requirements. INL/A operates the Department's aviation program using a worldwide aviation support services contract and is responsible for compliance with Federal and Department aviation requirements using a network of Government Technical Monitors (GTM)⁷ who serve as aviation advisors at every location where Department aircraft are operated.

(U) Federal Aviation Regulations and Department Aviation Policies

(U) Title 41 of the Code of Federal Regulations (C.F.R.), "Public Contracts and Property Management," provides specific oversight and Federal reporting requirements on the management of Government aircraft.⁸ Office of Management and Budget (OMB) Circular A-126, "Improving the Management and Use of Government Aircraft," prescribes policies to be followed by Executive Agencies in acquiring, managing, using, accounting for, and disposing of aircraft. The Department's Foreign Affairs Manual (FAM) also provides guidance on managing aircraft. For example, the Department's policy is to account for and report the various data pertaining to Department-owned or exclusively leased aircraft.⁹

⁵ (U) INL Aviation Program Policies and Procedures Handbook 2015, Section 1.2, "Background on INL Aviation Support Programs."

⁶ (U) Ibid.

⁷ (U) According to 14 Foreign Affairs Handbook 2 H-124.1, "Definitions," a GTM is an individual designated by the Contracting Officer to assist the COR in monitoring a contractor's performance.

⁸ (U) 41 C.F.R. §102-33, "Management of Government Aircraft."

⁹ (U) 2 FAM 811 (a), "Policy."

(U) Federal Contracting Regulations for Competition

(U) The Competition in Contracting Act and the Federal Acquisition Regulation (FAR) require that all Federal Government contracts be awarded on the basis of full and open competition unless a statutory exception applies.¹⁰ The Competition in Contracting Act states in relevant part,

[A]n 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 [FAR]; and
(2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.¹¹

(U) One statutory exception to the Competition in Contracting Act's "full and open competition" requirement states,

An executive agency may use procedures other than competitive procedures only when—
(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency.¹²

(U) The FAR states that use of the full and open competition exception "may be appropriate . . . [w]hen there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities."¹³

(U) The FAR further states that a Contracting Officer shall not enter into a sole-source contract without a written justification for other than full and open competition. The justification for other than full and open competition must include the following information:

- Identification of the agency and the contracting activity and specific identification of the document as a "Justification for other than full and open competition."
- Nature or description of the action being approved.
- A description of the supplies or services required to meet the agency's needs (including the estimated value).

¹⁰ (U) 41 United States Code (U.S.C.) § 3301 (a), "Full and open competition." In addition, FAR 6.101 and 13.104 prescribe the policies and procedures that Federal agencies must follow in acquiring goods and services.

¹¹ (U) 41 U.S.C. § 3301 (a).

¹² (U) 41 U.S.C. § 3304 (a)(1), "Use of noncompetitive procedures" (formerly 41 U.S.C. § 253); *see also* FAR 6.302-1, "Only one responsible source and no other supplies or services will satisfy agency requirements" (citing 41 U.S.C. § 3304(a)(1)).

¹³ (U) FAR 6.302-1(b)(1)(i), "Only one responsible source and no other supplies or services will satisfy agency requirements," and FAR 13.106-1(b), "Soliciting competition."

- An identification of the statutory authority permitting other than full and open competition.
- A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
- A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.
- A determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable.
- A description of the market research conducted and the results or a statement of the reason market research was not conducted.
- Any other facts supporting the use of other than full and open competition.¹⁴

(U) U.S. Mission to Somalia

~~(SBU)~~ U.S. foreign policy objectives in Somalia are to promote political and economic stability; prevent the use of Somalia as a safe haven for international terrorism; and alleviate the humanitarian crisis caused by years of conflict, drought, flooding, and poor governance. On September 8, 2015, the Department formally launched the U.S. Mission to Somalia (Mission Somalia), which had been based at U.S. Embassy Nairobi, Kenya. In Somalia, U.S. Government personnel are permitted by the Under Secretary for Management to remain at the Mogadishu International Airport in an alternate residential compound. The U.S. Government's diplomatic presence in Somalia has continued to grow. In 2017, the U.S. Government had 18 to 28 Foreign Service Officers and other Department personnel who regularly worked in Somalia, either under a temporary duty assignment or residing at the alternate residential compound. Travel to Somalia for most employees under a temporary duty assignment originates in Nairobi, Kenya.

(b) (7)(F)



(U) Purposes of the Management Assistance Report and Related Audit

(U) This Management Assistance Report is intended to communicate deficiencies that OIG identified during its audit of the Department's administration of the aviation program.¹⁵ See Appendix A for additional details of the purpose, scope, and methodology.

¹⁴ (U) FAR 6.303, "Justifications."

¹⁵ (U) OIG, *Audit of the Department of State's Administration of its Aviation Program* (AUD-SI-18-59, September 2018).

(U) RESULTS

(U) Finding A: The Bureau of Medical Services Inappropriately Modified a Sole-Source Contract

(U) OIG found that the Department awarded a sole-source contract (SAQMMA16C0077) in April 2016 on the basis of a justification that the contractor had a unique capability to conduct aeromedical biocontainment evacuations. However, the contract was never used to conduct an aeromedical biocontainment evacuation. Instead, MED used the contract for other purposes unrelated to the justification for the sole-source award in 2016, such as aeromedical evacuations not requiring biocontainment and for the deployment of hurricane response teams.¹⁶ OIG does not question the original sole-source contract because the procurement and maintenance of this biocontainment evacuation capability may have been reasonable at the time, especially in the context of the 2014 Ebola outbreak in West Africa. However, on September 1, 2017, after it had become clear that the specialized capability that had served as the basis for the sole-source award was not needed, the Contracting Officer modified the aeromedical biocontainment evacuation contract on the basis of a recommendation from MED to stipulate that the aeromedical aircraft based in Africa could be used to transport Department employees between Kenya and Somalia. This modification of the contract was inconsistent with the unique capability upon which the justification for the sole-source procurement was based. OIG determined that, as of April 2018, the Kenya to Somalia air transport service remains the primary use of the aircraft and that it has still not been used for aeromedical biocontainment evacuation.

(U) The Competition in Contracting Act and the FAR require that all Federal Government contracts be awarded on the basis of full and open competition, unless a statutory exemption applies. MED deviated from the Competition in Contracting Act and the FAR when it modified a sole-source contract, originally awarded on the basis of a unique capability for a specific service that the contractor could provide, after it was aware that this specific service was not needed. MED also deviated from the Competition in Contracting Act and the FAR by changing the primary use of the aircraft to a routine transportation service that is commercially available while paying more for a virtually unused capability.

(U) OIG identified two primary reasons that MED used the aircraft for purposes other than that which justified a sole-source award and ultimately modified the contract. First, the immediate need for aeromedical biocontainment evacuations subsided when the Ebola crisis ended, which was approximately 3 months before the sole-source contract was awarded. According to the COR for the aeromedical biocontainment evacuation contract, rather than having the two aeromedical aircraft sit idle, the Department decided that the aircraft—one of which is based in the United States and the other in Africa—would be used for other purposes. Second, MED believed that using the aircraft for these purposes would allow for cost savings and provide

¹⁶ (U) MED provided information indicating it that held training events related to the aeromedical biocontainment capability on two occasions.

other value to the Department. However, OIG analyzed MED's cost analysis and value-added analysis and identified significant flaws. On the basis of its analysis, OIG concludes that using Department-owned aircraft would have saved money and provided more value. OIG also notes that MED did not perform a documented cost analysis until after the contract was modified.

(U) Overall, the services performed after the 2017 modification were available from other sources. Accordingly, the sole-source contract should not have been modified to expand its scope to non-unique services; instead, these services should have been awarded competitively. Because the first option year of the contract will end in May 2019, OIG recommends that the Department elect to not exercise option years 2 and 3, thereby putting \$24 million in taxpayer funds to better use.

(U) Contracting for Aeromedical Biocontainment Evacuation Services

(U) SAQMMA16C0077 is a sole-source contract. The justification for this sole-source contract stated that the aeromedical biocontainment evacuation contract was a sole-source procurement using the statutory authority permitting other than full and open competition according to the statement in Chapter 41 of the U.S.C., § 3304(a)(1), and FAR 6.302.1 that "[o]nly one responsible source and no other supplies or services will satisfy agency requirements." The justification represented that PAG was the only source because:

The movement of patients infected with highly contagious pathogens, as with the current Ebola Virus epidemic, requires the use of an air-transportable biocontainment [ABCS] unit. A unit was designed and built by the [Centers for Disease Control and Prevention] in 2006 in collaboration with the PAG in Cartersville, GA. The [ABCS] is the only contagious patient airborne transportation system in the world which allows attending medical personnel to enter the containment vessel in-flight to attend to the patient, thus allowing emergency medical intervention such as new [intravenous] lines, intubation, etc.¹⁷ PAG owns the intellectual property rights to the ABCS system, and is the only firm currently equipped and [Federal Aviation Administration] approved to perform missions using that system. At the direction of the National Security Staff, the Federal Aviation Administration conducted a search of their Supplemental Type Certification database in November, 2014, and found no comparable capability in other vendors.

(U) The statement of work more broadly states:

The contractor will be responsible for providing on-call aircraft services for use by [the Department] to perform emergency deployment of personnel and equipment, and retrieval of eligible personnel, including personnel that are critically ill and may or may not be infected with unique and highly communicable pathogens.

¹⁷ (U) OIG found that the ABCS is not the only contagious patient airborne transportation system in the world that allows attending medical personnel to enter the containment vessel in-flight. In fact, the DOD's Transportation Isolation System has this capability and according to the DOD, "allows for much more robust in-flight medical care."

(U) On the basis of information in the statement of work and the justification, OIG concludes that the unique capability procured by SAQMMA16C0077 was to provide aeromedical biocontainment evacuation capabilities that would be reliably available on short notice under various contingencies and in various aircraft configurations. The sole-source contract was awarded to PAG on the basis of a determination that it was the only supplier with a unique aeromedical biocontainment capability. Medical evacuations and deployment of crisis response personnel were authorized as necessary to support that primary purpose. Under the contract, the aircraft could be used for other missions, such as transporting critically ill personnel, whether or not they needed aeromedical biocontainment. The contract, however, described these other permitted missions as evacuations involving patients who may have been exposed to highly contagious pathogens and required medical evacuation whether or not they had yet exhibited clinical symptoms of infection and therefore may or may not have required biocontainment in each case. Such missions required a flight crew and medical crew with the same training and capabilities as a biocontainment evacuation. In short, the various lines of activity described under the scope sections of the contract could all be understood as reasonably related to the unique aeromedical biocontainment evacuation capability for which the Department determined that it had a need. Viewed in that light, the original contract in itself was a reasonable exercise of the Department's sole-source authority.

(U) However, some of the services procured under the original contract, would have been proper for a full and open competition, which is ordinarily less expensive than sole sourcing, had they not been tethered to the unique aeromedical biocontainment mission on which the contract was based. Aeromedical evacuation not involving exposure to highly contagious pathogens, for example, is not a unique capability. Procurement of such capabilities standing alone would have required full and open competition. (Indeed, OIG conducted a limited search that identified seven companies offering international air medical evacuation services.)

(U) Initially, MED told OIG that the aircraft provided by contract SAQMMA16C0077 had, at most, been used for two training events related to the ABCS functionality and had never been used for an actual aeromedical biocontainment evacuation, even though this was the justification for the sole-source contract. However, in April 2018, MED officials modified their response and stated that the ABCS had been used on several occasions, including to conduct training events and to move Ebola laboratory samples. OIG analyzed supporting documentation to verify MED's statements. Regarding the training events, OIG reviewed the relevant invoices and found that the ABCS functionality was used for only two training events. OIG could not verify that the ABCS functionality was used to transport Ebola laboratory samples, because the relevant invoices did not provide evidence that the use of the ABCS functionality had occurred.¹⁸

¹⁸ (U) The Ebola samples were moved from Liberia to the National Institutes of Health at Fort Detrick, MD, in October 2016. According to the COR, the PAG aircraft was used because it has a special ventilation system, which is a component of the ABCS functionality but is not a part of the ABCS that needs to be installed or destroyed after its use.

(U) Use of Aeromedical Biocontainment Evacuation Services

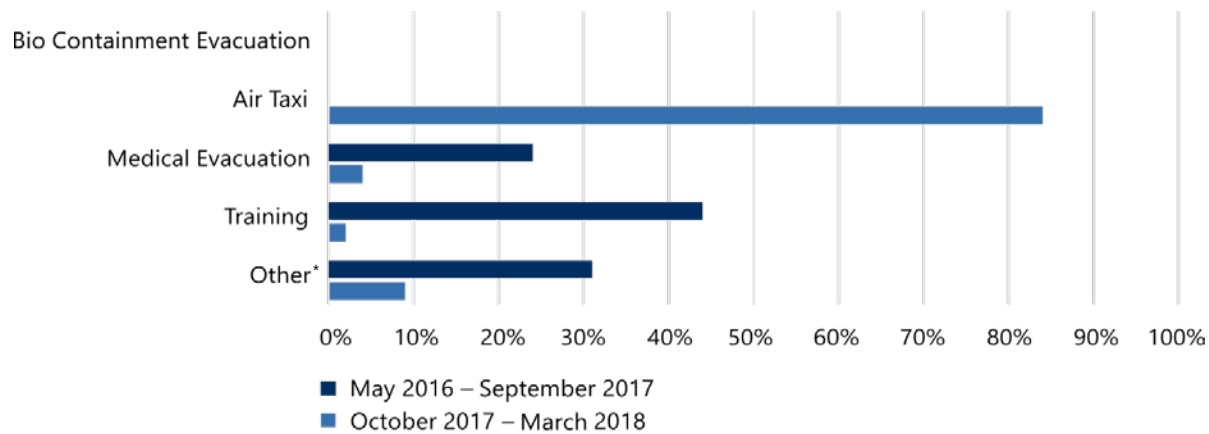
(U) Prior to modification 11, between April 2016 and September 2017, OIG found that 24 percent of the missions flown under the contract related to medical evacuations, none of which was for transporting patients with highly contagious pathogens. Specifically, according to documents obtained from the Department, during FY 2016 and FY 2017, of the 45 missions PAG flew for the Department, only 11 were medical evacuation missions. Approximately 29 percent of the FY 2016 and FY 2017 missions flown using SAQMMA16C0077 related to authorized or ordered post evacuations. For example, PAG flew 16 missions to evacuate individuals or deploy crisis response personnel from or to the Caribbean region because of Hurricanes Irma and Maria in September 2017.¹⁹ Other uses of contract SAQMMA16C0077 included deploying Department employees to various locations. For example, one of the PAG aircraft was used to transport Bureau of Diplomatic Security agents from Washington, DC, to Las Vegas, NV, to perform a training exercise, at a cost of \$91,453.²⁰ According to GSA, the Government fare for a commercial flight from Washington, DC, to Las Vegas, NV, during this time period was approximately \$300 round trip. Accordingly, the round trip cost for the 10 agents would have totaled \$3,000. Had commercial flights been used instead of the PAG aircraft, a savings of \$88,453 would have been realized. In another example, three Washington, DC-based Department personnel were transported to Kuwait City, Kuwait, at a cost of \$283,840.²¹ Many commercial flights for this route are under \$1,000; had the Department personnel flown commercial, a savings of \$280,840 would have been realized. In a third example, nine Washington, DC-based Department personnel were transported from Washington, DC, to Catania, Italy, at a cost of \$93,595. Many commercial flights for this route are under \$1,000; had the Department personnel flown commercial, a savings of \$84,895 would have been realized. Figure 2 provides information on the types of missions performed using aircraft from contract SAQMMA16C0077, both before and after the modification.

¹⁹ (U) Evacuees included U.S. Government personnel, U.S. citizens that did not work for the U.S. Government, and citizens from other countries.

²⁰ (U) From September 24 to 27, 2017, MED and the Bureau of Diplomatic Security executed a training exercise during which DS replicated the crisis deployment of a security team to a mock embassy at a training center in Las Vegas, NV.

²¹ (U) OIG notes that MED initially stated that the purpose of this mission was a medical evacuation. On the basis of an invoice review, OIG determined that the aircraft was not in an air ambulance configuration, as would be necessary for a medical evacuation, and that no medical staff were aboard the flight. Additionally, the aircraft flew the passengers from Washington, DC, to Kuwait City, Kuwait, making it unlikely that this was a medical evacuation.

(U) Figure 2: Types of Missions Performed Under Contract SAQMMA16C0077 Before and After Modification



(U) * Other uses of the aircraft include deployment of crisis personnel, non-medical evacuation of American and non-American citizens, cargo shipments, and repositioning flights with no passengers.

(U) **Source:** Prepared by OIG from information obtained from MED and the Integrated Logistics Management System.

(U) The unique biocontainment capability was the basis for the non-competitive award in the first place. On the basis of information received to date, OIG does not conclude at this time that any particular use of the contract aircraft from the time of the award up until the modification addressed subsequently was an improper exercise of the contract or a violation of relevant law or regulations. However, OIG found that, over the course of almost 18 months, the Department did not use this non-competitive contract even once to evacuate a patient with a highly contagious pathogen. This course of conduct is relevant in assessing the propriety of the modification discussed subsequently. That is, the Department's failure to use the contract for its intended purpose did not justify a modification but rather should have led to a more fundamental reassessment of the contract and its utility.

(U) Modification 11 to SAQMM16C0077

(U) In September 2017, the Contracting Officer issued modification 11, which stated:

[The Department] has a requirement for a rapidly deployable aviation capability transporting response personnel and retrieving eligible persons and critically ill patients safely, swiftly, and securely to and from locations in Somalia, while continuing to support medical evacuation and biocontainment requirements on the African continent. With the move from Dakar to Nairobi, the Department would maximize the efficiency of aviation operations in Africa by leveraging spare capacity within the existing multi-mission aviation support services contract to support Mission Somalia from a base in Nairobi, Kenya.

(U) By this time, however, biocontainment capability could not be used to justify going forward with a sole-source contract, and all the other services could have been performed by other contractors. PAG is not uniquely qualified to perform routine air taxi services.

(SBU) Initially, in November 2016, (b) (7)(F)

(b) (7)(F)

(b) (7)(F)

In an email dated March 6, 2017, the COR for the PAG contract stated to the Contracting Officer that the PAG aircraft based in Africa could be relocated to provide the air transport service.²³ According to MED, taking this approach would allow the Department to maximize the efficiency of aviation operations in Africa by leveraging spare capacity within the existing multi-mission aviation support services contract to support Mission Somalia from a base in Nairobi, Kenya. This aircraft service was considered a "multi-mission aircraft and aviation support" and would satisfy the Department's requirement for movement of diplomatic personnel involved in high-threat diplomatic engagement in Somalia from Nairobi, Kenya, to Mogadishu, Somalia. Nothing suggested that the unique ABCS capabilities would be relevant for this expanded contract scope.

(U) On May 8, 2017, INL/A provided a cost-benefit analysis that demonstrated using Department-owned assets and the worldwide aviation support services contract would provide greater benefit to the Department than would using the aeromedical biocontainment aircraft under the PAG contract (SAQMMA16C0077). The analysis demonstrated the additional benefits of using Department-owned aircraft for the air shuttle service. However, no documentation indicates that the Contracting Officer ever received or considered the INL/A-prepared cost-benefit analysis.²⁴

(U) On September 1, 2017, the Contracting Officer executed the modification to the PAG contract (SAQMMA160077), thereby approving the rebasing of the aeromedical biocontainment aircraft from Dakar, Senegal, to Nairobi, Kenya, for the primary purpose of transporting Department employees between Kenya and Somalia. On October 4, 2017, the aeromedical aircraft began to provide air shuttle service between Kenya and Somalia. As subsequently noted in more detail, however, MED's own cost analysis justifying this approach was not dated until October 6, 2017.

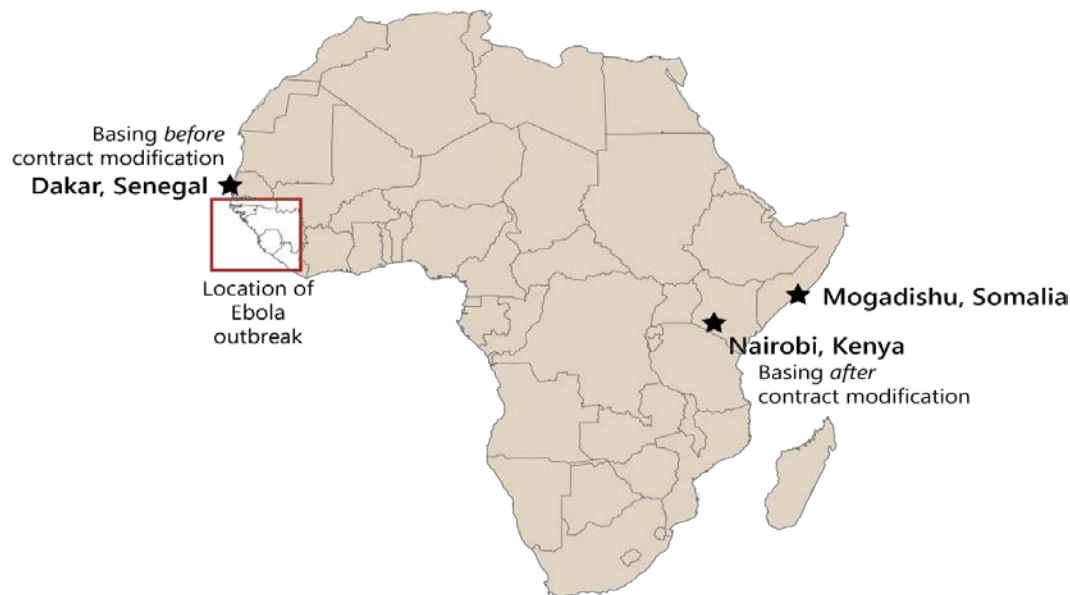
²² (U) U.S. Mission to Mogadishu – Emergency Action Plan, H-758 Decision Points and Consolidated Actions to Consider.

²³ (U) According to the MED Memorandum, "DRAFT Quality Concerns, re: Draft Management Assistance Report Titled 'Out of Scope Use of the Bureau of Medical Services' Sole Source Contract for Aeromedical Biocontainment Evacuations," page 47, the MED COR was directed to develop a cost model via a phone call from the Executive Assistant to the Deputy Under Secretary for Management on March 3, 2017.

²⁴ (U) FAR 7.102(a)(4), "Policy," states that agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions to promote and provide for: appropriate consideration of the use of pre-existing contracts, including interagency and intra-agency contracts, to fulfill the requirement, before awarding new contracts. The Contracting Officer is required to consider contractor vs. government performance with consideration of OMB Circular A-76 as part of the acquisition plan required by FAR 7.105(b)(9).

(U) OIG found that, since the modification, the Kenya to Somalia routine transport has become the primary use of the PAG aircraft. Specifically, between the dates of October 4, 2017, and March 31, 2018, the aircraft was used 72 times (96 percent) for routine transport and 3 times (4 percent) for other purposes. Figure 3 presents the 3,800-mile change in base of the PAG aircraft as a result of modification 11 to contract SAQMMA16C0077.

(U) **Figure 3: Change in Base as a Result of Modification 11**



(U) **Source:** Generated by OIG from data provided by the Department.

(U) Causes of the Inappropriate Modification

(U) The inappropriate use of the PAG aircraft, which culminated in the unwarranted modification, occurred, in part, because the immediate need for aeromedical biocontainment evacuations subsided when the Ebola crisis ended. The evacuation of Ebola patients was an inarguably critical priority. However, as noted previously, the World Health Organization announced the official end of the Ebola crisis on January 14, 2016, which is approximately 3 months prior to when contract SAQMMA16C0077 was awarded. Additionally, on March 29, 2016, the World Health Organization issued the following statement:

[The] Ebola transmission in West Africa no longer constitutes an extraordinary event, that the risk of international spread is now low, and that countries currently have the capacity to respond rapidly to new virus emergencies. Accordingly, in the Committee's view the Ebola situation in West Africa no longer constitutes a Public Health Emergency of International Concern and the Temporary Recommendations adopted in response should now be terminated. The Committee emphasized that there should be no restrictions on travel and trade with Guinea, Liberia and Sierra Leone, and that any such measures should be lifted immediately.

(U) The World Health Organization reiterated that flare-ups might occur but stated that the disease no longer constituted an international emergency. Therefore, the Department's need for two on-call aircraft to perform aeromedical biocontainment evacuations had diminished substantially. According to the COR, rather than having the two aeromedical planes sit idle, MED decided that the planes would be used for other purposes.

(U) MED's Cost Analysis versus INL/A's Cost Analysis

(U) The deficiencies identified also occurred because MED justified modifying the contract on the basis of the assertion that the new mission of using the aeromedical biocontainment evacuation aircraft for performing the routine Kenya to Somalia air transport would be "highly cost effective." This assertion, however, was incorrect, and MED moreover made this statement before the date of the cost-benefit analysis it provided to OIG. On the basis of information presented to OIG, MED was not able to conclude that the air taxi service would be "highly cost effective."

(U) The cost-benefit analysis that MED provided to OIG was dated October 6, 2017, which was almost 1 month after the decision was made to modify the contract.²⁵ On the basis of an analysis of the document, OIG concluded that MED's cost analysis was flawed and underestimated the costs associated with the Somalia to Kenya air shuttle service for the first year of service by \$3.6 million. This deficiency was due, in part, to the fact that MED did not include all relevant costs. For example, MED only included 10 percent of fixed contract costs in its analysis, which was an erroneous assumption. Moreover, OIG compared historical usage data to projected air shuttle usage data under SAQMMA160077 and found that, conservatively, the aircraft would be used more than 50 percent of the time for the air shuttle service, meaning at least 50 percent of fixed costs should be attributed to the service. Furthermore, OIG found that MED charged the Bureau of African Affairs \$6 million for the first year of air shuttle service, which is much greater than MED's representation within the cost-benefit analysis that the service would cost \$3.9 million for the first year.

²⁵ (U) On April 10, 2018, MED provided OIG with an email dated March 17, 2017, between the COR and the Office of the Deputy Under Secretary for Management. On June 5, 2018, the COR stated that this email was the cost analysis regarding the use of SAQMMA16C0077 to perform the air shuttle service. The Department's response also makes this point. However, OIG reviewed the email and found that the information in the email did not appear to be a detailed, accurate, or supportable cost analysis. The email lays out eight assertions regarding the existing contract and the planned modification, all of which are factually incorrect. For example, the email states that the aircraft is the U.S. Government's only standing all-hazard biocontainment capability. As noted previously, this is not the case. The email also includes incorrect information regarding the cost to base an aircraft in Africa and uses assumptions that are inconsistent with the stated requirements of the modification. Finally, the cost forecasts are miscalculated. For example, the email states that "fixed overhead costs would increase \$500,000 per year"; in fact, the modification included increased fixed overhead costs of over \$1 million. The email also underestimates the direct costs for each flight by over 20 percent and fails to mention the associated overhead costs. Finally, the estimated overall increased cost was stated as \$3.5 million; OIG, however, found that for the first year of service, the approximate increased cost will be \$6 million.

(U) OIG also reviewed the cost analysis prepared by INL/A to support its proposal to provide air shuttle services from Kenya to Somalia. OIG found that INL/A's cost analysis was developed using cost data based on other INL/A services, such as flights to and from Iraq. OIG determined that the cost data and assumption used were adequate to make a determination, at the time it was prepared, of the projected cost associated with the Kenya to Somalia air shuttle service.

(U) OIG performed its own cost analysis and concluded that using the INL/A option to provide transportation services from Kenya to Somalia, rather than the MED option, would save the Department approximately \$5.9 million for the first 2 years of service, as shown in Table 1.²⁶

(U) Table 1: OIG Analysis of Air Shuttle Service Options

Service Provider	10/01/2017– 09/30/2018	10/01/2018 – 09/30/2019	Total
MED ^a	\$7,525,623	\$8,220,666	\$15,746,289
INL/A ^b	\$4,729,570	\$5,116,192	\$9,845,762
Total Savings Using INL/A Option	\$2,796,053	\$3,104,474	\$5,900,527

(U) ^a OIG calculated the Year 1 and Year 2 amounts using the modified base year and option year 1 cost data from SAQMMA16007 for fixed contract line items; the flight hours obtained from the interagency agreement and added MED's estimate of 312 medical labor hours and MED's calculation of three canceled flights each year.

(U) ^b OIG used cost data based on INL/A Embassy Air flight operations and the assumption of two trips per week, including a variety of reoccurring and non-reoccurring costs. For example, materials, fuel, hangar lease, labor costs, and materials transport.

(U) **Source:** Prepared by OIG using data provided by INL/A and MED.

(U) Value-Added Analysis

(U) MED also provided OIG with a value-added analysis it prepared to support the decision to use contract SAQMMA160077 (a Gulfstream III aircraft—referred to as the "MED Model") for the air shuttle service, rather than using INL/A's worldwide aviation support services contract and a Department-owned asset (a Beechcraft 1900D—referred to as the "INL Model").

(U) OIG consulted with INL/A, which is the Department's subject matter expert in the field of aviation, to review and consider MED's assertions. OIG determined that a number of MED's assertions were not accurate, in relation to the Mission Somalia requirement, as shown below in Table 2.

²⁶ (U) This analysis is based on an assessment of funds that would have been saved had the Department not exercised the option years of SAQMMA160077 and thereby avoided the high fixed costs associated with the contract.

(U) Table 2: MED and OIG Analysis of Use of Gulfstream GIII Versus Beechcraft 1900D for Somalia–Nairobi Transport

(U) MED Analysis of Gulfstream III	(U) MED Analysis of Beechcraft 1900D	(U) OIG Analysis of MED's Assertions
MED model is available within 6 hours of notification, 24 hours per day, 7 days per week	INL model is scheduled only 5 days per week	The U.S. Mission to Somalia requires 2 to 3 scheduled round trip flights per week between Kenya and Somalia. Having an aircraft available 24 hours a day, 7 days a week, for this purpose provides no added value.
MED model does not require an NSDD-38 position ^a	INL model included one NSDD-38 position	The NSDD-38 position is that of a GTM who was supposed to ensure that the aircraft operates safely and in accordance with contract requirements. MED did not provide for any on-site oversight of the contractor.
MED model has a large enough gas tank that it does not require to be refueled in Mogadishu, Somalia.	INL model did not have a large enough gas tank to allow it to return to Nairobi without being refueled in Mogadishu, Somalia.	Fuel is readily available in Mogadishu, Somalia. The unavailability of fuel was not indicated as a risk or limiting factor by any of the aircraft operators, airport operators, Defense Attaché Office, or post personnel.
MED model has a 31,700-pound payload. ^b	INL model has a 3,000 pounds payload.	MED incorrectly stated the payload of a Gulfstream III, which is actually 6,200 pounds. Regardless, the actual payload requirement is less than 3,000 pounds.
MED model has a dedicated hangar for maintenance at a 24-hour international airport.	INL has ramp parking at a daylight-only airport.	MED's assertion related to the INL/A aircraft is not accurate. Both airports are international airports. The INL/A proposal also included a hangar for maintenance.
MED model can fly from sub-Saharan Africa to London, United Kingdom, in 1 duty day.	INL model is a local service, passenger-only model.	The U.S. Mission to Somalia requires two to three scheduled round trip flights per week between Kenya and Somalia. So, the ability for the aircraft to fly to other locations is not a valid consideration.
MED contracts for a service on a firm-fixed-price basis with little maintenance risk.	INL's model is a Department-owned aircraft and operates on a time and material basis, meaning the Department assumes maintenance risk.	MED's assertion about the MED model is not accurate. The MED contract is a "hybrid" contract, which includes charges for flight and labor hours and other costs associated with maintenance, such as maintenance missions.

(U) ^a NSDD-38 positions refers to National Security Decision Directive Number 38 which governs proposals for the establishment of or changes to full-time, permanent, direct-hire positions.

(U) ^b The Federal Aviation Administration defines payload as the weight of occupants, cargo and baggage. MED's value-added analysis stated that the Gulfstream III had 31,700 pounds of payload; however, in another document, MED asserted that the Gulfstream III had a payload of 6,000 pounds. In another email to OIG, MED stated that the payload was 29,680 pounds. As noted in the table, the actual payload of a Gulfstream III is approximately 6,200 pounds.

(U) **Source:** Generated by OIG from information from MED and INL/A.

(U) Funds Could Be Put to Better Use

(U) Even though the PAG contract was predicated on the need for unique services associated with the Ebola epidemic, those unique services have not been used for an actual aeromedical biomedical evacuation. Moreover, the Department has not taken advantage of aviation assets that it already owns and has instead continued to expend funds imprudently. ABCS functionality was not used for an actual evacuation between April 2016 and April 2018, raising the substantial question as to whether this service is needed by the Department. On the basis of the nature of the Department's use of these aircraft since the contract was awarded, OIG concludes that MED should not execute option years 2 and 3 for contract SAQMMA16C0077 and that, instead, the Department should identify the actual requirements needed for aeromedical biocontainment evacuations, medical evacuations, non-medical evacuations, and other air transport missions. The Department would put approximately \$24 million of taxpayer funds to better use by not exercising option years 2 and 3 of contract SAQMMA16C0077.

Recommendation 1: (U) OIG recommends that the Bureau of Administration not exercise option years 2 and 3 of SAQMMA16C0077, thereby putting \$24 million of taxpayer funds to better use.

(U) Management Response: The Deputy Under Secretary for Management did not concur with the recommendation and stated that "it is premature to make a determination on exercising an option on this contract, at this time, because of the continuing requirement for the contracted capability due to current threats from highly-pathogenic infectious diseases, security threats, and an enduring requirement for aviation support to crisis response in the aftermath of a manmade or natural disaster." The Deputy Under Secretary for Management also stated that "in order to realize the \$24 million savings . . . , the Government would have to eliminate, without replacement, its only biocontainment capability and only standing aviation assets capable of supporting a trans-oceanic crisis response." The Deputy Under Secretary for Management further stated that "a determination regarding the exercise of remaining option periods will be made not later than 60 days before the current period of performance ends."

(U) OIG Reply: On the basis of the Department's non-concurrence, OIG considers this recommendation unresolved. The Department's response, here and elsewhere, does not acknowledge the limited nature of the original sole source contract. The PAG contract was awarded as a sole-source contract on the basis of the contractor's unique capability to conduct aeromedical biocontainment evacuations, but, as set forth in the report, was never used to conduct an actual aeromedical biocontainment evacuation. Therefore, the option years for the modified contract should not be exercised, thereby saving the U.S. Taxpayer approximately \$24 million.

(U) Furthermore, OIG does not agree with the assertion that the PAG aircraft is, at this point, the Government's "only biocontainment capability and only standing aviation assets capable of supporting a trans-oceanic crisis response." The DOD has other aviation assets that are

capable of supporting a trans-oceanic crisis response that also have a biocontainment capability. Specifically, in 2015, the United States Air Force developed and procured 25 military isolation units, which have the ability to transport multiple patients that have highly contagious pathogens, such as Ebola. The isolation unit, known as the "Transport Isolation System," was engineered and implemented after the Ebola virus outbreak in 2014. According to DOD officials, the Transportation Isolation System is produced by the same manufacturer as the ABCS, and the difference between the two systems is that the Transportation Isolation System allows for more robust in-flight medical care. The 375th Aeromedical Evacuation Squadron from Scott Air Force Base located in St. Clair County, IL, conducted Transport Isolation System training, the goal of which was to implement and evaluate procedures for transporting highly infectious patients from one location to another via aeromedical evacuation.²⁷

(U) Finally, the Department asserts that it needs to maintain the contracted capability due to "security threats, and an enduring requirement for aviation support to crisis response in the aftermath of a manmade or natural disaster." OIG does not challenge the Department's programmatic decision, but it does question the use of this unique contracting vehicle as a mechanism to fulfill this need. OIG reiterates that the Department's stated justification for awarding this sole source contract in the first place was to procure an aeromedical biocontainment evacuation capability. Responding to security threats and manmade or natural disasters, while necessary, does not require the unique capabilities of an ABCS aircraft. These needs should be met through an appropriate contracting vehicle.

(U) This recommendation will be resolved when the Department provides OIG with a plan of action for addressing this recommendation or provides an acceptable alternative that meets the intent of this recommendation, which is to safeguard U.S. Taxpayer funds. This recommendation will be closed when OIG receives and accepts documentation demonstrating that contract SAQMMA16C0077 is either being utilized for its unique capability to conduct aeromedical biocontainment evacuations or has been terminated.

Recommendation 2: (U) OIG recommends that the Deputy Under Secretary for Management determine the necessity of awarding a new contract or contracts for an aeromedical biological containment capability, non-biocontainment aeromedical evacuations, or other air transport missions of a non-medical nature and whether any acquisition under such new contract(s) is justified as a sole-source or other form of other-than-fully-and-openly competed procurement.

²⁷ (U) Refer to the following press releases and articles that describe the DOD's aeromedical biocontainment capability: <http://www.jbcharleston.jb.mil/News/Article/1581973/airmen-and-medical-researchers-team-up-for-inflight-tis-training/>; <https://www.defense.gov/News/Article/Article/603981/transcom-system-brings-dod-new-capability-to-move-patients/>; <https://www.af.mil/News/Article-Display/Article/562739/scott-airmen-train-on-transport-isolation-system/>; and <https://www.airforcetimes.com/news/your-air-force/2015/02/02/air-force-getting-25-isolation-units-for-contagious-patients/>.

(U) Management Response: The Deputy Under Secretary for Management concurred with the recommendation and stated “[it] agree[s] that contracts should be competitively awarded unless a valid sole-source justification applies – as with the present contract – with proper consideration of whether a total package approach is in the best interests of the [U.S. Government] and consistent with federal procurement regulations.” The Deputy Under Secretary for Management additionally stated that MED used the “total package approach” when making a determination to award SAQMMA16C0077. Specifically, the Deputy Under Secretary for Management stated “the award and management of multiple aviation service contracts, where a single contract would suffice, predictably results in unnecessary fixed overhead costs.”

(U) OIG Reply: On the basis of the Deputy Under Secretary for Management’s concurrence with the recommendation, OIG considers the recommendation resolved pending further action. OIG does not agree, however, that the “total package approach” justifies the Department’s actions overall or, more specifically, the 2017 modification.

(U) First, the claim that the “total package” approach was used to award the original contract is not well-supported. The “total package approach” is a concept found in Federal procurement law, notably Government Accountability Office decisions on bid protests. It refers to an agency decision to procure divisible portions of an acquisition requirement under one contract awarded to a single vendor rather than awarding separate contracts for each divisible portion to more than one vendor. Such a decision is generally within the discretion of the contracting agency if it has a reasonable basis demonstrating that the approach taken is necessary to satisfy the agency’s needs.²⁸ The Competition in Contracting Act, however, generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency.²⁹ Since bundled procurements combine separate, multiple requirements into one contract, they have the potential to restrict competition by excluding vendors that can furnish only a portion of the requirement. Accordingly, an agency’s “total package approach” is subject to protest and is reviewable.³⁰ To establish the required reasonable basis for its approach, the agency typically demonstrates, for example, how bundling will generate significant cost savings,³¹ is necessary to satisfy its minimum needs,³² will produce

²⁸ (U) *Teximara, Inc.*, B-293221.2 (Comp. Gen. July 9, 2004); *Masstor Systems Corp.*, B-211240 (Comp. Gen. Dec. 27, 1983).

²⁹ (U) *Teximara, Inc.*, B-293221.2.

³⁰ (U) *Ibid.*

³¹ (U) *Ibid.*

³² (U) *ReedSport Machine & Fabrication*, B-293110.2, B-293556 (Comp. Gen. April 13, 2004).

economies of scale,³³ or will eliminate unacceptable technical risk.³⁴ Administrative convenience or personal preference alone is not sufficient.³⁵

(U) A decision to bundle a sole-source component with a component otherwise available from several vendors in no way lowers the standards for the agency to justify its action. To the contrary, "because of the requirement for maximum practical competition, agency decision[s] to procure sole source must be adequately justified and are subject to close scrutiny."³⁶ In its response to a draft of this report, the Department cited a large number of cases that it stated provided support for its position on this topic. In all the cases on which the Department relies to support its position, the record contained detailed analyses showing how bundling of this sort—that is, awarding to a sole-source supplier of a unique product an additional contract component available from multiple sources —produced significant cost savings, was essential for mission success, or satisfied one of the other criteria discussed above. In each of those cases, the procuring agency also made clear from the outset its intention to combine sole-source components and non-sole source components into a single contract award to one vendor.

(U) In contrast, neither the supporting documentation the Department provided for the JOFOC, nor the JOFOC itself, included any assessment of a total package approach in terms of comparative costs, savings, or operational efficiencies of a total package versus separate procurements. To the contrary, in evaluating the technical acceptability of the responses it received to its Sources Sought Notice for this contract, the Department only considered whether the vendor had (a) a biocontainment capability and (b) air ambulance accreditation.³⁷

(U) There was, similarly, no suggestion in any procurement documents that the Department intended to or might later use the aircraft contracted through the sole source mechanism for routine, non-emergency, non-medical transportation purposes. The various references to "multi-mission" in the contract title and elsewhere did not disclose such a possibility, nor did potential vendors otherwise have any notice of such a possibility.

(U) Second, even assuming that the original award was pursuant to the total package approach, none of the many cases and Government Accountability Office decisions cited by the Department authorize a modification of the type at issue here. The Department cites no authority that would permit the noncompetitive transformation of a sole-source contract for highly specialized, emergency air evacuation services into a predominately non-emergency

³³ (U) *IVAC Corp.*, B-231174 (Comp. Gen. July 20, 1988).

³⁴ (U) *Hvide Shipping, Inc.*, B-194218 (Com. Gen. Aug. 30, 1979).

³⁵ (U) *Masstor Systems, Corp.*, B-211240.

³⁶ (U) *Hvide Shipping, Inc.*, B-194218 (describing agency requirement for a service that could have been provided by more than one vendor that was combined into sole source procurement of a unique capability; explaining that agency's reasonable bases included avoiding a substantial, demonstrated risk of mission failure).

³⁷ (U) See "Responses to Sources Sought – SAQMMA16SSMMASS – Summary of Responses" (February 17, 2016).

air taxi service. To the contrary, the cases on which the Department relies reflect circumstances in which the "total package approach" was amply supported in detailed analysis contained in the procurement documents justifying the sole-source awards that were later challenged.³⁸ Such analysis was lacking in the JOFOC and other award documents here, and the analysis offered by the Department after the fact is incorrect in several respects as discussed in this report.

(U) Finally, OIG reiterates that the Department has had a worldwide aviation support service contract in place since 2005, which was established precisely to avoid the need to manage multiple aviation service contracts and unnecessary additional fixed overhead costs.

(U) In short, the issuance of contract SAQMMA16C0077 deviated from the Government Accountability Office's guidance regarding the "total package approach."

(U) Although OIG presently considers this recommendation resolved based on the Deputy Under Secretary for Management's concurrence, it will only be closed when OIG receives and accepts documentation demonstrating that a determination has been made regarding the necessity of a new aeromedical biological containment capability, non-biocontainment aeromedical evacuation, or other air transport missions of a non-medical nature. Additionally, the Deputy Under Secretary for Management must provide OIG with documentation identifying whether any acquisition under such new contract(s) is justified as a sole-source or other form of other-than-fully-and-openly competed procurement.

Recommendation 3: (U) OIG recommends that if it is determined that one or more new contracts is necessary (Recommendation 2), that the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law

³⁸(U) For example, *Agustawestland North America, Inc. v. United States*, 880 F.3d 1326 (Fed. Cir. 2018), on which the Department relies, in fact illustrates the type of analysis that would have been needed to support the "total package approach" that the Department now contends it intended to take here. In that case, the Army awarded Airbus a sole-source contract for helicopters as a follow-on to a major system procurement that had previously been competitively awarded to Airbus. In upholding the sole-source award, the court discussed the substantial showing that an agency must make to justify its decision:

Prior to awarding a sole-source contract, a contracting officer must: (1) justify the sole-source award in writing; (2) certify the "accuracy and completeness of the justification"; and (3) obtain the approval of the senior procurement executive of the agency. FAR 6.303-1(a). The FAR sets forth the specific information required to support each justification, including "[a] determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable"; "[a] description of the market research conducted ... and the results"; "for follow-on acquisitions ..., an estimate of the cost to the Government that would be duplicated and how the estimate was derived"; and "[a]ny other facts supporting the use of other than full and open competition, such as ... [an] [e]xplanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available." FAR 6.303-2(b).

Agustawestland, 880 F.3d at 1333. While the JOFOC developed by MED was sufficient to justify procurement of ABCS on a sole source basis, it did not contain any justification for a "total package approach" that bundled other items available from several vendors into this sole source procurement.

Enforcement Affairs, perform acquisition planning to establish detailed requirements essential to supporting the contracted air mission capabilities and assess those requirements annually against current conditions.

(U) Management Response: The Deputy Under Secretary for Management concurred with the recommendation and stated that it "agree[s] that, if a new contract is awarded at some point in the future, that contract requirements should be defined, based on proper acquisition planning, and reviewed periodically to ensure continued value to the [U.S. Government], as occurred with the present contract."

(U) INL provided a separate response to this recommendation, in which it concurred with the recommendation and stated that it "stand[s] ready to work with the Bureau of Administration and Medical Services to perform acquisition planning, establish detailed requirements, and reassess those requirements annually."

(U) OIG Reply: On the basis of the Deputy Under Secretary for Management's and INL's concurrence with the recommendation, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives and accepts documentation demonstrating that: 1) if it is determined that one or more new contracts is necessary, the Department has performed acquisition planning to establish detailed requirements essential to supporting the contracted air mission capabilities; and 2) the Department has assessed contract requirements for aviation contracts annually against current conditions to determine if the contract(s) are still needed.

Recommendation 4: (U) OIG recommends that, if it is determined that one or more new contracts is necessary (Recommendation 2), the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, execute the contract solicitation using full and open competition, to the extent required by the Federal Acquisition Regulation (FAR), and that any solicitation and award determined to be justified as a sole-source or other form of less-than-fully-and-openly competed procurement be confined to the specific goods or services that satisfy the FAR criteria for other than full and open competition.

(U) Management Response: The Deputy Under Secretary for Management concurred with the recommendation and stated that it "agree[s] that, if a new contract is awarded at some point in the future, that the contract should be competitively awarded unless a valid sole-source justification applies – as with the present contract – with proper consideration of whether a total package approach is in the best interests of the [U.S. Government] and consistent with federal procurement regulations."

(U) INL provided a separate response to this recommendation, in which it concurred with the recommendation and stated that it "stand[s] ready to work with the Bureau of Administration and Medical Services to execute the contract solicitation in accordance with the FAR, including meeting criteria for full and open competition."

(U) OIG Reply: On the basis of the Deputy Under Secretary for Management's and INL's concurrence with the recommendation, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives and accepts documentation demonstrating that, if it is determined that one or more new contracts is necessary, the Department has executed the contract solicitation using full and open competition, to the extent required by the FAR, and that any solicitation and award determined to be justified as a sole-source or other form of less-than-fully-and-openly competed procurement be confined to the specific goods or services that satisfy the FAR criteria for other than full and open competition.

Recommendation 5: (U) OIG recommends that the Bureau of Administration determine the reason or reasons that the Contracting Officer and Contracting Officer's Representative inappropriately modified SAQMMA16C0077 and assess whether disciplinary actions and revisions to the delegation structure or oversight roles need to be implemented.

(U) Management Response: The Deputy Under Secretary for Management did not concur with the recommendation and stated that it does "not agree with Recommendation 5 because it assumes that either the contract, or the modification to the contract was improper." The Deputy Under Secretary for Management further specified four reasons as to why he did not agree: 1) because there is a prevailing threat of highly contagious disease outbreaks; 2) because the Government Accountability Office supports the "total package approach;" 3) because there was no cardinal change in the contract; and 4) because MED and the [Bureau of Administration, Office of Acquisition Management], followed the appropriate procedures, including obtaining the required clearances. The Deputy Under Secretary for Management further specified that "AQM reviewed the original award and the modification and found that the actions taken by the [Contracting Officer] and the COR to be in strict compliance with the FAR, [the Competition in Contracting Act] and [the Bureau of Administration, Office of Acquisition Management] Assurance Plan."

(U) OIG Reply: Notwithstanding the Deputy Under Secretary for Management's non-concurrence, OIG considers this recommendation closed. OIG disagrees with the specific points set forth in the Department's response regarding the manner in which the contract was used, the applicability of the total package approach, whether there was a cardinal change, and whether the rationale for the modification was appropriate. OIG does not dispute, however, that needed clearances were obtained before the modification occurred. OIG also acknowledges that the Department has assessed the modification and made a determination as to whether it occurred appropriately. Because the Department has concluded that the modification was appropriate, OIG infers that it likewise concludes that no disciplinary action or revision to delegation structure or oversight rules should be implemented.

Recommendation 6: (U) OIG recommends that the Bureau of Administration, in coordination with the Bureau of International Narcotics and Law Enforcement, use the existing worldwide

aviation support services contract or award a contract using full and open competition to establish air shuttle services between Kenya and Somalia.

(U) Management Response: The Deputy Under Secretary for Management did not concur with the recommendation and stated that “the modification to the contract has been found legally sufficient and within the scope of services contemplated at the time of award and, after careful review of the requirement and associated costs, the current model provides the best value to the [U.S. Government] and the American taxpayer.” The Deputy Under Secretary for Management also stated “several cost and non-cost operational factors were considered in selecting the final model. A key factor in the Department’s decision to utilize [SAQMMA16C0077] was that the Department was already paying for the asset to maintain the [U.S. Government’s] only biocontainment aviation support asset for medical evacuation.” The Deputy Under Secretary for Management further stated that “by relocating the [SAQMMA16C0077] aircraft to Nairobi, Kenya, the Department could cover all 21 of these high threat posts within a single duty day, providing support for an additional 7,916 (14,280 total) U.S. direct hire personnel advancing U.S. interests in the most dangerous parts of the world.”

(U) INL provided a separate response to this recommendation, in which it concurred with the recommendation and stated that it “stand[s] prepared, in cooperation with the Bureau of Administration, to provide air shuttle services as needed through its existing worldwide aviation support services contract or through a separate contract using full and open competition.”

(U) OIG Reply: On the basis of the Deputy Under Secretary for Management’s non-concurrence, OIG considers this recommendation unresolved. The PAG contract, which was awarded on the basis of the contractor’s unique capability to conduct aeromedical biocontainment evacuations, was never used to conduct an actual aeromedical biocontainment evacuation. Therefore, OIG concludes that the contract has not been used for its intended purpose, that the modification was therefore improper, and that the option years should accordingly not be exercised.

(U) As stated in OIG’s response to Recommendation 1, OIG does not agree with the assertion that the PAG aircraft is presently the U.S. Government’s only biocontainment aviation support asset. Furthermore, if the Department requires an on-call crisis response aircraft, it should use the existing worldwide aviation services support contract or enter into a new contract that outlines the requirements, in detail, using full and open competition. Moreover, OIG reiterates that the Deputy Under Secretary for Management is not well-founded in stating that the non-biocontainment air services that were the heart of the modification were within the scope of services contemplated at the time of award.³⁹ Such services are not unique to PAG. Although the original justification for the sole-source award made general reference to several services other than biocontainment, it did not purport to justify

³⁹(U) Aside from any other issues, if the non-biocontainment air services were, in fact, within the original scope of the contract, there would have been no need to modify the contract to incorporate them.

procuring such other services on a sole-source basis. To the contrary, the only justification narratives in the JOFOC were for the unique biocontainment capability. This point is further confirmed by MED's "Response to Sources Sought" (February 15, 2015). In this document, the only factors the COR addressed under "Technical Acceptability of Responses" were whether the source had (a) biocontainment capability and (b) air ambulance accreditation (a necessary condition to providing aerial biocontainment evacuation service).

(U) This recommendation will be resolved when the Department provides a plan of action for addressing this recommendation or provides an acceptable alternative that meets the intent of this recommendation, which is to promote full and open competition in the award of contracts. This recommendation will be closed when OIG receives and accepts documentation demonstrating that the Bureau of Administration has used the existing worldwide aviation support services contract or awarded a contract using full and open competition to establish air shuttle services between Kenya and Somalia.

(U) Finding B: The Bureau of Medical Services Is Not Prepared or Adequately Versed in Federal Aviation Regulations and Requirements

(U) OIG found that MED was not in compliance with Federal aviation regulations and Department aviation policies. According to Federal requirements, aircraft hired to provide CAS—such as the PAG aircraft—are considered "Government aircraft." Agencies hiring CAS must maintain oversight of various aspects of a flight program and report its cost and usage data.⁴⁰ MED did not comply with Federal requirements for establishing Flight Program Standards, nor did it report the cost and use of CAS aircraft, as required. Furthermore, Department policies allow the use of CAS only when it is more cost effective than using Department-owned aircraft and doing so requires approval from AGB. OIG found that using the Africa-based aeromedical aircraft to shuttle Department employees between Kenya and Somalia was not cost effective and that AGB did not approve the arrangement. OIG determined that these deficiencies occurred, in part, because MED incorrectly believed that the aircraft did not meet the definition of Government aircraft and that, as a result, MED did not have to comply with Federal regulations or Department policy. Even MED acknowledges, however, that GSA informally opined that the services provided by PAG should be considered CAS and were therefore subject to relevant regulations and policies. Additionally, MED is not prepared to oversee a flight program and is not adequately versed in Federal aviation regulations and requirements. For example, MED lacks the capacity to provide technical aviation expertise and onsite oversight of day-to-day operations of the air services. The lack of adequate oversight of CAS poses safety risks to Department personnel.

⁴⁰ (U) 41 C.F.R. §102-33.130, "If we hire CAS, what are our management responsibilities?"

(U) Federal Aviation Requirements

(U) The C.F.R.⁴¹ provides that aircraft that is operated for the exclusive use of an executive agency is considered Government aircraft. Government aircraft includes aircraft hired as CAS, which the agency hires under a full-service contract, charters or rents, or leases. The C.F.R. defines a full-service contract as a "contractual agreement through which an executive agency acquires an aircraft and related aviation services (for example, pilot, crew, maintenance, catering) for exclusive use. Aircraft hired under [full-service] contracts are CAS." The C.F.R. further defines a chartered aircraft as an aircraft that an agency hires commercially under a contractual agreement specifying performance and one-time exclusive use. The commercial source operates and maintains a charter aircraft. A charter is one form of a full-service contract. OIG accordingly determined that the aircraft used under contract SAQMMA16C0077 fall within the C.F.R. definition of Government aircraft because it is a CAS contract that calls for PAG to provide two "dedicated aircraft for the sole use of the [Department] (Dedicated Aircraft), available continuously through the period of performance."

(U) The C.F.R. requires agencies to take certain actions related to CAS, such as "establishing Flight Program Standards."⁴² Flight Program Standards involve the following areas:

- (U) Management and administration of the flight program.⁴³
 - (U) In the case of CAS, an agency must provide oversight to ensure that the contractor providing the aircraft has established a management structure responsible for the administration, operation, safety training, maintenance, and financial needs of the aviation operation, in addition to guidance describing the roles, responsibilities, and authorities of the flight program personnel. MED did not perform required oversight to ensure that PAG had established such a management structure.⁴⁴
- (U) Operation of the flight program.⁴⁵
 - (U) In the case of CAS, an agency must provide oversight to ensure that the contractor providing the aircraft is complying with a number of items relating to aviation operations, including: basic qualifications and requirements for pilots and crewmembers, procedures to record and track flight time, and procedures to implement a risk assessment before each flight. MED did not perform oversight

⁴¹ (U) 41 C.F.R. §102-33.20, "What definitions apply to this part?"

⁴² (U) 41 C.F.R. §102-33.130.

⁴³ (U) 41 C.F.R. §102-33.160, "What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?"

⁴⁴ (U) OIG did not perform an audit of PAG and is therefore unaware of whether PAG does or does not perform required activities. Throughout this section, OIG is reporting that MED did not perform oversight to ensure that PAG had performed required activities.

⁴⁵ (U) 41 C.F.R. §102-33.165, "What standards must we establish or require (contractually, where applicable) for operation of our flight program?"

to ensure that PAG was complying with requirements or developed procedures to track flight time and procedures to implement a risk assessment before each flight.

- (U) Maintenance of the Government aircraft.⁴⁶
 - (U) In the case of CAS, an agency must provide oversight to ensure that the contractor providing the aircraft has maintenance and inspection programs that comply with Federal Aviation Administration programs, procedures for operating aircraft with inoperable instruments and equipment, technical support, and procedures for recording and tracking maintenance actions. MED did not perform oversight to ensure that PAG had an acceptable maintenance and inspection program.
- (U) Training for the flight program personnel.⁴⁷
 - (U) In the case of CAS, an agency must provide oversight to ensure that the contractor providing the aircraft has an instructional program to train flight program personnel and an instructional program that meets the specific requirements for safety manager training. MED did not perform oversight to ensure that PAG had appropriate instructional programs.
- (U) Safety of the flight program.⁴⁸
 - (U) In the case of CAS, an agency must provide oversight to ensure that the contractor providing the aircraft has the following aviation safety management standards: a Safety Management System; procedures, risk analysis, and risk management policies that require the use of independent inspectors; procedures for reporting unsafe operations to agency aviation officials; and a security program. MED did not perform oversight to ensure that PAG had all required aviation safety management standards.

(U) Both 41 C.F.R. §102-33⁴⁹ and OMB Circular A-126⁵⁰ require that agencies properly account for and report the costs associated with operating Government aircraft. This includes using Federal Aviation Interactive Reporting System (FAIRS)⁵¹ to document and report the costs of operating those aircraft and the amount of time the agency uses the aircraft. To account for

⁴⁶ (U) 41 C.F.R. §102-33.170, "What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?"

⁴⁷ (U) 41 C.F.R. §102-33.175, "What standards must we establish or require (contractually, where applicable) to train our flight program personnel?"

⁴⁸ (U) 41 C.F.R. §102-33.180, "What standards must we establish or require (contractually, where applicable) for aviation safety management?"

⁴⁹ (U) 41 C.F.R. §102-33.190, "What are the aircraft operations and ownership costs for which we must account?"

⁵⁰ (U) OMB Circular A-126, Revised, Paragraph 14, "Accounting for Aircraft Costs."

⁵¹ (U) FAIRS is a Government-wide system administered by GSA. FAIRS collects and analyzes data on the inventories, cost, and usage of Government aircraft. Through the FAIRS application, agencies report on their Federal aircraft inventories and the cost, missions, and flight time of their Federal aircraft as well as the cost, missions, and flight time of aircraft they hire as CAS.

aircraft costs, agencies must justify the use of commercial aircraft in lieu of Government aircraft, determine the cost effectiveness of various aspects of agency aircraft programs, and accumulate aircraft program costs following the procedures defined in the "U.S. Government Aircraft Cost Accounting Guide."⁵²

(U) In addition, OMB Circular A-126 states that:

Agencies must maintain systems for their aircraft operations which will permit them to: (i) justify the use of [G]overnment aircraft in lieu of commercially available aircraft, and the use of one [G]overnment aircraft in lieu of another; (ii) recover the costs of operating [G]overnment aircraft when appropriate; (iii) determine the cost effectiveness of various aspects of their aircraft programs; and (iv) conduct the cost comparisons required by OMB Circular A-7653 to justify in-house operation of [G]overnment aircraft versus procurement of commercially available aircraft services.⁵⁴

(U) MED was in violation of 41 C.F.R. §102-33 and OMB Circular A-126 requirements because it failed to use FAIRS to report the cost and usage data on CAS. Specifically, MED did not document or report the costs of operating Government aircraft or the amount of time the agency did so. Additionally, MED did not justify the use of commercial aircraft in lieu of Government-owned aircraft, determine the cost effectiveness of the aircraft program, or accumulate aircraft program costs following the procedures defined in the "U.S. Government Aircraft Cost Accounting Guide."

(U) Department Aviation Policies

(U) The FAM states that aviation policies apply to the management of all activities including commercial aircraft that the Department hires as CAS that the Department charters, rents, or hires as part of a full-service contract. Furthermore, Department policies allow the use of CAS only when it is more cost effective than using Department-owned aircraft.⁵⁵ As reported in Finding A of this report, using aircraft provided by contract SAQMMA16C0077 for the air shuttle services between Kenya and Somalia is not more cost effective than using Department-owned aircraft managed by INL/A. The cost of the aeromedical biocontainment evacuation aircraft is relatively high because of the specialized equipment and other requirements, such as including a medical doctor or a nurse on every flight, even if they are unrelated to a medical evacuation. Therefore, MED is not complying with Department policy.

⁵² (U) 41 C.F.R. §102-33.190. The "U.S. Government Aircraft Cost Accounting Guide" was developed by the Interagency Committee for Aviation Policy and GSA. The current version of the guide was issued in November 2002. https://www.gsa.gov/cdnstatic/CAG_Published_Nov02_consol_R2I-x2-p_0Z5RDZ-i34K-pR.pdf.

⁵³ (U) OMB Circular A-76, "Performance of Commercial Activities."

⁵⁴ (U) OMB Circular A-126, paragraph 14.

⁵⁵ (U) 2 FAM 816.1-2 (F), "Commercial Aviation Services."

(U) Additionally, the FAM states “[AGB], which the INL Assistant Secretary chairs, provides oversight of aviation activities in the Department.”⁵⁶ The AGB is required to approve all contracts for CAS.⁵⁷ According to AGB meeting minutes and the Department’s Senior Aviation Management Officer,⁵⁸ however, the AGB was not involved in the decision-making process related to MED’s contract for CAS services and, therefore, did not approve the contract as required by Department policy. The Department’s AGB Charter also states that the AGB was established to centralize the oversight of aviation assets and activities in the Department. The AGB’s responsibilities include approving policies, budgets, and strategic plans for aviation assets and activities. The AGB is also responsible for evaluating existing and future aviation requirements and determining the appropriate allocation of resources to missions. Although Department policy requires that the AGB have oversight of all aviation activities, according to AGB meeting minutes and the Department’s Senior Aviation Management Officer, the AGB has not been involved with overseeing MED’s aviation services.

(U) Bureau of Medical Services Does Not Have Aviation Expertise

(U) OIG determined that these deficiencies occurred, in part, because MED is not prepared to oversee a flight program and is not versed in aviation regulations and requirements. For example, MED lacks contract oversight officials with aviation expertise. Additionally, no contract oversight official has experience in operating or maintaining an aircraft. This is inconsistent with the Foreign Affairs Handbook, which states that the COR must have sufficient technical expertise on the subject matter of the contract to perform effective oversight.⁵⁹ Furthermore, MED does not have a GTM onsite in Kenya or Somalia to oversee the day-to-day operations of the air transportation services or to facilitate post’s requirements for air shuttle services. The Department of State Acquisition Regulation states that a Contracting Officer may appoint a GTM because of physical proximity to the contractor’s work site or because of special skills or knowledge necessary for monitoring the contractor’s work. The Contracting Officer may also appoint a GTM to represent the interests of another requirements office or post concerned with the contractor’s work.⁶⁰ OIG determined that the air shuttle service between Kenya and Somalia requires a special skill set and that a GTM should be in close proximity to the air service, who represents the interest of post.⁶¹

⁵⁶ (U) 2 FAM 811 c.

⁵⁷ (U) 2 FAM 816.1-2(F)(3).

⁵⁸ (U) The Department’s Senior Aviation Management Official is the agency’s primary member of the Interagency Committee for Aviation Policy and is responsible for designating the certifying officials for FAIRS and ensuring the agency’s internal policies and procedures are consistent with the aviation management requirements in OMB Circulars and Federal Management Regulations.

⁵⁹ (U) 14 Foreign Affairs Handbook-2 H-143, “Designating A Contracting Officer’s Representative (COR).”

⁶⁰ (U) Department of State Acquisition Regulation, Part 642, “Contract Administration and Audit Services,” 642.271(a).

⁶¹ (U) INL/A provides multiple GTMs to oversee the same services provided by a contractor in Iraq and Afghanistan (air shuttle service plus medical evacuations).

(U) MED's lack of aviation knowledge was confirmed when MED advised OIG that the aircraft used under a contract for aeromedical biocontainment evacuations does not meet the definition for Government aircraft. MED incorrectly assumed that it would not have to comply with Federal regulations concerning oversight and accounting for aviation equipment or with Department aviation policies. Specifically, MED officials stated that the aeromedical biocontainment evacuations contract is not for CAS because the contract was for the transport of patients with highly contagious pathogens and, therefore, is not a commercial service. However, OIG determined that the contract is CAS, which is defined as a "contractual agreement through which an executive agency acquires an aircraft and related aviation services...for exclusive use." Therefore, it was subject to the aviation rules and regulations. In fact, MED later told OIG that it obtained an opinion from GSA stating that SAQMMA16C0077 would qualify as CAS because the contract met the definition of contracting for full services.⁶² The contract was never used for aeromedical biocontainment evacuations; rather it was used for medical and non-medical evacuations and other types of commercially available air transport services.

(U) MED lacks the capacity to provide technical aviation expertise, which poses safety risks to Department personnel. Additionally, without a GTM, post personnel are given an undue burden of overseeing contract management for an area in which they have no specialized training. INL/A views the GTM as essential because of the technical nature of an aviation services contract. The GTM that INL/A provides ensures that all aspects of the contractor-provided aviation service meet essential safety standards. Finally, the lack of technical oversight increases the possibility that costs are incurred to contract SAQMMA16C0077 because of maintenance or other services that are not needed.

Recommendation 7: (U) OIG recommends that the Deputy Under Secretary for Management direct that all Department of State aviation services, except those for logistics support of nonrecurring and unpredictable requirements managed by the Bureau of Administration, be assigned to the Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation, to support Department of State compliance with applicable Federal aviation regulations and requirements.

(U) Management Response: The Deputy Under Secretary for Management did not concur with the recommendation and stated that "on review of the facts and qualifications of the current contract management team within MED, Management finds sufficient experience and expertise to continue the effective and efficient management of [SAQMMA16C0077]. The Deputy Under Secretary for Management notes that MED corrected their reporting procedures through the [FAIRS] in January 2018, and has been in complete compliance with FAIRS reporting (with correction of the record back to 2014) since March 23, 2018. The Deputy Under Secretary for Management disagrees with the [OIG's] position that MED is operating [SAQMMA16C0077] outside existing federal safety regulations. In a crosswalk comparison of the flight program requirements set forth in the Federal Management

⁶² (U) MED Memorandum, "DRAFT Quality Concerns, re: Draft Management Assistance Report Titled 'Out of Scope Use of the Bureau of Medical Services' Sole Source Contract for Aeromedical Biocontainment Evacuations," page 81.

Regulation (41 C.F.R.) cited in the [report] and the requirements set forth in the Federal Aviation Regulation (14 C.F.R.) to which the vendor is contractually held, Management holds that the current use of [CAS] operating under 14 C.F.R. 135 and other required regulations has completely satisfied existing safety and regulatory standards.”

(U) OIG Reply: On the basis of the Deputy Under Secretary for Management’s non-concurrence, OIG considers this recommendation unresolved. As set forth in the report itself, MED does not perform sufficient contract oversight of SAQMMA16C0077. For example, MED was not able to provide OIG with documentation showing that it met all the oversight requirements required by 41 C.F.R. §102-33. Additionally, there is no on-site, dedicated GTM to oversee the day-to-day operations in Nairobi, Kenya. Furthermore, through review of the FAIRS reporting, OIG found that MED underreported the costs of SAQMMA16C0077 by over 67 percent. Specifically, from July 2014 through March 2018, MED expended approximately \$44 million on CAS; however it only reported approximately \$14 million.

(U) This recommendation will be resolved when the Deputy Under Secretary for Management provides a plan of action for addressing this recommendation or provides an acceptable alternative that meets the intent of this recommendation, which is to support Department compliance with applicable Federal aviation regulations and requirements. This recommendation will be closed when OIG receives and accepts documentation demonstrating that the Deputy Under Secretary for Management directed that all Department aviation services, except those for logistics support of nonrecurring and unpredictable requirements managed by the Bureau of Administration, be assigned to INL/A.

(U) RECOMMENDATIONS

Recommendation 1: (U) OIG recommends that the Bureau of Administration not exercise option years 2 and 3 of SAQMMA16C0077, thereby putting \$24 million of taxpayer funds to better use.

Recommendation 2: (U) OIG recommends that the Deputy Under Secretary for Management determine the necessity of awarding a new contract or contracts for an aeromedical biological containment capability, non-biocontainment aeromedical evacuations, or other air transport missions of a non-medical nature and whether any acquisition under such new contract(s) is justified as a sole-source or other form of other-than-fully-and-openly competed procurement.

Recommendation 3: (U) OIG recommends that if it is determined that one or more new contracts is necessary (Recommendation 2), that the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, perform acquisition planning to establish detailed requirements essential to supporting the contracted air mission capabilities and assess those requirements annually against current conditions.

Recommendation 4: (U) OIG recommends that, if it is determined that one or more new contracts is necessary (Recommendation 2), the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, execute the contract solicitation using full and open competition, to the extent required by the Federal Acquisition Regulation (FAR), and that any solicitation and award determined to be justified as a sole-source or other form of less-than-fully-and-openly competed procurement be confined to the specific goods or services that satisfy the FAR criteria for other than full and open competition.

Recommendation 5: (U) OIG recommends that the Bureau of Administration determine the reason or reasons that the Contracting Officer and Contracting Officer's Representative inappropriately modified SAQMMA16C0077 and assess whether disciplinary actions and revisions to the delegation structure or oversight roles need to be implemented.

Recommendation 6: (U) OIG recommends that the Bureau of Administration, in coordination with the Bureau of International Narcotics and Law Enforcement, use the existing worldwide aviation support services contract or award a contract using full and open competition to establish air shuttle services between Kenya and Somalia.

Recommendation 7: (U) OIG recommends that the Deputy Under Secretary for Management direct that all Department of State aviation services, except those for logistics support of nonrecurring and unpredictable requirements managed by the Bureau of Administration, be assigned to the Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation, to support Department of State compliance with applicable Federal aviation regulations and requirements.

(U) APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

(U) This Management Assistance Report is intended to communicate deficiencies that OIG identified during its audit of the Department's administration of the aviation program.¹ The primary objective of the audit was to determine whether the Department is administering its aviation program, including inventory management, and oversight of aviation operations, aircraft maintenance, and asset disposal, in accordance with Federal requirements and Department guidelines. OIG is reporting these deficiencies in accordance with generally accepted government auditing standards. These standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions presented in this report.

(U) In performing the work related to these deficiencies, OIG interviewed Bureau of African Affairs, Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation (INL/A), Bureau of Medical Services (MED), U.S. Mission to Somalia, and Office of the Under Secretary for Management officials and reviewed applicable criteria and supporting documentation. Specifically, OIG researched and reviewed Federal laws and regulations as well as policies relating to the Department's aviation program. OIG reviewed the Code of Federal Regulations, the Federal Acquisition Regulation, the Federal Management Regulation, Office of Management and Budget (OMB) circulars, the Foreign Affairs Manual, the Foreign Affairs Handbook, and the Department of State Acquisition Regulations. OIG also reviewed and analyzed hard copy files, such as documentation obtained from the Integrated Logistic Management System (ILMS).

(U) Prior Reports

(U) In August 2016, an audit² was conducted to determine whether the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, and MED properly administered and provided oversight of the aeromedical biocontainment evacuation contracts in accordance with requirements and whether MED received reimbursement for non-Department aeromedical biocontainment evacuations, as required. The audit specifically focused on two contracts with Phoenix Air Group—SAQMMA14C0155 and SAQMMA15C0022. OIG found internal controls weaknesses related to the administration and oversight of the aeromedical biocontainment evacuation contracts. Specifically, OIG found weaknesses related to the quality assurance surveillance plans lacking a methodology to measure and document the contractor's performance, as required; and MED did not adequately segregate duties over the procurement and contracting practices. These weaknesses occurred, in part, because the Department did not establish and implement formal procedures to guide the administration and

¹ OIG, *Audit of the Department of State's Administration of its Aviation Program* (AUD-SI-18-59, September 2018).

² (U) OIG, *Audit of the Aeromedical Biological Containment Evacuation Contracts Within the Bureau of Medical Services*, (AUD-CGI-16-40, August 2016).

oversight of these activities. OIG made four recommendations, three of which were closed as of April 2018 and one is considered resolved but remains open pending further action.

(U) Work Related to Internal Controls

(U) OIG performed limited steps to assess the adequacy of internal controls related to the management and oversight of SAQMMA16C0077. For example, OIG reviewed and assessed Government-wide criteria pertaining to aviation, including OMB Circulars, Federal Management Regulation 102-33 and the Foreign Assistance Act of 1961. OIG used this information to develop limited procedures to test internal controls related to the oversight of contract SAQMMA16C0077 and to develop a better understanding of the processes within MED. During the course of the audit, OIG identified instances of inadequate internal controls. In the areas with weak internal controls, OIG added additional audit procedures to obtain additional information. OIG's conclusions are presented in the Results section of this report.

(U) Use of Computer-Processed Data

(U) OIG used computer-processed data in its review. OIG reviewed payment data from the Department's ILMS, data obtained from the MED Contracting Officer's Representative (COR), and invoices obtained from the Bureau of the Comptroller and Global Financial Services (CGFS). The MED COR provided lists of missions flown using charter aircraft provided under SAQMMA16C0077. The audit team attempted to verify the completeness of the lists provided by the COR by comparing payment details obtained from ILMS. Upon review, the team found discrepancies between information on the lists received from the COR and the information contained in ILMS. The audit team then compared the information obtained from the COR to invoices obtained from CGFS. The audit team confirmed that data were missing from the list provided by the COR. However, OIG reviewed information in CGFS and believes that it obtained a complete list of all invoices submitted and approved during the timeframe under review. On the basis of these conclusions, the audit team determined that the data were sufficiently reliable for the purposes of this report.

(U) OIG obtained two datasets to identify a universe of missions flown using contract SAQMMA16C0077 in order to determine the extent to which aircraft were used to conduct aeromedical biocontainment evacuation missions. OIG found that the information provided by MED was often incomplete and inaccurate and caused considerable data reliability issues. However, OIG mitigated these issues by obtaining corroborating evidence from ILMS and CGFS. Because of the high number of discrepancies and inaccurate information provided by MED, OIG chose to review all relevant and available invoices and mission manifests.

(U) MED Informal Recordkeeping System

(U) On October 16, 2017, OIG requested a listing of and manifests relating to medical evacuation missions that were performed using contract SAQMMA16C0077. OIG specifically requested that MED identify the medical evacuation missions that included the use of the biocontainment (in other words, the use of the Aeromedical Biocontainment System [ABCS] functionality). OIG

initially requested medical evacuation missions because, at that time, OIG was unaware that the aircraft were used for missions that were not medical related. MED provided a listing of missions on October 20, 2017. OIG reviewed that listing and noted that MED listed 10 missions as medical evacuations. To verify the completeness of the list, OIG compared the list provided by MED to a list of invoices obtained from ILMS. OIG then discovered that missions were included in ILMS that demonstrated additional use of the aircraft. OIG sent a follow-up request on October 30, 2017, for a listing of all missions³ that were performed using contract SAQMMA16C0077. MED provided an updated listing on November 3, 2017, which included a total of 35 missions. OIG compared the updated listing to information obtained from ILMS to determine the completeness of the listing. OIG again found that MED had not provided a complete listing. Specifically, OIG identified 14 missions that were not included on the MED listing dated November 3, 2017. On November 27, 2017, OIG requested information on the additional flights. Over the course of the following 2 weeks, MED provided OIG some, but not all, of the missing data.

(U) Phoenix Air Group Invoices

(U) On April 9, 2018, OIG obtained all invoices related to contract SAQMMA16C0077 from CGFS. The invoices generally contain the following relevant information: description of services, costs related to various contract categories, dates of the mission, configuration of the aircraft, daily flight summaries (which include number of passengers and other data), and route information. OIG compared the invoice information to information provided by MED and found discrepancies. For example, OIG identified four instances in which invoices indicated a different purpose than that represented by MED. In addition, MED never provided a manifest, after repeated requests for the information, for at least four missions. Table A.1 presents examples of the discrepancies OIG identified with the information provided by MED.

³ (U) This includes a summary of the mission, manifest including crew and passengers indicating whether the passenger is Chief of Mission personnel, American citizen, or other; dates and aircraft routes; and the Phoenix Air Group trip report for each mission.

(U) Table A.1: Examples of Discrepancies in Information Provided by MED

Mission Number	Purpose from MED	Purpose from Invoice	Mission Cost
D17-004	On November 30, 2017, MED indicated that this mission was a medical evacuation and provided a manifest showing three passengers traveled from Dakar, Senegal, to Kuwait City, Kuwait.	Mission invoice states that the purpose of the mission was "passenger transport" from Washington, DC, to Kuwait City, Kuwait. The invoice also indicates that the aircraft was not in an air ambulance configuration. OIG confirmed that the passengers were Washington, DC, based Department personnel.	\$283,840
M17-002	On November 30, 2017, MED indicated that "all M missions are maintenance missions or administrative repositioning of the aircraft without passengers." Manifests for these missions were not provided. On April 10, 2018, MED indicated that this mission was to transport Ebola lab samples and the ABCS was used.	Mission invoice states that the mission is for "movement of cargo." The invoice does not indicate that the aircraft was in the ABCS configuration and does not indicate that the ABCS was destroyed, which is a requirement of its use. OIG also reviewed emails between MED and Phoenix Air Group, none of which mention a requirement for ABCS. Therefore, OIG concludes that the ABCS was not used.	\$227,703
D17-002	On November 30, 2017, MED indicated that the mission was never flown, and that the "mission number was administratively skipped." A manifest was not provided.	Mission invoice states that the purpose of the mission was "Patient Movement from Bamako, Mali, to Washington, DC."	\$143,647
M16-002	On November 30, 2017, MED indicated that "all M missions are maintenance missions or administrative repositioning of the aircraft without passengers." Manifests for these missions were not provided.	Mission invoice states "Air Charter of Gulfstream G-III N173PA in ABCS configuration for static display at [Andrews Air Force Base]."	\$224,344

(U) **Source:** Generated by OIG from information from MED and contract SAQMMA16C0077 invoices.

(U) APPENDIX B: DETAILS OF SELECTED MISSIONS

(U) During the course of audit fieldwork, the Office of Inspector General (OIG) developed a list of missions flown by Phoenix Air Group, Inc., under contract SAQMMA16C0077. The listing was developed by requesting manifest information from the Contracting Officer's Representative in the Bureau of Medical Services (MED) and comparing the information provided to payment details obtained from the Department of State's (Department) Integrated Logistics Management System¹ and invoices obtained from the Bureau of the Comptroller and Global Financial Services. Overall, the Department was charged \$23,596,212 between May 8, 2016, and March 31, 2018. This amount comprises \$14,308,393 fixed costs or other direct cost charges and \$9,287,818 of variable contract costs directly related to missions flown. The total amount charged also includes \$1,035,268 for storage costs and \$72,508 for canceled missions in which the aircraft was never flown. OIG identified 120 total missions that were conducted from May 8, 2016, through March 31, 2018; this is an average rate of \$77,398 per mission. The top 10 in terms of cost are shown in Table B.1.

(U) Table B.1: Ten Most Expensive Missions for Contract SAQMMA16C0077

Mission Number/Name	Date	Destination	Description	Cost
Tranquil Shift	4/10/17	Sierra Leone, United States	Training Exercise	\$1,839,951
Tranquil Surge	11/16/16	Liberia	Training Exercise	\$698,985
D16-011	6/5/16	Thailand	Medical Evacuation	\$323,139
X17-001	6/10/17	North Korea	Medical Evacuation	\$296,659
D17-004	4/1/17	Kuwait	Deployment of Crisis Personnel	\$283,840
WB17-020	12/3/17	Italy, Oman, Malta	Deployment of Crisis Personnel	\$266,256
M17-002	9/13/17	Guinea United States	Movement of Ebola Lab Samples/Cargo Shipment	\$227,703
Tranquil Storm	8/22/2016	United States	Training Exercise	\$224,344
D16-012	7/11/16	South Sudan	Deployment of Crisis Personnel	\$190,657
D17-002	1/27/17	Mali, United States	Medical Evacuation	\$143,647
Total				\$4,495,181

(U) **Source:** Developed by OIG using data provided by the Department.

¹ (U) The Integrated Logistics Management System is a unified web-based information system designed to upgrade the Department's supply chain by improving processing in such areas as purchasing, procurement, transportation, receiving, and property management.

(U) APPENDIX C: DEPUTY UNDER SECRETARY FOR MANAGEMENT RESPONSE

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United States Department of State
Washington, D.C. 20520

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July 27, 2018

ACTION MEMO FOR THE DEPUTY UNDER SECRETARY FOR MANAGEMENT (M)

FROM: M/PRI - Janice DeGarmo, Senior Bureau Official

SUBJECT: Management Response to Draft Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements

BLUF: In a draft report, the OIG listed multiple recommendations to correct what they see as an unjustified modification of a medical services' contract, and a misplacement of responsibilities for aviation services. The attached response addresses these recommendations and how the Department will move forward.

Recommendation

That you approve the attached response to the Office of the Inspector General's draft Management Assistance Report (MAR), "Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements" (Approve/Disapprove by 7/27/18)

Background

The OIG issued a draft MAR entitled "Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements. Recommendation" (Tab 3). In the report, the OIG lists several recommendations that requires action on behalf of M, MED, and A bureau.

Attached is the draft response to the OIG stating that the Office of the Under Secretary for Management concurs in principle with recommendations 2, 3, and 4, and disagrees with recommendations 1, 5, 6, and 7 (Tab 1). The package also includes supporting information from MED that strengthens the justification for the Department's disagreeing with those recommendations (Tab 2).

Attachments:

- Tab 1 - Response to the Draft Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements
- Tab 2 - Supporting Background, Facts, Legal Authorities, and Discussion
- Tab 3 - Draft MAR "Department of State Has Not Implemented the Required Value Engineering Program for Contracts Exceeding \$5 Million"

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Approved:	M/PRI – Janice DeGarmo		
Drafted:	M/PRI – Katie Kirkpatrick, ext. 7-4725		
Cleared:	M/PRI	Julie Schechter-Torres	OK
	M_Clearance	Mike Lampe!	OK

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United States Department of State

Washington, D.C. 20520

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July 27, 2018

MEMORANDUM

TO: OIG/AUD – Norman P. Brown

FROM: D U/S M – Ambassador William E. Todd *William Todd*

SUBJECT: (U) Management Response to Draft Report – Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements

(U) Thank you for the opportunity to provide a management response to the subject report. The Deputy Under Secretary for Management appreciates the opportunity to provide the Department's Management Response on the Draft Management Assistance Report (DMAR) titled "Modification and Oversight of Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements," provided by the U.S. Department of State and Broadcasting Board of Governors Office of the Inspector General (OIG), Office of Audits (OIG/AUD) on behalf of the Office of the Under Secretary for Management (M) and the U.S. Department of State (Department).

(U) As explained below, the Department agrees in principle with Recommendations 2, 3, and 4, and disagrees with Recommendations 1, 5, 6, and 7. For Recommendation 1, the Department notes that implementing Recommendation 1 is premature at this time because an assessment of requirements, available funds, and best value will be completed in Quarter 2 of Fiscal Year 2019. For Recommendations 5 and 6, the Department disagrees with the underlying conclusions that support the recommendations. A full rationale for the Department's disagreement is provided by MED as a Tab to this Management Response, explaining the position that the contract modification complied with applicable law, that the current aviation support model represents the best value, and that federal safety and reporting requirements were satisfied. Consistent with Government Auditing Standards. The Department requests that the Med's Tab be published in its entirety with the final Management Assistance Report (MAR) and the Department requests that the OIG modify the DMAR in light of sufficient and appropriate evidence provided. For Recommendation 7, the Department disagrees with the DMAR's Recommendation, and submits the proposed action which it believes satisfies the underlying intent of the recommendation.

1. **Recommendation 1:** (U) OIG recommends that the Bureau of Administration not exercise option years 2 and 3 of SAQMMA16C0077, thereby putting \$24 million of taxpayer funds to better use.
- **Management Response to Draft Report Recommendation 1:** (U) M does not agree with Recommendation 1. It is premature to make a determination on exercising an option on this contract, at this time, because of the continuing requirement for the contracted capability due to current threats from highly-pathogenic infectious diseases (HPID), security threats, and an

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enduring requirement for aviation support to crisis response in the aftermath of a manmade or natural disaster. , During the pendency of the MAR, there continues to be active outbreaks of Ebola Virus Disease (EVD), as well as Pneumonic Plague, Rift Valley Fever, Nipah Virus and Lassa Fever. Both the Department's 2014 Post-Benghazi Best Practices Panel and the 2018 Independent Best Practices Panel for High-Risk, High-Threat Diplomatic Engagement Protective Medicine specifically recommend maintaining this type of contract aviation asset to support high-risk, high-threat posts in medically austere locations - a view shared by the House Appropriations Committee in its Committee Reports for Fiscal Years 2018 and 2019.1 M also points out that in order to realize the \$24 million savings in the DMAR, the Government would have to eliminate, without replacement, its only biocontainment capability and only standing aviation assets capable of supporting a trans-oceanic crisis response. Nonetheless, in accordance with the Foreign Affairs Handbook (14 FAH-2 H-532b(3)), a determination regarding the exercise of remaining option periods will be made not later than 60 days before the current period of performance ends. The current period of performance expires on May 7, 2019. No later than March 8, 2019, M, in partnership with appropriate stakeholder bureaus, will assess whether to exercise the option period at that time based on whether: (1) funds are available; (2) the contract fulfills an existing need; (3) that exercise of the option is most advantageous to the U.S. Government (USG) (with price and other factors considered); and (4) after proper consultation with the Office of the Legal Adviser (L).

2. **Recommendation 2:** (U) OIG recommends that the Deputy Under Secretary for Management determine the necessity of awarding a new contract or contracts for an aeromedical biological containment capability, non-biocontainment aeromedical evacuations, or other air transport missions of a non-medical nature and whether any acquisition under such new contract(s) is justified as a sole-source or other form of other-than-fully-and-openly competed procurement.
- **Management Response to Draft Report Recommendation 2:** (U) M agrees that contracts should be competitively awarded unless a valid sole-source justification applies — as with the present contract — with proper consideration of whether a total package approach is in the best interests of the USG and consistent with federal procurement regulations. Management points out that the U.S. Government Accountability Office (GAO) has long “recognized that the determination to procure by means of a package approach rather than by separate procurements for divisible portions of a total requirement is primarily a matter within the discretion of the procuring activity and will be upheld so long as some reasonable basis exists.”² In determining whether to award a contract to a potential sole-source supplier, agencies are not required to speculate as to every possible scenario that might enable other potential offerors to qualify.³ The rationale for a total package approach to the acquisition

¹ H. Rept. 115-253, page 13: “Within the amount provided for WSP, the Committee recommendation includes the amount requested for the Directorate of Operational Medicine, which has responsibility for contingency medical preparedness and the Department’s biocontainment evacuation response, which includes the capability to support short-notice transnational deployment of security and crisis response teams and to evacuate Chief of Mission (COM) personnel from posts in crisis.” See also H. Rept. 115-829, page 16 (identical language).

² *Hvide Shipping, Inc.*, B-194218 (Comp. Gen. Aug. 30, 1979) (citing *Systems Engineering Associates Corporation*, B-189260 (Comp. Gen. Oct. 3, 1977), see also *U.S. Electrodynamics, Inc.*, B-403516; B-403516.2 (Comp. Gen. Nov. 12, 2010) (holding that in determining its bundling requirements, an agency must have a reasonable basis for consolidating the requirements to meet its needs).

³ *Emery Worldwide Airlines, Inc. v. United States*, 49 Fed. Cl. 211 (2001), affirmed 264 F.3d 1071 (Fed. Cir. 2001), rehearing and rehearing en banc denied; see also *ATA Defense Indus., Inc. v. United States*, 38 Fed. Cl. 489, 500 (1997) (explaining that “[w]here in fact ‘the property or services needed

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was captured in several written submissions to the Under Secretary for Management and other key Department decision makers at the time of contract award and at key decision points thereafter.⁴ The business case is quite simple. First, the award and management of multiple aviation service contracts, where a single contract would suffice, predictably results in unnecessary fixed overhead costs. Second, while a total package approach may at first exclude some firms that can only provide a portion of the requirements, bundling may encourage otherwise excluded firms to expand into new areas, thereby eventually increasing competition.^{5,6} The most recent interpretation by the U.S. Federal Circuit Court of Appeals describes a "heavy burden" to show that an Agency "had no rational basis."⁷ To support the Department's view, in April 2018 the Department provided the Audit Team with a detailed business analysis and over 110 authoritative and/or persuasive decisions by the Comptroller General, GAO, and Federal Courts that support the Department's position.

3. **Recommendation 3:** (U) OIG recommends that if it is determined that one or more new contracts is necessary (Recommendation 2), that the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, perform acquisition planning to establish detailed requirements essential to supporting the contracted air mission capabilities and assess those requirements annually against current conditions.
- **Management Response to Draft Report Recommendation 3:** (U) M agrees that, if a new contract is awarded at some time in the future, that contract requirements should be defined, based on proper acquisition planning, and reviewed periodically to ensure continued value to the USG, as occurred with the present contract.
4. **Recommendation 4:** (U) OIG recommends that, if it is determined that one or more new contracts is necessary (Recommendation 2), the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, execute the contract solicitation using full and open competition, to the extent required by the Federal Acquisition Regulation (FAR), and that any solicitation and award determined to be justified as a sole-source or other form of less-than-fully-and-openly competed procurement be confined to the specific goods or services that satisfy the FAR criteria for other than full and open competition.
- **Management Response to Draft Report Recommendation 4:** (U) M agrees that, if a new contract is awarded at some time in the future, the contract should be competitively awarded unless a valid sole-source justification applies — as with the present contract — with proper

are available from only one responsible source,⁴ and the selling party knows that it is the only source, then this exception is hardly a significant departure from full and open competition. In such a case, if the agency used competitive procedures and solicited offers or bids from other sources, that act would be futile because the supplier would be aware, in setting its price, that it was not bidding against any competition." The Court further elaborated in a footnote: "[f]ull and open competition in such a case could bring benefits to the government when the contracting officer is not absolutely certain that only one responsible source is available in that soliciting bids could produce a bid from an unexpected source."

⁴ All communications were provided to the Audit Team in response to earlier versions of the DMAR.

⁵ See, e.g., *Reedport Machine & Fabrication*, B-293110.2; B-293556 (Comp. Gen. Apr. 13, 2004) (noting that "combining the two groups could make the requirement more attractive to some potential bidders, and ultimately result in greater competition overall.")

⁶ See, e.g., *Reedport Machine & Fabrication*, B-293110.2; B-293556 (Comp. Gen. Apr. 13, 2004).

⁷ *AgustaWestland H. Am., Inc. v. United States*, 880 F.3d 1326, 1332 (Fed. Cir. 2018).

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consideration of whether a total package approach is in the best interests of the USG and consistent with federal procurement regulations.

5. **Recommendation 5:** (U) OIG recommends that the Bureau of Administration determine the reason or reasons that the Contracting Officer and Contracting Officer's Representative inappropriately modified SAQMMA16C0077 and assess whether disciplinary actions and revisions to the delegation structure or oversight roles need to be implemented.
- **Management Response to Draft Report Recommendation 5:** (U) M does not agree with Recommendation 5 because it assumes that either the contract, or the modification to the contract was improper. The Department does not agree with this characterization because: (1) there continues to be a legitimate and prevailing threat from HPIDs (described in Recommendation 1, above); (2) the GAO has found that use of a package approach, rather than by separate procurements for divisible portions of a total requirement, is within the discretion of the agency and will not be disturbed "in the absence of clear evidence that it lacked a reasonable basis" (addressed in Recommendation 2, above); (3) the Contracting Officer (CO) and Contracting Officer's Representative (COR) did not inappropriately modify SAQMMA16C0077 because there was no cardinal change to the contract in violation of CICA or the FAR that would be considered "so drastic that it effectively require[d] the contractor to perform duties materially different from those originally bargained for;" and (4) MED and AQM followed appropriate procedures when executing a bilateral modification of the MMASS Contract, to include obtaining required clearances and following procedures outlined in AQM's Quality Assurance Plan.

During the 2014 EVD Outbreak, the CDC faced broad criticism for allowing this capability to lapse and the USG nearly lost the capability. If it were not for the quick actions of the Department to secure and hold this asset, the U.S. likely would have had no capability to support any patients during the crisis. The Department continues to face the real and proximate threat of HPIDs in supporting both its overseas workforce and U.S. persons overseas. To support the Department's view, the Audit Team was provided independent affirmations from the World Health Organization (WHO), Samaritan's Purse, Int., and the U.S. Department of Health and Human Services which all validate the continuing requirement for biocontainment aviation support.

In order to maintain a first response biocontainment capability, several interrelated components are required. All of those components (ABCS hardware, aircraft maintenance, aircraft, pilots, and medical crew) are necessary to field the biocontainment capability. The inclusion of crisis response, personnel extraction, and medical evacuation without biocontainment to the scope of the contract simply leverage some or all of the capabilities that the Government is already paying to maintain. By awarding SAQMMA16C0077 as a multi-mission aviation capability, and using it to support as many valid requirements as possible within the scope of that contract, the Government realizes significant operational flexibility and limits wasteful redundancy.

With regard to the propriety of Modification 11, the Office of the Legal Advisor (L) both initially cleared on and has subsequently upheld its opinion that the movement of the place of

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performance of services already being performed under the Mmass contract did not represent a cardinal change to the scope of the contract. From a contractual standpoint, Modification 11 is simply responsive to section C.2.2.2 of the Mmass contract, defining Nairobi by mutual consent as the "...overseas base of operations ('Overseas Contractor Base') located in a mutually agreed upon location outside the continental United States." Further, the DMAR's assertion that transportation of USG personnel into and away from Mogadishu, Somalia, represented a change in scope is directly contradicted by section C.2.2.6.3 of the contract as awarded, titled "Emergency Deployment/Retrieval of Government Personnel."⁸ Finally, in response to the DMAR, AQM reviewed the original award and the modification and found the actions taken by the CO and the COR to be in strict compliance with the FAR, CICA, and AQM's Quality Assurance Plan.

In sum, the Department believes it has offered sufficient facts and rationale to support the decision to procure the Mmass Contract on a sole-source basis using a total package approach and to use that asset to its maximum efficiency in supporting the U.S. Mission to Somalia.

6. **Recommendation 6:** (U) OIG recommends that the Bureau of Administration, in coordination with the Bureau of International Narcotics and Law Enforcement, use the existing worldwide aviation support services contract⁹ or award a contract using full and open competition to establish air shuttle services between Kenya and Somalia.
- **Management Response to Draft Report Recommendation 6:** (U) M does not agree with Recommendation 6. The modification to the contract has been found legally sufficient and within the scope of services contemplated at the time of award and, after careful review of the requirement and the associated costs, the current model provides the best value to the USG and the American taxpayer. While recognizing that both the INL and MED options available for aviation support offered unique advantages and disadvantages, policy, fiscal, and security considerations in Mogadishu at the time of the decision support the Department's decision to utilize the Mmass contract which, under the circumstances, offered the best overall value. In this case, the repositioning of the Mmass Contract aircraft to East Africa and assumption of support to Somalia added utilization and value to the Mmass contract without redundant overhead costs, while simultaneously allowing the Department to reduce its federal aircraft fleet through asset liquidation and reductions in overall fleet maintenance costs.

Several cost and non-cost operational factors were considered in selecting the final model. A key factor in the Department's decision to utilize the Mmass Contract model was that the Department was already paying for the asset to maintain the USG's only biocontainment aviation support asset for medical evacuation. The DMAR takes issue with the fidelity of the

⁸ The Department articulated its position — as well as other significant concerns as to the quality of the Audit Team's findings — on multiple occasions beginning in April 2018 (the first draft of the DMAR was transmitted by the Audit Team in March 2018).

⁹ The DMAR's recommendation to transfer the Somalia Aviation Requirement from the Mmass Contract (a small business) to the Worldwide Aviation Support Services Contract (a non-small business) also may be in conflict with the Department's requirements under the Small Business Act. Per FAR 7.107, consolidation or bundling of requirements has the potential to impact small business participation. The DMAR does not provide the required analysis in order to preclude small business participation as required by the Small Business Act. While such circumstances may exist, they are not born out by the information in the report.

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original MED cost projections. However, review of actual performance shows that MED's cost estimate was within 2.76% of the actual direct costs based on the parameters requested by M Staff and within 4.05% of initial projections with consideration of the direct costs and the AQM procurement surcharge.¹⁰ The Mmass aircraft represent the Department's only organic strategic crisis response and medical evacuation capability. The positioning of the aircraft in West Africa made sense when that base was established in 2015 because the commercial air ambulance industry refused to retrieve non-Ebola patients from Ebola-stricken countries and the embassies could not support their post populations without reliable medevac services. When one looks at the useful range of the aircraft (depicted in the Tab), the trade-off of a West Africa base is a loss of utility in most of the current ISIL-threat countries.

The requirement for aviation support in East Africa presented a reason to re-examine the placement and efficient use of the Department's aviation capabilities on a global scale. There are currently 21 U.S. diplomatic facilities on the Security Environment Threat List that are rated as "Critical" for either Terrorism and/or Political Violence with a combined authorized post population of 14,280 U.S. direct hire personnel. When based in West Africa, the Department could only capture 9 of these 21 posts in the useful range of the Mmass aircraft — covering 6,364 of the U.S. direct hire personnel at these high threat posts (44.6% of the population at risk). By relocating the Mmass Contract aircraft to Nairobi, Kenya, the Department could cover all 21 of these high threat posts within a single duty day, providing support for an additional 7,916 (14,280 total) U.S. direct hire personnel advancing U.S. interests in the most dangerous parts of the world. By using the Mmass asset to support the East Africa requirement, the Department created the optimal value proposition by improving global responsiveness and providing Mission Somalia with critical medical and personnel evacuation support in what turned out to be the best financial savings to the tax payer overall.

7. **Recommendation 7:** (U) OIG recommends that the Deputy Under Secretary for Management direct that all Department of State aviation services, except those for logistics support of nonrecurring and unpredictable requirements managed by the Bureau of Administration, be assigned to the Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation, to support Department of State compliance with applicable Federal aviation regulations and requirements.
- **Management Response to Draft Report Recommendation 7:** (U) M does not agree with Recommendation 7. On review of the facts and qualifications of the current contract management team within MED, Management finds sufficient experience and expertise to continue the effective and efficient management of the Mmass contract. M notes that MED corrected their reporting procedures through the Federal Aviation Interactive Reporting System (FAIRS) in January, 2018, and has been in complete compliance with FAIRS reporting (with correction of the record back to 2014) since March 23, 2018. M disagrees with the DMAR's position that MED is operating the Mmass contract outside existing federal safety regulations. In a crosswalk comparison of the flight program requirements set forth in the Federal Management Regulation (41 CFR) cited in the DMAR and the

¹⁰ Comparatively, the INL/A Model for two trips per week was \$4,729,570 in Year One, or \$1,087,925.67 more than the MED estimate.

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requirements set forth in the Federal Aviation Regulation (14 CFR) to which the Mmass vendor is contractually held, Management holds that the current use of Commercial Aviation Service operating under 14 CFR 135 and other required regulations has completely satisfied existing safety and regulatory standards. Email correspondence from the FAA's Flight Standards District Office in Atlanta, GA, (provided to the Audit Team) supports the conclusion that the Mmass vendor continues to operate in strict compliance with the most stringent safety standards and aviation industry best practices.

In support of its view, the Department notes that, in the last five years, MED has managed more CAS missions, more CAS flight hours, in more countries using CAS and in compliance with 14 CFR 135 than the rest of the Department combined.

The DMAR references 2 FAM 816.1-2¹¹ for the proposition that that federal aircraft must be used unless a program office determines that CAS could be operated more cost effectively than federal aircraft. In preparing a response, M recognizes a nuanced conflict between the existing Department regulations and existing law and regulation set forth by OMB. Specifically, 41 CFR 102-33.50(a)(1)(iii) allows the Government to acquire aircraft only when "(iii) No commercial or other Governmental source is available to provide aviation services safely (i.e., in compliance with applicable safety standards and regulations) and cost-effectively." Further regulatory restrictions on the acquisition and continued ownership of aircraft are found in 41 CFR 102-33.80, which states, "If you are acquiring Federal aircraft, you must ensure that the private sector cannot provide Government aircraft or related aviation services more cost-effectively than you can provide Federal aircraft and related services."

The Aviation Governing Board (AGB) serves the Under Secretary for Management in an advisory role. Per 1 FAM 044.1(5) and 1 FAM 044.1(11), M retains authority for assigning Department functions as well as oversight of all management-related functions, and therefore M clearly retained the authority to delegate aviation-related authority to MED and did so through signed Action Memos repeatedly for all three Mmass contracts, ultimately codified in the 2016 revision of 1 FAM 362.1(c)(2). Management recognizes the value of enhancing the role of the AGB to include CAS and aviation programs that are not administered by INL. To this end, the AGB Charter is being revised to include MED as an AGB member and, as a whole, the AGB will leverage INL/A for technical guidance while simultaneously leveraging expertise and experience from other bureaus that procure aviation services. This ensures that the AGB has oversight authority for all ongoing and new aviation activities to ensure compliance with relevant law and regulation and also that all aviation costs within the Department are captured for reporting and budgeting purposes.

Attachment:

Tab – Supporting Background, Facts, Legal Authorities, and Discussion

¹¹ M also notes that the relevant sections of 2 FAM 816.1-2 (as drafted) are limited in scope: 2 FAM 816.1-2(A) begins with "INL/A acquires," 2 FAM 816.1-2(B) begins with "INL/A must," and 2 FAM 816.1-2(F) begins with "INL/A must []"

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Approved: D-US/M: Ambassador William Todd, Deputy Under Secretary for Management

Drafted: M – Gregory Stanford, ext. 7-1501

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	DS – (info)		

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July 26, 2018

UNCLASSIFIED**MEMORANDUM FOR RECORD**

THRU: OIG/AUD – Norman P. Brown

SUBJECT: Supporting Background, Facts, Legal Authorities, and Discussion

INTRODUCTION

The Management Assistance Report asserts that the Bureau of Medical Services (MED) Department is not in compliance with Federal and Department aviation regulations and policies. Specifically, the DMAR claims that the “unique biocontainment capability was the basis for the non-competitive award in the first place,” and that the September 1, 2017 modification deviated “from the original purpose and sole source justification for the procurement,” considering that the need for aeromedical biocontainment evacuations subsided when the Ebola crisis ended in 2016,” including a deviation from both the Competition in Contracting Act (CICA) and the Federal Acquisition Regulation (FAR). Moreover, the DMAR says that MED is “in violation of 41 CFR §102-33 and OMB Circular A-126 requirements because it failed to use FAIRS to report the cost and usage data on CAS,” that MED did not “justify the use of commercial aircraft in lieu of Government-owned aircraft,” that it did not establish Flight Program Standards or perform proper oversight to see if Contractor was meeting these standards, and the MED lacks officials with aviation expertise.

The Department does not agree with the DMAR’s characterization because: (A) the decision-making process leading up to the modification reflected careful deliberation by the Department and MMASS Contract provides strategic mobility options for the Department, as called for by the Secretary; (B) there continues to be a legitimate and prevailing threat from highly-pathogenic infectious diseases (C) the GAO has found that use of a package approach, rather than by separate procurements for divisible portions of a total requirement, is within the discretion of the agency absent “clear evidence that it lacked a reasonable basis;” (D) the Contracting Officer and Contracting Officer’s Representative did not inappropriately modify SAQMMA16C0077, properly adhering to AQM Quality’s Assurance Plan. Additionally, the Department does not agree with the DMAR’s characterization of MED’s oversight of the MMASS Contract because: (E) MED is in compliance with the Federal Aviation Interactive Reporting System (FAIRS); (F) MED is in compliance with 41 CFR §102-33 and OMB Circular A-126 and that MED properly justified the use of commercial aircraft in lieu of Government-owned aircraft; and (G) the COR on the Contract has the required expertise and proven competency to administer the MMASS Contract.

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- A. THE DEPARTMENT ENGAGED IN A CAREFUL DECISION-MAKING PROCESS FOR THIS REQUIREMENT AND FOUND THAT USE OF THE MMASS CONTRACT PROVIDED THE BEST VALUE SOLUTION TO THE REQUIREMENT

- A.1. **Background:** (SBU) In December of 2016 Congress appropriated \$6.0M as part of the Security Assistance Appropriations Act (SAAA or D-ISIL) for Mogadishu aviation support for Fiscal Years 2017 and 2018. As part of the D-ISIL Appropriation, funds were also appropriated for MED to provide multi-mission aviation support for medical evacuation and transport of Bureau of Diplomatic Security (DS) crisis response teams in locations covered by the Department's D-ISIL Operating Plan which included Somalia and three other locations. At that time, the small U.S. presence in Somalia was operating without a dedicated health unit and without any medical evacuation capability. Overall U.S. policy concerning a diplomatic presence in Somalia is changing (b) (5)

(b) (5)
(b) (5)

Recognizing the uncertain budgetary future for the U.S. Mission to Somalia and that establishing a long-term INL/A-run federal aviation operation would require a longer-term investment that may not be available in future years, in March of 2017 the M Staff requested that MED advise on the feasibility of utilizing the MMASS contract to support the U.S. Mission to Mogadishu.

- A.2. (U) After receiving the request from M Staff on March 3, 2017, MED contacted INL/A to seek their guidance on how to respond to M Staff's request and was told by INL/A to provide the requested information. On March 6, 2017, MED then contacted the AQM Contracting Officer to determine whether such services could be provided under the contract. The Contracting Officer performed necessary analysis and sought legal option. The Legal Advisor (L/BA) provided a response that, if the MMASS Contractor was amenable to the change, such a geographic move would be within the scope of the contract. On March 17, 2017, MED provided its cost estimate to M based on a planning factor of two missions per week for one year. On March 23, 2017, M Staff posed additional questions to MED which MED answered on the same day.
- A.3. (U) From March through June, M Staff worked with INL/A to develop a cost estimate for an INL/A Model for aviation support. During this time, INL/A was provided MED's cost estimate and developed modifications to their proposal to reduce the cost. In a White Paper, INL/A recommended staging both assets in Nairobi, with INL/A assuming the shuttle service portion of the requirement and using the MED asset for MEDEVAC and regional support. On June 2, 2017, INL/A provided their final cost estimate. M Staff sent the cost estimate to the Bureau of Budget and Planning (BP) on June 5, 2018, and informed MED of the decision to utilize the MMASS Contract for the Mogadishu requirement on June 22, 2018. This decision was based on both cost and non-cost factors. While one advantage of the INL/A model is that it provided dedicated support that would not be interrupted by short-notice medical evacuation, biocontainment, and/or crisis response requirements, the additional capabilities of the MED asset, uncertainty with respect to the form of U.S. presence in Somalia, and availability of funds led M Staff to support utilizing the MMASS Contract COA.

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- A.4. **The Cost Estimates:** A key factor in the Department's decision to utilize the Mmass Contract model was that the Department was already paying for the asset to maintain the USG's only biocontainment aviation support asset for medical evacuation. The DMAR takes issue with the March 17, 2017, cost estimate provided by MED which served as the baseline for future discussions and analysis. To date, the Mmass Contractor has fully invoiced the Department for 16 missions from Nairobi to Mogadishu to Wajir to Nairobi with an average cost of \$27,889.51. In addition to the \$521,620 annual cost increase for the monthly basing fee and the \$12,000 increase in Defense Base Act Insurance, the Department incurred \$110,000 in additional mobilization costs and one-time costs of \$68,978.32. While MED should have included the AQM Procurement Surcharge in their estimate, the direct costs associated with MED's estimate are within 2.76% of the actual direct costs and 4.05% of the total actual cost including the AQM surcharge. Comparatively, the INL/A Model for two trips per week was \$4,729,570 in Year One, or \$1,087,925.67 more than the actual costs associated with using the Mmass Contract.

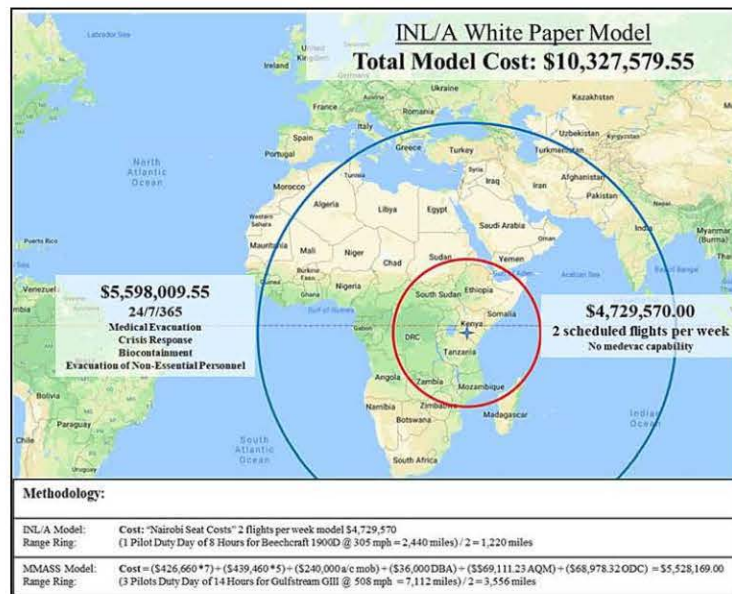
MED Est vs. Act	Missions	Per Mission Cost	Annual Mission Cost	Fixed Over- head	Other Direct Cost	AQM Sur- charge	Direct Costs	Total
Estimate	104	\$28,150.00	\$2,927,600.00	\$500,000.00	\$72,400.00	\$0.00	\$3,500,000.00	\$3,500,000.00
Actual	104	\$27,731.61	\$2,884,087.44	\$643,620.00	\$68,978.32	\$44,958.57	\$3,596,685.76	\$3,641,644.33
							(\$96,685.76)	(\$141,644.33)
							2.76%	4.05%

- A.5. **The Models Presented to Management:** At the outset, and addressed elsewhere, the Department does not agree with the DMAR's recommendation to eliminate the Department's only on-call aviation asset that can perform crisis response, biocontainment aviation support, and medical evacuation. As a result, that Model was not considered as an option. The remaining three models include:
- A.5.1. The "Status Quo" Model which would have established the INL/A platform in Nairobi and retained the Mmass Contract platform in Dakar, Senegal.
- A.5.2. The INL/A White Paper proposed a model which would have co-located both assets in Nairobi, incurring the fixed overhead costs for both operations.
- A.5.3. The M Decision Model which was to relocate the Mmass Contract Asset to Nairobi to use a single vendor to service the entire requirement.
- A.6. Based on the three models presented, the Department opted to proceed with the "M Decision Model" which overall cost \$1,087,925.67 less than the Status Quo Model and \$1,809,431.47 less than the INL/A White Paper Model.

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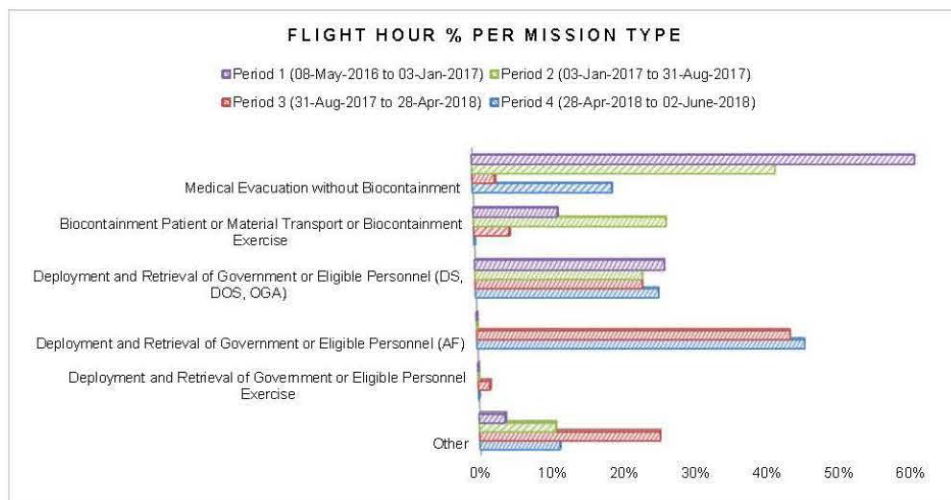
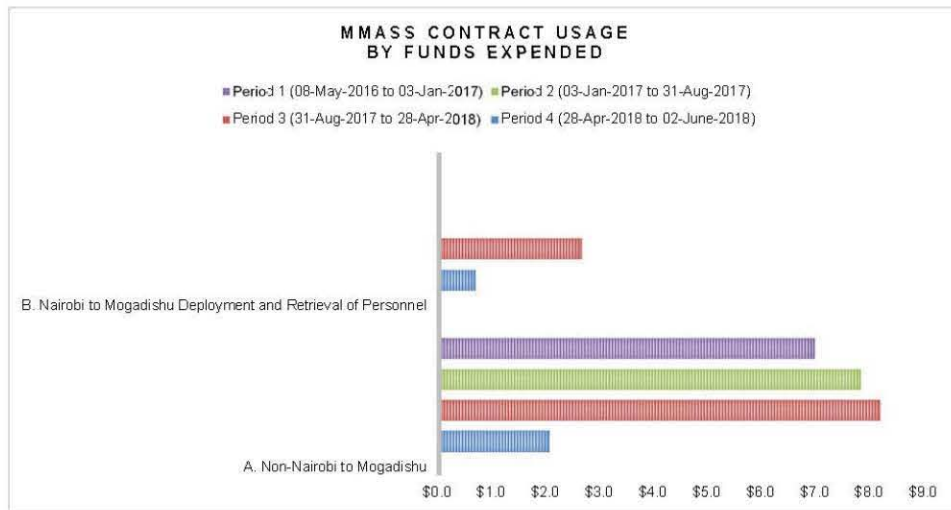


- A.7. **Value Added to MED and AF:** The DMAR also takes issue with the usage of the aircraft, arguing that a larger proportion of the base costs should be attributable to AF based on the usage of the aircraft. Based on an analysis of mission costs, overhead costs, and flight hours, it is clear that MED derives the majority of the use and the flight hours on the contract.

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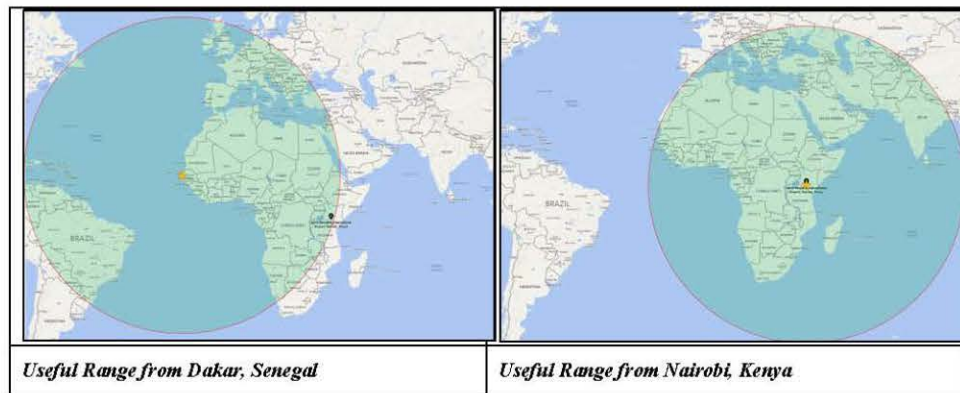
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- B. THE SECRETARY HAS EMPHASIZED THE NEED TO PROVIDE ADEQUATE PROTECTION TO OUR DIPLOMATS IN HIGH-RISK, HIGH-THREAT ENVIRONMENTS AND THE MMASS CONTRACT PROVIDES THE DEPARTMENT STRATEGIC MOBILITY FOR CRISIS RESPONSE, AS CALLED FOR BY THE SECRETARY AND AUTHORITATIVE RECOMMENDATIONS
- B.1. **Summary:** The DMAR states that “[t]he Department would put approximately \$24 million of tax-payer funds to better use by not exercising option years 2 and 3 of contract SAQMMA16C0077.” The Department submits that eliminating the USG’s only biocontainment capability by not exercising option years on the MMASS Contract would mean the loss of strategic mobility of the Department’s crisis response teams — a capability that Secretary Pompeo made clear was critical for protecting COM personnel in the Additional Remarks published with the House Select Committee Report on Benghazi. Moreover, loss of this critical Department asset would not be consistent with several authoritative reports documenting steps the Department should take to enhance its ability to provide support to Embassies in crisis.
- B.2. **A Critical Safety Net for MED and the Department:** Several non-cost operational factors were considered in selecting the final model. While the INL/A model of support uses regionally capable turboprop aircraft focused solely on the passenger shuttle mission, the MMASS aircraft represents the Department’s only organic strategic crisis response and medical evacuation capability. The positioning of the aircraft in West Africa made sense when originally established in 2015 because commercial air ambulances refused to retrieve non-Ebola patients from Ebola-stricken countries and embassies could not support their post populations without reliable medevac services. Looking at the useful range of the aircraft (below), the trade-off of a West Africa base is a loss of utility in most of the current ISIL-threat countries. The requirement for aviation support in East Africa presented a reason to re-examine the placement and efficient use of the Department’s aviation capabilities on a global scale. A co-existence model would have increased cost without significantly improving the Department’s response posture to our highest risk posts and left Mission Somalia without medical evacuation or unscheduled personnel extraction capability. The co-location model would have improved responsiveness but increased cost. By using the MMASS asset, the Department created the optimal value proposition by improving global responsiveness, providing Mission Somalia with critical medical and personnel evacuation support, in what turned out to be the best financial savings to the tax payer overall.

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B.3. **Support for the Highest Risk Posts and Department Employees:** There are currently 21 U.S. diplomatic facilities on the Security Environment Threat List that are rated as “Critical” for either Terrorism and/or Political Violence with a combined authorized post population of 14,280 U.S. direct hire personnel. Under the Dakar, Senegal Model, the Department could only captured 9 of these 21 posts in the Useful Range of the Aircraft — covering 6,364 of the U.S. direct hire personnel at these high threat posts (44.6% of the population at risk). By relocating the MMASS Contract aircraft to Nairobi, Kenya, the Department can now cover all 21 of these high threat posts within a single duty day, providing support for an additional 7,916 (14,280 total) U.S. direct hire personnel advancing U.S. interests in the most dangerous parts of the world.

B.4. **The Asset Meets the Requirements of Authoritative Reports and Recommendations:** In the “Proposed Additional Views of Representatives Jim Jordan and Mike Pompeo” to the House Select Committee Report on Benghazi, then-Representative Pompeo, along with Representative Jordan, stressed that the “American people expect that when the government sends our representatives into such dangerous places they receive adequate protection.” They mention that what was most troubling was that the U.S. Government “never sent assets to help rescue those fighting in Benghazi and never made it into Libya with personnel during the attack,” and the “rescue team did not leave until hours after the attack was over.” In addition to meeting the Secretary’s guidance to ensure the safety of the Department’s workforce in high-threat environments, the MMASS Contract Capability also allows the Department to address lessons learned and recommendations post-Benghazi, as well as recommendations from the Accountability Review Board Report for the Embassy Bombings in Nairobi and Dar es Salaam.¹

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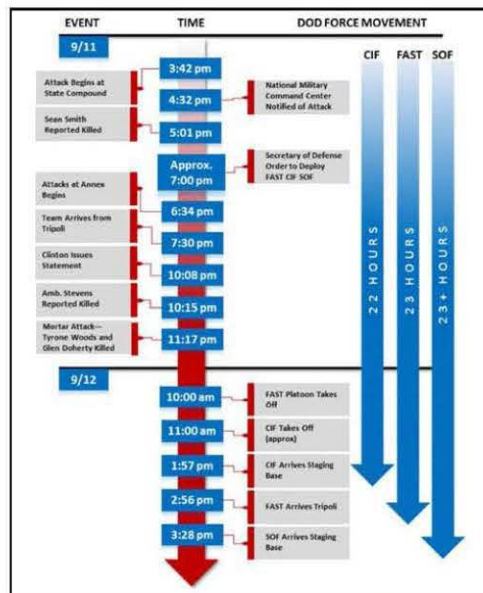


Figure 1 Excerpt from Proposed Additional Views of Representatives Jim Jordan and Mike Pompeo (noting that DOD Aircraft did not depart for Benghazi until almost 18 hours after the attack began) (under the terms of the MMASS Contract, the vendor is required to maintain a N+6 hours readiness posture) (using Benghazi as an example, the flight time with a GIII from Nairobi to Benghazi is approximately 5 hours and 5 minutes and could have been onsite in 11 hours and 5 minutes)

- B.5. **Alongside Biocontainment and MEDEVAC, Crisis Support is Clearly Part of the Contract:** The MMASS Contract provides a solution to the void that existed during the time of Benghazi. Per the MMASS Contract's PWS at C.2.2.6.3: the "Government may request air transportation for emergency deployment or retrieval of Government personnel in support of security ... needs of the Government ... referred to herein as 'Crisis Response[.]'" and the Background section elaborates on the operating environment at C.1.1, stating: "DOS must equip itself with the tools that shall best enable its response to be safe, accurate and fast ... [and] must have the capability to deploy key personnel ... from areas of civil unrest[.]" The MMASS Contract provides the Government with strategic options during highly complex international crises. Through the MMASS Contract, the Department has been able to quickly respond to several international crises, including the deployment of crisis responders in response to civil unrest in Bangui, Central African Republic in 2017, and the rescue of twelve American citizens from South Sudan in 2016.
- B.6. **Conclusion:** The MMASS Contract provides the Department with strategic response options during the time of highly complex international crises. In the event that another Benghazi-like attack takes place, through the MMASS Contract, the Department would be able to provide emergency deployment and response both quickly and efficiently, and provide for the adequate protection to our diplomats abroad, as called for by the Secretary.

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c. THE MULTI-MISSION AVIATION SUPPORT SERVICES (MMASS) CONTRACT WAS PROPERLY AWARDED AS A MULTI-MISSION AVIATION SUPPORT CAPABILITY AT THE TIME OF AWARD AND THROUGHOUT PERFORMANCE

c.1. **Summary:** The DMAR states that the ability to evacuate patients infected with highly-pathogenic infectious diseases (HPID) is no longer required by the USG, rationalizing that at some time the HPID threat to individuals under Chief of Mission (COM) security responsibility ("COM personnel") vanished. As result, the sole-source basis was improper because the MMASS Contract combines biocontainment aviation support (specialized service) with general aviation support such as the deployment and retrieval of USG personnel, crisis response teams, and other eligible personnel into/out of areas of disaster or conflict. The Department expresses concern with the underlying premise of the DMAR's position in this regard, with the view that divestment of the USG's only proven biocontainment evacuation capability would potentially prevent the Department from fulfilling its obligation to establish policies and programs for the protection of COM personnel and to provide for the safe evacuation of U.S. citizens when their lives are endangered as required under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. To this end, the Department reasonably and rationally justified a consolidated procurement approach and that use of the MMASS asset to its fullest extent — by contractually including a spectrum of missions that require interrelated components — optimizes the return on investment made by the American taxpayer.

c.2. **Rule:** The Competition in Contracting Act (CICA) requires "full and open" competition² unless there is a valid sole-source determination.³ An agency may use non-competitive procedures when the services are available from only one responsible source.^{4,5} Sole-source authority is intended to provide agencies with flexibility,⁶ including the authority to utilize a total package approach, bundling interrelated requirements into a single procurement.⁷ While agencies may not justify sole-source procurement actions that result from a lack of advance planning, "[a]dvance planning does not mean that such planning be completely error free[.]"⁸ In exercising this authority, agencies must provide prospective sources with notice of the agencies intent and an opportunity to respond.⁹ While bundling may at first exclude some firms that can only provide a portion of the requirements, bundling may encourage otherwise excluded firms to expand into other areas, thereby eventually increasing competition,¹⁰ and the combination of requirements can reasonably be expected to increase future competition for specialized requirements.¹¹ Moreover, in determining whether to award a contract to a potential sole-source supplier, agencies are not required to speculate as to every possible scenario that might enable other potential offerors to qualify.¹² In exercising this discretion, the GAO has long "recognized that the determination to procure by means of a package approach rather than by separate procurements for divisible portions of a total requirement is primarily a matter within the discretion of the procuring activity and will be upheld so long as some reasonable basis exists."^{13,14,15,16} The GAO and Federal Courts will not overturn an agency's decision to sole-source a contract award unless either "(1) the procurement official's decision lacked a rational basis; or (2) the procurement procedure involved a violation of regulation or procedure,"¹⁷ which the U.S. Federal Circuit Court of Appeals recently described as a

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“heavy burden” on the protestor.¹⁸ “Review of an agency’s decision to conduct a non-competitive procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A[.]”¹⁹ A rational basis exists where an “agency reasonably determines that consolidation will result in significant cost savings or operational efficiencies”²⁰ and the GAO has also recognized the safety of USG personnel and national security as relevant considerations in assessing whether an agency action with a rational basis.²¹

C.3. The Department’s Rational Basis for a Standing Biocontainment Aviation Capability

C.3.1. Continuing HPID Threats: The DMAR relies upon the WHO’s January 14, 2016, declaration that the 2014 of the Ebola Virus Disease (EVD) Outbreak ended as evidence that there is no longer a requirement for biocontainment aviation support. However, the DMAR acknowledges that there were subsequent EVD outbreaks that were reported the following day and throughout 2017, as well as a 2018 EVD outbreak. It is important to note that EVD is not the only HPID threatening COM personnel, American citizens, and international health care workers. In 2017, an outbreak of bubonic plague resulted in over 2000 cases and 202 deaths on the island of Madagascar. Today, Nigeria is experiencing the worst outbreak of Lassa hemorrhagic fever virus disease in history, beginning in June of 2017, with over 1000 cases since January. The WHO’s 2018 Annual Review of Diseases Prioritized under the Research and Development Blueprint, identified eight diseases with “potential to cause a public health emergency” where there is currently an “absence of efficacious drugs and/or vaccines” therefore justifying an “urgent need for accelerated research and development[.]”²² Six of the eight are diseases classified by the National Institute of Allergy and Infectious Diseases (NIAID)²³ as HPIDs. A seventh disease — “Disease X”²⁴ — represents the unknown which is likely also to meet NIAID’s criteria as an HPID. To support the Department’s view, the Audit Team was provided correspondence from the WHO, Samaritan’s Purse, and the Department of Health and Human Services which all unequivocally validate the continuing requirement for biocontainment aviation support.

- **World Health Organization (March 2018):** *The provision of biological containment system medical evacuation services is crucial for WHO’s operations in the field. ... The need for biocontainment transport capability remains critical to our functions as we need to guarantee to our workforce the possibility to be evacuated in any circumstance. ... In summary, biocontainment medical evacuation still remains - and will continue to be - a requirement in the protection of international health care workers. WHO and partners look to the US Department of State for the provision of biocontainment medical evacuation services (on a reimbursable basis) to support the larger global security effort and our essential response functions.*
- **Samaritan’s Purse, Int (March 2018):** *It is part of our responsibility as an organization, but I think it is also part of our obligation as a nation to protect our citizens. Maintaining the evacuation capability for them is far beyond our capacity as a private organization, thus we are thankful that DOS has this capability. I honestly believe that taking care of our citizens in manners like this is what separates America from other nations.”*
- **U.S. Department of Health and Human Services (March 2018):** *DOS continues to have the only tested, proven, and viable federal biocontainment transport capability. This federal capability has been written into the aforementioned regional and state response plans. It is clear the federal government will continue to be the nation’s safety net during disease outbreaks. It is equally clear that a*

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transportable biocontainment capability is a critical requirement to provide that net and support to American citizens.

C.3.2. **Executive and Legislative Policy Directives instruct Investment in Biodefense — not Divestment:** Section 7058 of Public Law 115-141 (as modified by the Explanatory Statement) requires State, the National Security Council (NSC) and other stakeholders to develop a Global Health Security Strategy to prevent, detect, and respond to infectious disease outbreaks by the end of FY18.²⁵ It is also crucial to recognize that biological threats are not limited to naturally-occurring pandemics or diseases. As the Brookings Institute noted last year: “there have been warnings that terrorist groups like ISIS, rogue countries like North Korea, or violent transnational groups like Boko Haram could gain access to biological agents — or even deadly diseases like Ebola or Zika—and use them to create weapons of mass destruction.”²⁶ The threat posed by biological agents — whether naturally-occurring or weaponized as weapons of mass destruction (WMD) — is specifically recognized in the President’s National Security Strategy (NSS), with Pillar I’s priority actions including priority actions to disrupt WMDs (to include biological weapons) and combatting biothreats and pandemics “at their source[.]”²⁷

C.3.3. **The Department’s Strategic Plan Emphasizes the Department’s Role to Counter Bio-Weapons and Pandemic:** Likewise, the Department’s Joint Strategic Plan for FY 2018-2022, with Strategic Objective 1.1 focused on limiting the spread of WMDs to include biological weapons,²⁸ Strategic Objective 3.4 which seeks to prevent the spread of disease (including pandemics),²⁹ and Strategic Objective 4.4 which seeks to protect the security and safety of the Department’s workforce overseas.³⁰

C.3.4. **Lessons Learned Strongly Support the Biocontainment Aviation Requirement:** Finally, the inability to obtain biocontainment evacuation during an HPID outbreak is well-documented both with the recent experience with EVD³¹ and the 2002-2003 experience with SARS.³² The CDC developed the ABCS in response to SARS but, as a cost-savings measure, opted to allow the contract to lapse in 2011. The CDC faced broad criticism for allowing this capability to lapse and the USG nearly lost the capability at the EVD outbreak. If it were not for the quick actions of the Department in 2014 to secure this asset, the U.S. likely would have had no capability to support any patients during the EVD crisis. In light of these lessons learned, it would be a potentially catastrophic mistake to lose this capability and the Department and Government would face significant criticism should another outbreak occur with no tested biocontainment asset available for deployment.

C.3.5. While the Department may not always have a constant, predictable requirement for biocontainment transportation, the risk is currently at a critical level globally and a need could arise at any time. At the time of award, the Government was still working with the international community to contain the largest Ebola outbreak in history. Since the award, there have been uninterrupted and often overlapping outbreaks of highly contagious pathogens in several regions of the world that threatened Chief of Mission personnel and others. Here, the Agency determined that only the selected

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MMASS Contractor could provide the biocontainment services necessary to transport personnel infected with unique and highly communicable pathogens, determined that it had a valid and enduring requirement for contingency airlift support, and determined that a single packaged approach was more beneficial than two separate contracts that would incur a much higher fixed overhead costs. Thus, acting properly within its discretion in determining its requirements, the Agency reasonably and rationally decided to couple this requirement with medical evacuation services and other emergency transportation services. Should the need arise for biocontainment transportation services, the Contractor would already be on contract and in country. Finally, there are currently no other firms that offer comparative biocontainment transportation; and, as the DMAR recognizes, biocontainment flights are not particularly common – i.e., there is essentially no reason for competitors to try to enter a market consisting solely of biocontainment flights. Thus, by bundling the various requirements, other firms may be encouraged to enter the marketplace for biocontainment transportation unlike a biocontainment-only procurement.

- c.4. **The Department's Consolidated, Total Package Approach was Documented Contemporaneously and included a Clearly Articulated Rational Basis:** The rationale for a total package approach to the acquisition was captured in several written submissions to M and other key Department decision makers. In a January 22, 2016, email to M and the Department's Head of Contracting Authority (HCA)), the MED COR for the MMASS Contract noted an Independent Government Cost Estimate of \$24M for a 24-month period of performance to provide both a CONUS and an OCONUS aircraft. As a basis of comparison, an October 17, 2014, cost estimate provided by an alternate service provider using federal aircraft estimated first-year start-up costs of \$21.5M and recurring costs of \$18.6M for a 24-month estimate of \$40.1M for a single OCONUS aircraft capability to support regional medical evacuations in West Africa (without biocontainment) — a \$16.1M cost savings (or 40.15%) over a model with half the capacity and significantly less capability. Several non-cost operational efficiencies related to the approach were also noted, namely multi-mission aircraft in both the Eastern and Western Hemisphere capable of "medical evacuation, with or without biocontainment, deployment of crisis response teams, and back haul of non-essential personnel from posts in crisis." Similar cost and non-cost justifications were noted in a formal information memo for M highlighting biocontainment medical evacuation, non-biocontainment medical evacuation, the deployment of crisis responders, as well as a crisis-driven expansion of the contract in response to civil unrest in Bangui, Central African Republic on September 30, 2015, to include the non-medical evacuation of personnel of from posts in crisis.
- c.5. **The Department's Approach is Consistent with GAO and Court Decisions:** The GAO and courts have allowed the combination of requirements that permit operational efficiency.
- c.5.1. *B.H. Aircraft Co., Inc.* involved procurement of freight transportation and transportation coordination services within the continental United States in support of the Department of Defense's Defense Transportation Coordination Initiative. In response to the solicited procurement, potential offerors complained that competition was unduly

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restricted due to the consolidation of transportation coordination services and freight transportation services. However, the GAO found the Agency's bundling approach to be reasonable, noting that it would provide for substantial monetary benefits and increased operational efficiency as well as satisfy other core agency needs, "such as reducing cycle times, improving the reliability and predictability of freight shipments, and increasing the agency's capacity guarantees to address daily and surge requirements." As applied here, the Mmass Contract's total package approach improves reliability and guarantees capacity to address surge requirements.

c.5.2. *Matter of Hvide Shipping, Inc.*³³ considered a protest against a NASA sole-source award where the Agency awarded a sole-source contract to a vendor for both a highly-technical Solid Rocket Booster (SRB) retrieval mission in support of NASA's overall shuttle program. The protester — a maritime shipping company — protested the award on the basis that the sole-source award was not properly justified, or alternatively, that NASA improperly consolidated a specialized requirement (SRB retrieval) with a non-specialized requirement (general maritime retrieval), arguing that, given that the specialized requirement represented only a small percentage of the overall SRB retrieval mission (10% of the overall "manning effort").³⁴ NASA contended that while there were numerous maritime firms "capable of performing the maritime portion of the retrieval mission, too great a risk would be introduced if the mission were not in [the] control of a firm intimately familiar with the total SRB integrated mission requirement."³⁵ In upholding the Agency's decision, the Comptroller noted that NASA's belief that it was critical to the mission's success to have a single contractor perform all the services under the contract as well as a central prime contractor to provide operational control.³⁶ The Department holds that the integration of specially designed aircraft components, specifically trained crew, and proprietary technology within the Mmass vendor is absolutely critical to the safe transportation of HPID patients, and that the use of select components from that system to perform related missions without biocontainment is in the overall best interest of the U.S. taxpayer.

c.5.3. *Matter of: Teximara, Inc.*, considered a case where the GAO denied a protest to a U.S. Air Force sole-source award to a small business.³⁷ In *Teximara*, the GAO upheld the Air Force's sole-source award to a small business because the Agency was able to show "savings in equipment," "savings in vehicles," and "savings in personnel," as well as clearly identified "redundancies" in multiple tasks like "disaster cleanup, hazmat containment and control, and disaster preparedness[.]"³⁸ Like *Teximara*, the Department realizes savings in equipment (requiring only two aircraft instead of three or more aircraft if requirements were split among multiple vendors), personnel required to perform the multi-role aviation mission (*i.e.*, one set of pilots, one medical crew, one maintenance operation, etc.), and eliminate redundancies in tasks related to biocontainment and non-biocontainment aviation operations.

c.6. **Conclusion:** In sum, the Department has offered sufficient facts and rationale to support the decision to procure the Mmass Contract on a sole-source basis using a total package approach. In order to maintain a first response biocontainment capability, several interrelated components are required. The ABCS is highly complex assembly of sub-systems

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that must be maintained in a manner similar to that used in the management of other aviation equipment using tools and skills found in an aircraft maintenance facility. The ABCS is certified for use only in specifically configured Gulfstream III aircraft that have a combination of missions on their operating specification, including the movement of cargo, passengers, and medical evacuation patients. In flight, patients must be cared for by highly trained and experienced medical crew. All of those components (ABCS hardware, aircraft maintenance, aircraft, pilots, and medical crew) are necessary to field the biocontainment capability. The addition of crisis response, personnel extraction, and medical evacuation without biocontainment simply leverage some or all of the capabilities that the Government is already paying to maintain. By awarding SAQMMA16C0077 as a multi-mission aviation capability, and using it to support as many valid requirements as possible within the scope of that contract, the Government realizes significant operational flexibility and limits wasteful redundancy. By negotiating a fixed price for aircraft and basic medical crew, and using an aircraft with performance capabilities to support multiple and mixed missions, the Government is provided with strategic options during highly complex international crises. When that complex crisis includes the natural outbreak or intentional release of a highly contagious pathogen, the operational risk to the Government and the American public is too great to try to integrate biocontainment with aviation and crisis response in an unsynchronized and unrehearsed fashion at the time of execution.

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D. MODIFICATION 11 TO THE MULTI-MISSION AVIATION SUPPORT SERVICES (MMASS) CONTRACT WAS PROPERLY REVIEWED, CLEARED, AND AWARDED IN ACCORDANCE WITH DEPARTMENT AND FEDERAL REQUIREMENTS

D.1. **Summary:** The DMAR asserts that Modification 11 to the MMASS Contract was “inappropriate,” relying on the assertion that it is no longer necessary to maintain biocontainment aviation support, or that support to valid aviation support requirements using MMASS assets violates the basis of contract award. Additionally, the DMAR G asserts that the Contracting Officer’s Representative (COR) provided the Contracting Officer (CO) with incorrect pricing data and that the appropriate procedure to modify a contract was not followed in accordance with the FAR and Department policy. Finally, the DMAR states that the “Kenya to Somalia routine transport has become the primary use” of the MMASS Contract. For the reasons explained above, the Department maintains its position regarding the necessity of a biocontainment aviation asset, as divestment of the Department’s capability would be irresponsible and inconsistent with the Department’s obligation to protect COM personnel and provide for the safe evacuation of U.S. citizens when their lives are endangered as required under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Review of the decision-making process shows that M retained final decision-making authority based on price and non-price factors and did so after careful review and after multiple months of deliberation with INL, AF, and MED. Additionally, after consultation with A, L/BA, and the HCA, it is clear that all procurement-related processes and procedures were followed as required.

D.2. **Rule:** GAO and federal courts will review contract modifications to determine whether a government “modification is within the scope of the competition conducted to achieve the original contract.”³⁹ A “Cardinal Change” occurs when the government modifies the contract “that it effectively requires the contractor to perform duties materially different from those originally bargained for.”⁴⁰ There are six factors to assess a CICA-related Cardinal Change: (1) “the extent of any changes in the type of work[;]” (2) changes to the “performance period[;]” (3) differences in the “costs between the modification and the original contract[;]” (4) “whether the original solicitation adequately advised offerors of the potential for the change[;]” (5) “whether the change was the type that reasonably could have been anticipated[;]” and (6) whether “the modification materially changed the field of competition for the requirement.”⁴¹ Administratively, the AQM Quality Assurance Plan requires that for contract modifications that exceed \$5 million, that review/clearances/primary approvals be received by the Contracting Officer, Branch Chief, and L/BA, and Final Approval should be received by the Division Director or RPSO Director.

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D.3. Application

Factor (1) Extent of Any Changes in the Type of Work	
MMASS before Modification 011	MMASS after Modification 011
<p>1. On August 1, 2016, Section C.2.2.2. of the MMASS Contract was amended, requiring that MMASS vendor must "provide one dedicated aircraft for the sole use of the DOS (Dedicated Aircraft), available continuously through the period of performance, with a maximum six-hour (6-hour) response time to depart from an overseas base of operations ("Overseas Contractor Base") located in a mutually agreed upon location outside the continental United States."</p> <p>2. Per C.2.2.2 of the MMASS PWS, the "flight crew personnel may transport specimens and laboratory samples containing hazardous or infectious materials enclosed in appropriate transport containers." Per C.2.2.7 of the MMASS PWS, PAG "shall develop a biocontainment capability that creates a negative pressure environment throughout the flight, with visual and auditory pressure variation warning systems, capable of containing an airborne viral pathogen. Vented air from the unit shall be HEPA filtered, containing 99% of 0.3 micron particles, and 99.99% of 1.0 micron particles."</p> <p>3. Per C.2.2.6.3 of the MMASS PWS, the "the Government may request air transportation for emergency deployment or retrieval of Government personnel in support of security or other needs of the Government (referred to herein as "Crisis Response")."</p>	<p>1. According to SAQMMA16C0077, Modification 011, the MMASS Vendors is required to: "Reach Full Operating Capacity (FOC), with the ability, space, and resources to conduct three missions per week and maintain N+6 medical evacuation response posture for all other periods." Compare SAQMMA16C0077 MOD001 (six-hour (6-hour) response time to depart from an overseas base of operations).</p> <p>2. On September 13, 2017, the MMASS Contract executed mission M17-002 using the biocontainment capability — that creates a negative pressure environment throughout the flight — to transport hazardous and infectious laboratory samples of EVD from Conakry, Guinea to Atlanta, Georgia, to support the CDC, NIH, and the Bureau of International Security and Nonproliferation (ISN).⁴² Compare SAQMMA16C0077 Award ("transport specimens and laboratory samples containing hazardous or infectious materials" using "a biocontainment capability that creates a negative pressure environment throughout the flight").</p> <p>3. On November 3, 2017, the U.S. Military carried out its "first airstrikes against ISIS fighters in Somalia." Following a meeting of Mission Mogadishu EAC, an unscheduled request was made to remove non-essential staff from Mogadishu due to a security threat.⁴³ As a result, PAG was required to provide unscheduled, security-related retrieval of Government personnel from Mission Mogadishu (Mission 17-009ER). Compare SAQMMA16C0077 Award ("Government may request air transportation for emergency deployment or retrieval of Government personnel in support of security or other needs of the Government").</p>
<p>Analysis & Legal Authorities:⁴⁴ Here the inclusion of additional flight hours for mission travel between Nairobi and Mogadishu did not materially change the work contemplated under the contract. The vendor was still required to perform the key functions described in the J&A and the original PWS, including the special services described in the J&A (e.g., biocontainment movement and crisis response to retrieve personnel).</p>	

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Factor (2) Changes to the Period of Performance

There were no changes to the period of performance.

Factor (3) Differences in the Costs between the Modification and the Original Contract

1. While there were some changes in fixed costs, the overall value of the contract remains \$60,000,000.00.
2. As of June 2, 2018, the vendor has invoiced a total of \$26,450,120.76 for the Base, 24-month period of performance, with \$23,655,471.56 (89.43%) for non-AF requirements and \$2,764,649.20 (10.57%) associated with the AF mission requirement.
3. This represents a *de minimis* change to the total value of the contract and is insufficient to constitute a Cardinal Change. *See, e.g., HDM Corp. v. United States*, 69 Fed. Cl. 243, 257 (2005) (cost increase of 10% in current period of performance not a Cardinal Change for CICA).

Factor (4) Whether the Original Solicitation adequately advised Offerors of the potential for the Change
Factor (5) Whether the Change was the type that Reasonably could have been Anticipated
Factor (6) Whether the Modification Materially Changed the Field of Competition for the Requirement

MMASS before Modification 011	MMASS after Modification 011
<p>1. The 2016 Sources Sought appealed to "small businesses with proven technical capability and experience to provide <u>multi-role aircraft</u> with sufficient range and seating capacity to efficiently <u>deploy personnel and retrieve personnel and casualties from anywhere in the world</u>." In the J&A Synopsis, the Department required "a rapidly deployable aviation capability <u>for transporting response personnel and retrieving eligible persons and critically ill patients safely, swiftly and securely to and from locations anywhere in the world</u>, in the most expeditious manner." The Department further explained that it required "the services of an air transportation company with access to a wide variety of airplanes of varying sizes and capabilities that shall provide movement <u>anywhere in the world</u> on short notice."</p> <p>2. The J&A states that MED "identified a support gap in its mission to respond to critical threats to the Department's diplomatic missions overseas. This gap includes ... <u>movement of USG personnel into and out of hazardous or non-permissive environments</u>." The J&A also notes that recent experience "from civil disorder in Tripoli ... has shown that <u>commercial flights into affected regions become increasingly unreliable as a crisis evolves</u>, and the commercial and charter aviation industry will terminate service to affected regions without</p>	<p>1. MMASS Modification 011 stemmed from a Department requirement "to support both scheduled movement of high risk diplomatic personnel and ongoing contingency Operations." MMASS Modification 011 states: "To better serve the needs of the Department, the Program Office requested that discussions be held with Phoenix Air Group to determine whether the mutually-agreed upon location could be changed from Dakar, Senegal to Nairobi, Kenya. The DOS has a requirement for a rapidly deployable aviation capability transporting response personnel and retrieving eligible persons and <u>critically ill patients safely, swiftly and securely to and from locations within Somalia</u>, while continuing to support medical evacuation and biocontainment requirements on the African continent."</p> <p>2. On January 7, 2016, the Federal Aviation Administration (FAA) amended and expanded its <u>suspension of U.S. commercial air support</u>⁴⁵ for the country of Somalia⁴⁶ which was extended through January 7, 2020, by a final rule published by the FAA on December 13, 2017.⁴⁷ Compare J&A ("<u>commercial airline services are suspended</u>"). By Executive Order, Presidents Barrack Obama and Donald Trump have both declared a national emergency with respect to Somalia, citing, <i>inter alia</i>, a deteriorating security situation and the persistence of violence as posing an extraordinary threat to U.S. national</p>

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Factor (4) Whether the Original Solicitation adequately advised Offerors of the potential for the Change Factor (5) Whether the Change was the type that Reasonably could have been Anticipated Factor (6) Whether the Modification Materially Changed the Field of Competition for the Requirement	
MMASS before Modification 011	MMASS after Modification 011
<p>warning." Finally, in the first bullet describing the Vendor's unique qualifications, the J&A explains: "The current <u>violence</u> and direct <u>threat</u> to American citizens and the official USEMB delegation often requires immediate evacuation of personnel from posts in crisis, including the potential for simultaneous evacuation of wounded members of the delegation. Typically at the outset of hostilities, <u>all commercial airline services are suspended</u>, and charter services face restrictions[.] ... Civil institutions collapse or suspend operations. During these situations, the ability to reliably deploy crisis response teams, and evacuate injured and non-essential personnel requires the use of long-range aircraft with operating specifications and crews to move cargo, personnel, and air ambulance patients with a single aircraft. Phoenix Air Group (PAG) is the only known vendor, based on extensive market research, with airframes and crews capable of this mission."</p>	<p>security and foreign policy.⁴⁸ On August 30, 2017, the U.N. Security Council adopted Resolution 2372 (2017), expressed "grave concern at the ongoing humanitarian crisis and risk of famine" and determined that the "situation in Somalia continues to constitute a threat to international peace and security."⁴⁹ Compare J&A ("violence and direct threat to American citizens and the official USEMB delegation often requires immediate evacuation of personnel from posts in crisis").</p>
<p>Analysis: Here, Modification 011 to the MMASS Contract did not materially change the scope of the requirement in a manner that would have changed the scope of the competition. The MMASS Contract Vendor is still required to provide the specialized biocontainment support, crisis response, and medical aviation support. The Sources Sought, J&A, and PWS all contemplate the work required by Modification 011. As stated above, the aviation requirement is stated as requiring the movement of USG personnel into hazardous or non-permissive environments — Somalia has been declared a humanitarian crisis and security threats that pose an "extraordinarily threat to U.S. national security and foreign policy."</p> <p>Legal Authorities:⁵⁰ The current situation bears striking factual similarity to the Court of Claims decision in <i>Aircraft Charter Solutions v. United States</i>, where the Court assessed a Department of State aviation contract intended for multi-mission aviation support (medical evacuation ("using six specially-equipped aircraft provided by State"), Diplomatic Security High Threat Protection Services, search and rescue, counternarcotics, etc.).⁵¹ In that case, the modification was much more radical than what is contemplated here, with the plaintiff arguing that the counternarcotics solicitation could "not authorize INL/A to acquire wholesale new airlift requirements materially different from the services solicited in the original completion. ... [And] arguing that broad-based air carriage of personnel or cargo unrelated to counternarcotics activities was beyond the scope of the contract's counternarcotics support mission[.] ... [And that] the Solicitation's lack of a broad catch-all category of services, or reference to any specific passenger-related services such as ticketing or reservations, would have led offerors to assume that passenger service was beyond the scope of the State Contract[.]"⁵² The case is summarized by Thomson Reuter's <i>American Law Reports</i> (ALR) as an endnote, but relevant here is the Court's <i>dicta</i> that the Department could likely utilize a sole-source procurement authority for the requirement based on "national security concerns."^{53,54}</p>	

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Clearances and Adherence to Department Policies

1. In response to a March 3, 2017 request from M Staff, the MED COR contacted the SAMO to request guidance on how to proceed with a request by M Staff to investigate using the Mmass Contract to support the U.S. Mission to Mogadishu. On March 6, 2017, the MED COR contacted the AQM CO to determine whether the Mogadishu requirement would fall within the scope of the existing contract, who, in turn, contacted the legal advisor from L/BA. Once a determination of legal sufficiency was received, and on advice from the Senior Aviation Management Official, the MED COR responded affirmatively to the inquiry from the M staff.
2. From March of 2017 to June of 2017, senior leadership in the Office of the Under Secretary for Management (M Staff) considered using the Mmass Contract or establishing an INL/A federal aircraft operation to support the U.S. Mission to Mogadishu Requirement.
3. On June 13, 2017, M Staff indicated it had compared both models and opted to utilize the Mmass Contract.
4. On July 28, 2017, MED and AF met to better define the requirement.
5. On September 1, 2017, L/BA reviewed and formally cleared the modification for legal sufficiency in accordance with the AQM Quality Assurance Policy. The modification approval was approved by all required approvers.
6. On September 5, 2017, MED provided BP and AF a detailed breakdown of costs based on AF's revised requirements for final consideration by all parties, including the M staff.
7. On September 23, 2017, M made a policy decision that is clearly within his delegated authorities as a management function and approved the Action Memo to reposition the aircraft.

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- E. MED SUBSTANTIALLY COMPLIED WITH APPLICABLE GUIDANCE AND JUSTIFIED THE MMASS CONTRACT TO OMB AND CONGRESS, AND ONCE ARE OF ADDITIONAL REPORTING REQUIREMENTS, MED COMPLETED ALL REQUIRED SUBMISSIONS
- E.1. **Summary:** The DMAR states that MED is “in violation of 41 CFR §102-33 and OMB Circular A-126 requirements because it failed to use FAIRS to report the cost and usage data on CAS. Specifically, MED did not document or report the costs of operating Government aircraft or the amount of time the agency did so.” The Department points out that MED is in compliance with the Federal Aviation Interactive Reporting System (FAIRS). MED has submitted FAIRS reporting to INL/A to upload into FAIRS between January 22, 2018 and February 1, 2018, and MED also actively worked with INL/A and GSA to retroactively update the FAIRS record, and, as of March 23, 2018, all MED FAIRS data for the MMASS Contract and its two predecessors has been successfully entered into FAIRS.
- E.2. **Rule:** Per 41 CFR §102-33.405(b), agencies are required to update FAIRS — to include Commercial Aviation Services (CAS) cost utilization — for each quarter of the fiscal year.
- E.3. **Application:** FY18Q1 FAIRS data was due between January 1, 2018 and March 31, 2018. After the November 9, 2017 meeting with GSA, MED submitted FAIRS reporting to INL/A to upload into FAIRS between January 22, 2018 and February 1, 2018. MED also worked with INL/A and GSA to retroactively update the FAIRS record, and, as of March 23, 2018, all MED FAIRS data for the MMASS Contract and its two predecessors has been successfully entered into FAIRS. Hence, the evidence on record shows that MED complied with all reporting requirements under the FMR. Moreover, because MED has now submitted all FAIRS reporting data, MED and the MMASS Contract are fully compliant with FMR reporting requirements for the management of aircraft. Thus, upon consulting with INL/A and GSA, MED took affirmative steps in ensuring that the MMASS Contract mission information was entered into FAIRS as required by the FMR.

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F. THE DEPARTMENT PROPERLY JUSTIFIED THE USE OF CAS IN ACCORDANCE WITH 41 CFR § 102-33 AND OMB CIRCULAR A-126, THE MMASS CONTRACT EXCEEDED ALL SAFETY REQUIREMENTS, AND THE DEPARTMENT SUBSTANTIALLY COMPLIED WITH APPLICABLE AVIATION POLICY AND GUIDANCE

F.1. **Summary:** The DMAR states that that the Department violated 41 CFR §102-33 and OMB Circular A-126, specifically that “MED did not justify the use of commercial aircraft in lieu of Government-owned aircraft, determine the cost effectiveness of the aircraft program, or accumulate aircraft program costs following the procedures defined in the “U.S. Government Aircraft Cost Accounting Guide.” The DMAR also takes the view that MED did not establish Flight Program Standards and did not perform the required oversight to ensure that the Contractor was meeting these standards. From the Department’s perspective, ensuring the safety of Department personnel transported aboard MMASS Contract aircraft is of utmost importance to the Department. Review of the contract and the adoption of more rigorous 14 CFR Part 135 requirements shows that services under the MMASS Contract are held to safety standards and maintenance requirements beyond those required by other Department Federal Aircraft. The MMASS Contract exceeds safety requirements prescribed in the Federal Aviation Regulations (14 CFR), as well as the Federal Management Regulations (FMR) (41 CFR). As required by the FMR, these safety requirements are unambiguously incorporated into the MMASS Contract where the contract clearly articulates an affirmative requirement by the Contractor to operate in accordance with the standards set forth in 14 CFR Part 135. With respect to cost analysis, MED and AQM conducted market research to ensure that use of Commercial Aviation Services (CAS) was more cost effective than use of Federal Aircraft as required by the FMR and OMB Circular A-126. Moreover, per 41 CFR §102-33.50(a)(1), use of Federal Aircraft would have violated the FMR because of the CAS model’s superior cost and safety standards. Lastly, by relying on the Contractor’s existing (established by the FAA and consistent with industry best practices) quality assurance system, the Department is meeting the requirements set forth in FAR Part 46.

F.2. **Rules**

F.2.1. **OMB A-126:** Per OMB Circular A-126(6)(b), Agencies must ensure that aviation services cannot be operated by the private sector more cost effectively, and OMB Circular A-126(6)(d) states that “Agencies shall use their aircraft in the most cost effective way to meet their requirements.” Per 41 CFR §102-33.50(a)(2), Agencies are required to acquire CAS when Aircraft are the “optimum means of supporting your agency’s official business[.]” using CAS is “safe (i.e., conforms to applicable laws, safety standards, and regulations)[.]” and is more cost effective than using Federal aircraft, aircraft from any other Governmental source, or scheduled air carriers.”

F.2.2. **FAA Part 135:** Federal Aviation Regulations Part 135 provides Operating Requirements for “Commuter and On Demand Operations and Rules Governing Persons on Board” and establishes stringent standards for safety, training, crew testing, and

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maintenance. Conversely, Federal Aircraft (those owned by the USG) and Government Aircraft (including CAS) — when specifically designated as performing a “Public Use” function — perform their mission outside of the scope of established FAA’s commercial aviation safety regulations and industry best practices.

F.2.3. FAR Part 46: Part 46 of the Federal Acquisition Regulation prescribes “policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract’s quality and quantity requirements.” Specifically 48 C.F.R. 46.102(f), requires that Agencies ensure “contracts for commercial items shall rely on a contractor’s existing quality assurance system as a substitute for compliance with Government inspection[.]”

F.3. Application

F.3.1. OMB A-126: The DMAR states that “MED did not justify the use of commercial aircraft in lieu of Government-owned aircraft.” At the time of award, the Department conducted market research to ensure that use of CAS was more cost effective than use of Federal Aircraft as required by the FMR and OMB Circular A-126. On July 28, 2014, M directed MED to establish the first MMASS Contract to allow the Department to maintain its operations in West Africa using the urgent and compelling circumstances exception to CICA’s competition requirement. The first MMASS Contract had a period of performance of August 7, 2014, to February 6, 2015. Between the time of the first MMASS Contract award and the second MMASS Contract award, MED and AQM conducted market research, to include consultation with INL/A. At this time, MED received a cost estimate for a Federal Aircraft model (even though it lacked a technical approach to the biocontainment portion of the mission). To meet MED’s requested performance parameters in terms of response and capability, the Federal Aircraft Model cost estimate required two aircraft, 58 full-time equivalent (FTE) positions, and either: (1) for Dakar, Senegal, a total first-year cost of \$21,455,623.58, with recurring annual costs at \$18,557,798.23; or (2) for Monrovia, Liberia, a total first-year cost of \$22,656,235.96, with recurring annual costs at \$19,797,492.43. In contrast, the annual CAS cost model was \$12M per year. Because the Federal Aircraft model’s cost was not as cost effective as CAS, and because the Federal Aircraft model lacked key safety standards (compared to CAS operating with appropriate FAA Part 135 and biocontainment STC), use of CAS was both more cost effective and safer than Federal Aircraft for this mission requirement. In making its decision regarding support to Mission Somalia, the M staff collected cost estimates from both INL/A (Federal Aviation Service) and MED (Commercial Aviation Service) in making its decision.

F.3.2. FAA Part 135: Because missions contemplated under the MMASS Contract are conducted as civil aircraft subject to the requirements of 14 CFR Part 135, the Department has satisfied the requirements for CAS Flight Program Standards under the FMR. Officials from both the GAO and the National Transportation Safety Board (NTSB)⁵⁵ have encouraged agencies to adopt the more stringent commercial standards to govern their aviation operations. In a report to Congress, GAO acknowledged Part 135 Stand-

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ards as “significantly above” those prescribed by the Inter-agency Committee for Aviation Policy (ICAP) and praised the Federal Aviation Administration’s (FAA) decision to apply the more rigorous Part 135 standards for their Government Aircraft operations.⁵⁶ As the USG’s experts on the regulation and management of aircraft, the FAA’s Flight Program Standards (available at FAA Order 4040.27 “Flight Program Standards”) make clear that the FAA’s policy with respect to Flight Program Standards is to ensure consistency “with the highest equivalent operational and maintenance requirements under Title 14 of the Code of Federal Regulations (14 CFR) (e.g., 14 CFR parts ... 135 ...).” (Note: Adherence to 14 CFR Part 135 standards incorporates by reference the standards at 14 CFR Parts 43, 61, 63, and 91 as applicable).

Table 1. FAA Flight Program Standards

Approved Uses of FAA Aircraft	Legal Requirement	Order 4040.27 (FAA Policy)			Limitations
		Operations	Pilot Qualifications	Airworthiness	
Aircraft Certification	Flight Program Executive approval required. Standards determined when mission is approved.				
Currency (Recent Flight Experience)	Public Use Statutes (FAA A/C) Part 91 (Rental A/C)	Part 91	Part 61	Part 43 & 91	
Flight Inspection	Public Use Statutes (FAA A/C)	Part 91/135	Part 135	Part 135	Only Aircraft Operations Group pilots are authorized to operate flights when flight inspection is the primary or secondary mission.
Proficiency, Qualification & Standardization	Public Use Statutes (FAA A/C) Part 91 (Rental A/C)	Part 91	Part 61	Part 43 & 91	
Research, Development, Test & Evaluation (RDTE)	Public Use Statutes (FAA A/C)	Part 91 or Public Use Statutes	Part 61	Part 43 & 91/125	
Support	Public Use Statutes (FAA A/C) Part 91 (Rental A/C)	Part 91	Part 61	Part 43 & 91	
Training	Public Use Statutes (FAA A/C) Part 91 (Rental A/C)	Part 91	Part 61	Part 43 & 91	
Transportation: Primary Mission	Part 135 (FAA A/C)	Part 135	Part 135	Part 135	Only Aircraft Operations Group pilots, trained under 14 CFR part 135, are authorized to operate flights when transportation is the primary mission.

- F.3.2.1. From the Department’s perspective, there appears to be confusion in the DMAR with respect to the requirements for federal aircraft and CAS operating under civil aviation authority. Unlike CAS conducting civil aviation operations, federal aircraft operate in an unregulated environment as they exist outside the civil aviation system and are not subject to the same level of scrutiny applied to CAS conducting civil aviation operations.⁵⁷ This is why the Department requires that Government Technical Monitors (GTM) be placed at every location where federal aircraft are being operated. The adoption of more rigorous 14 CFR Part 135 requirements shows that services under the Mmass Contract are held to a recognized safety standard and established maintenance requirements beyond those required for federal aircraft. Further, by operating as CAS, the Contractor is subject to both scheduled and unscheduled inspections described below. Thus, the same requirement for an on-sight GTM to monitor day-to-day operations under the Mmass Contract is not needed. In fact, A/LM and A/LM/OPS confirmed at the June 5, 2018 Exit Briefing that this is the standard for operators conducting regulated civil aviation operations under the Federal Aviation Regulations.

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F.3.2.2. By holding the Mmass Contractor to stringent 14 CFR Part 135 standards as an international carrier, the Contractor is also accountable by reference to relevant sections of 14 CFR 91, International Civil Aviation Organization (ICAO) standards, and applicable foreign-government aviation law, thus satisfying all Flight Program Standards described in the FMR. As a commercial aviation service operating under 14 CFR Part 135 and working internationally, the Mmass Contractor is subject at any time to inspection by the host national Civil Aviation Authority. Under Article 83 of the Convention on International Civil Aviation, the FAA transfers control of Government oversight while the aircraft is outside the U.S., allowing foreign civil authorities authorization to perform no-notice "ramp check" inspections of the aircraft and crew. Foreign civil authorities have performed these inspections at least five times over the past two years, without a single serious infraction. By treaty, the FAA receives and logs any infractions or reports via official correspondence should an incident occur. Additionally, section C.2.2.3 of the Mmass Contract requires the Contractor to maintain accreditation through either the Commission on Accreditation of Medical Transport Systems (CAMTS) or the National Accreditation Alliance of Medical Transport Applications (NAAMTA). The Contractor maintains both. Each requires a thorough and independent external audit on a three-year cycle. The Contractor underwent audits from both organizations during the Mmass period of performance without deficiency. These certifications are held, and reports are received, at no cost to the taxpayer. Finally, the Mmass Contractor is accredited by the Air Mobility Command Commercial Airlift Review Board (CARB), requiring a complete review of maintenance, operations, safety, and quality lasting several days. The Mmass Contractor completed their biannual CARB accreditation visit on March 15, 2018, without a single deficiency and at no additional cost to the taxpayer.

F.3.3. **FAR Part 46:** While the Mmass Contract contemplates limited non-commercial services, the core medical evacuation and passenger transport aviation services are commercial in nature and the FAR requires the USG to utilize quality assurance systems consistent with commercial practice.⁵⁸ By leveraging the existing quality assurance system that is required by the Contractor per the Contract terms, the Department is in compliance with FAR Part 46 which requires that an Agency "rely on a contractor's existing quality assurance system."

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g. MED HAS QUALIFIED PERSONNEL TO CONDUCT CONTRACT OVERSIGHT AND WITH THE REQUISITE AVIATION EXPERTISE TO MANAGE THE UNIQUE MMASS MISSION SET

- G.1. **Summary:** The DMAR states that “deficiencies occurred, in part, because MED is not prepared to oversee a flight program and is not versed in aviation regulations and requirements. For example, MED lacks contract oversight officials with aviation expertise. Additionally, no contract oversight official has experience in operating or maintaining an aircraft.” In light of the differences between CAS and federal aircraft discussed above, and the qualifications noted below, the Department believes that MED personnel have the required expertise and proven competency to administer the MMASS Contract.
- G.2. **Rule:** FAR 1.102-4 explains that the acquisition team must be empowered to make decisions within their areas of responsibility and that team members must be prepared to perform the functions and duties assigned. *Accord* 14 FAH-2 H-146 (the Program Office COR and CO must work synergistically to ensure that technical and contractual requirements are successful). Per FAR Part 7.101 and FAR Part 7.104, the planner in the requirements office is responsible for developing the acquisitions strategy with the concurrence of the CO, and working with an integrated procurement team of other team members in the fiscal, legal, and technical field to plan and execute an acquisitions plan. According to 14 FAM 222.1(c) such acquisition planning is initiated by the requirements office and per 14 FAM 222(f) requiring offices are responsible for planning the extent of contract administrative support to ensure effective contract management. According to 14-FAH-2 H-124.1 the contracting officer’s representative is an individual from the requirements office. 14 FAH-2 H-110 defines the qualifications of a COR, with 14 FAH-2 H-111 explaining that CORs are “critically important to the success of the Department’s mission” and serve as “Program office representatives who develop the requirements of the office and who later serve as the COR[.]” The first requirement for any COR is that they possess “sufficient expertise in the contract subject matter to be able to provide technical direction and to determine whether the contractor is providing conforming goods and services.” Per 14 FAH-2 H-143.2, CORs should be nominated by the Program Office on the basis of their: (1) assignment and training history; (2) work experience; (3) licensing; and (4) certifications.

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G.3. Application

G.3.1. **Aviation Expertise and Certifications:** The MMASS Contract COR previously served as a U.S. Army flight crew and flight engineer instructor, and recently completed a combat tour in Iraq as a qualified crewmember, flight surgeon, and member of the command team for a Combat Aviation Brigade. He is currently a qualified rated crewmember in the U.S. Army on the LUH-72, the CH-47, and the UH-60 helicopter. He has served as a qualified aviation crewmember for the Onondaga County Sheriff's Department, flying under 14 CFR Part 91, served as the aviation program manager for a helicopter transport company in New York operating under 14 CFR Part 135, and served as the overall program manager for a combined fixed-and-rotor-wing medical evacuation service flying under 14 CFR Part 135 regulation in Pennsylvania.

G.3.2. **Medical Technical Expertise and Training:** Medically, the MMASS COR holds a Medical Doctorate from the MCP Hahnemann School of Medicine in Philadelphia, PA, is board certified in Emergency Medicine and subspecialty boarded in Emergency Medical Services with a focus in long distance critical care transport, and holds a Master's in Business Administration from Auburn University. The MMASS COR has held academic appointments at Drexel University, Temple University, and Harvard University School of Medicine. The MMASS COR has extensive experience in managing international aviation and medical evacuation operations within the U.S. military, the Department of State, and in support of international non-governmental organizations.

**Contracting Officer's Representative
(COR) of the Year for Fiscal Year (FY)
2016.**

The MMASS Contract COR "was selected from an impressive field of 8 candidates, representing posts from 5 regional bureaus and 3 functional bureaus. The selection committee was impressed with [his] agile, creative leadership and remarkable success in administering numerous high-visibility, high-cost, and high-risk contracts supporting the Bureau of Medical Services, Directorate of Operational Medicine. ... [The MMASS COR] served as COR of the contract that secured the only MEDEVAC asset in the world that was capable of transporting Ebola stricken patients from West Africa to the United States or Europe. Under his leadership the contract operated over 40 Ebola related flights, which were **some of the most complicated flights in the history of aviation** as there was world-wide hysteria over Ebola being spread globally. Ultimately thousands of lives were saved. ... All this while, he was overseeing all medical emergency preparedness operations. Moreover he also made it a priority to establish written acquisition standard operating procedures.

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G.3.3. **Medical Support to Security and Crisis Response Operations:** The MMASS COR's relevant work experience related to security medical support is well documented, having started his career as an Army flight crew member and paratrooper and rising through the ranks to become a battalion and brigade surgeon — including two combat tours as a battalion surgeon in support of an infantry battalion engaged in combat operations — earning the Combat Medical Badge for providing care while engaged in direct armed conflict. The MMASS COR served over 4 years as the Deputy Command Surgeon within a unit of the Joint Special Operations Command, with primary responsibility for planning, resourcing, and managing

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ing complex commercial aviation support to evacuations from politically sensitive locations around the world. The Mmass COR has over twenty years of relevant medical and operational military service with 3 combat tours in Iraq and awards that include the Joint Meritorious Service Medal and the Bronze Star. Since entering service with the Department of State, the Mmass COR has led the development and integration of medical and aviation support operations to real contingency operations in Bujumbura, Bangui, Tripoli, Sana'a, Mogadishu, Juba, Niamey, and others, as well as highly sensitive personnel recovery operations in Syria, Russia, and North Korea.

- G.3.4. **Contracting:** The Mmass COR holds both Federal Acquisitions Certification as a Contracting Officer's Representative at the highest level (FAC-COR Level 3),⁵⁹ and Federal Acquisitions Certification in Contracting (FAC-C Level 1).⁶⁰ The COR was recognized publicly by President Barack Obama on February 11, 2015, for his expert management of this contract, and was recognized as the U.S. Department of State's Contracting Officer's Representative of the Year in 2016 for his work on this contract.⁶¹ All told, the Mmass COR possessed over a decade of aviation experience prior to being designated as the COR for the Mmass contract, and has provided direct and comprehensive program management on this contract for its entire 42 month history.

- G.4. **Conclusion:** The DMAR reasons that current MED officials are unqualified based on a lack of technical expertise to justify their recommendation to transfer program management to another bureau. However, the Department submits that careful review of the technical qualifications of MED personnel demonstrates differently. To date, current MED personnel possess necessary credentials, certifications, and experience and are qualified to manage the Mmass Contract (with a proven 3-year track record of success). Moreover, the occupational, preventive, and remedial medical care expertise necessary to execute the medical aspects of the Mmass Contract are clearly and inextricably tied to delegations of authority (legal and professional) to MED and for which MED has the responsibility — both legally and professionally as healthcare practitioners — to ensure that they are successfully executed. Finally, the synchronization between deployment of crisis response personnel and the backhaul of injured and other non-essential personnel remains critical to overall mission success, and the unique qualifications of the current Mmass COR provides the Department with a single holistic view of evolving aviation requirements at the time of execution.

"I want to thank the [Mmass COR] and the entire State Department medical team for all that they do to keep our workforce, and Americans around the world, safe and healthy. As many of you know, [the Mmass COR] was a key player in the U.S. Government response to the 2014 Ebola outbreak in West Africa. [...] [The Mmass COR] also recently won the State Department Contracting Officer Representative of the Year award. You may be wondering how an accomplished doctor came to win a contracting award. [pause] Well, as a result of his leadership and expert contract management skills, [...] [he] made over 35 Ebola-related MEDEVAC flights possible, an important element of the international response that saved thousands of lives."

Deputy Secretary
Heather Higginbottom

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¹Authoritative Recommendations and Lessons Learned:

Report or Event	Lessons Learned
Benghazi ARB	Recommendation 1: The Department must strengthen security for personnel and platforms beyond traditional reliance on host government security support in high risk, high threat ¹ posts. The Department should urgently review the proper balance between acceptable risk and expected outcomes in high risk, high threat areas. While the answer cannot be to refrain from operating in such environments, the Department must do so on the basis of having: 1) a defined, attainable, and prioritized mission; 2) a clear-eyed assessment of the risk and costs involved; 3) a commitment of sufficient resources to mitigate these costs and risks; 4) an explicit acceptance of those costs and risks that cannot be mitigated; and 5) constant attention to changes in the situation, including when to leave and perform the mission from a distance. The United States must be self-reliant and enterprising in developing alternate security platforms, profiles, and staffing footprints to address such realities. Assessments must be made on a case-by-case basis and repeated as circumstances change.
Senate Select Committee on Intelligence Report	Finding 5 Recommendation 1: Where adequate security is not available, the Department of State should be prepared to evacuate or close diplomatic facilities under the highest threat, as it has in recent years in Sana'a, Yemen, and Damascus, Syria. Finding 7 Recommendation 1: It is imperative that the State Department, DoD, and the IC work together to identify and prioritize the largest gaps in coverage for the protection of U.S. diplomatic, military, and intelligence personnel in the North Africa region and other high-threat posts around the world. The small number of U.S. military resources devoted to the vast and often ungoverned North African landscape makes it unlikely that DoD can respond in short periods to all potential crises across North Africa. DoD cannot always provide help in an emergency, U.S. personnel on the ground must make alternative plans to evacuate in the event of an attack or if intelligence indicates that an attack is imminent.
Benghazi Independent Panel on Best Practices Report	Recommendation #31: The Department should provide DS with the necessary inter-agency agreements and contract resources for airlift capability for DS' emergency response team from the Office of Mobile Security Deployments, similar to the best practice used by the FBI's HRT and the Department's own FEST.
The House Select Committee Report on Benghazi	Agencies on the ground need to plan for standby military support before a crisis in high threat environments, including where feasible support from U.S. allies. In addition, the coordinating body should provide for a specific mechanism to know and understand assets and capabilities actually available at any given time. When sufficient internal resources are not available, staffing for a QRF should be clearly coordinated in advance with potential responders. Planning should also provide for support and a definitive timeframe for response from other U.S. government resources such as Mobile Security Detachments, Site Security Teams or Fleet Antiterrorism Support Teams (FAST). When U.S. government assets are not available, planning should consider whether contractors might provide enhanced capability. Military planners should review current and future operational planning to prevent recurrence of specific operational issues identified in the response to the Benghazi attacks. [Including ...] Ensure that aircraft aligned with response forces maintain the ability to meet specified timelines contained in the relevant concept plans or operations plans.
Report of the ARB – Bombings of the US Embassies in Nairobi and Dar es Salaam	Recommendation 5. The Department of State should work closely with the Department of Defense to improve procedures in mobilizing aircraft and adequate crews to provide more rapid, effective assistance in times of emergency, especially in medical evacuations resulting from mass casualty situations. The Department of State should explore as well, chartering commercial aircraft to transport personnel and equipment to emergency sites, if necessary to supplement Department of Defense aircraft.

² FAR Subpart 6.1 "Full and Open Competition."

³ **Sole Source Authority Upheld:** *See, e.g., Emery Worldwide Airlines, Inc. v. United States*, 264 F.3d 1071, 1085-86 (Fed. Cir. 2001) (sole source) (sole source air transport award upheld where USPS recognized "piecemeal system" not cost efficient and rational basis for "single carrier" with shared-lift); *see also Matter of Brinkmann Instruments, Inc.*, 2007 U.S. Comp. Gen. LEXIS 186, *1, 2007 Comp. Gen. Proc. Dec. P188 (Comp. Gen. October 15, 2007) (sole source) (upholding sole source for purposes of standardization and safety across the nuclear submarine fleet); *see also In re Unitron LP*, 2012 U.S. Comp. Gen. LEXIS 237, *1, 2012 Comp. Gen. Proc. Dec. P247 (Comp. Gen. August 14, 2012) (sole source) (upholding sole source for highly specialized equipment and therefore the agency's decision was reasonable); *see also Matter of FN Am., LLC*, 2017 U.S. Comp. Gen. LEXIS 385, *1 (Comp. Gen. December 12, 2017) (sole source) (upholding sole source where award to any other source would likely cause substantial cost duplication, and unacceptable delays in fulfilling the agency's requirements).

⁴ *See also* FAR § 6.302-1(a)(2); *see also* 10 U.S.C. 2304(C)(1).

⁵ **Sole Source Authority (One Responsible Source) Upheld:** *See, e.g., AugustaWestland N. Am., Inc. v. United States*, 880 F.3d 1326, 1332 (Fed. Cir. 2018) (sole source) (one responsible source) (overruling trial court, finding Army CO's sole source rationale reasonable because of substantial cost duplication and unacceptable delays, also denying protestor's argument concerning order in which Agency J&A approvals were obtained); *see also Blue Dot Energy Co. v. United States*, 179 F. App'x 40 (Fed. Cir. 2006) (sole source) (one responsible source) (upholding sole source where only one responsible source for waste disposal services held the required certificate required under Washington State Law to perform needed duties); *see also Single Screw Compressor, Inc. v. US*

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Dep't of Navy, 791 F. Supp. 7, 7 (D.D.C. 1992) (sole source) (one responsible source) (upholding sole source where only one responsible source, Aurora, could provide the necessary COCA technology, whereas the protester did not even know what COCA was); *see also Infrastructure Def. Techs., LLC v. United States*, 81 Fed. Cl. 375, 393 (2008) (sole source) (one responsible source) (upholding sole source for one responsible source and rejecting protester's assertion that J&A was overly restrictive, noting CO's actions are presumptively proper and determination of procurement needs and best approach matters of broad agency discretion); *see also KSD, Inc. v. United States*, 72 Fed. Cl. 236 (2006) (sole source) (one responsible source) (upholding government's decision to justify the sole source procurement based upon its lack of technical data rights pertaining to the "Fat Boy" strap pack); *see also Matter of WSI Corp.*, 1985 U.S. Comp. Gen. LEXIS 138, *1, 85-2 Comp. Gen. Proc. Dec. P626 (Comp. Gen. December 04, 1985) (sole source) (one responsible source) (upholding sole source where only one source could satisfy agency needs of preparatory work and operation services by the required time); *see also In re Aero. Eng'g & Support, Inc.*, 1986 U.S. Comp. Gen. LEXIS 879, *1, *3-5, 86-2 Comp. Gen. Proc. Dec. P38 (Comp. Gen. July 07, 1986) (sole source) (one responsible source) (upholding sole source where agency neither had necessary data or sufficient time for competitive procurement); *see also Matter of Johnson Eng'g & Maint.*, 1987 U.S. Comp. Gen. LEXIS 130, *1, 87-2 Comp. Gen. Proc. Dec. P544 (Comp. Gen. December 03, 1987) (sole source) (one responsible source) (upholding sole source where only one source has proprietary software rights required to perform the contract); *see also Matter of Turbo Mch., Inc.*, 1988 U.S. Comp. Gen. LEXIS 1156, *1, 88-2 Comp. Gen. Proc. Dec. P299 (Comp. Gen. September 29, 1988) (sole source) (one responsible source) (upholding sole source where only one responsible source has access to technical data necessary required to accomplish performance); *see also Matter of Meteor Communs. Corp.*, 1989 U.S. Comp. Gen. LEXIS 1004, *1, 89-2 Comp. Gen. Proc. Dec. P235 (Comp. Gen. September 15, 1989) (sole source) (one responsible source) (sole source award upheld where protester failed to show that services exceeded scope of sole source justification and protester not able to show USG acted unreasonably); *see also Matter of Mine Safety Appliances Co.*, 1989 U.S. Comp. Gen. LEXIS 121, *1, 89-1 Comp. Gen. Proc. Dec. P127 (Comp. Gen. February 08, 1989) (sole source) (one responsible source) (sole source award upheld where Agency acted reasonably and notwithstanding minor technical defect in J&A); *see also Matter of Allied-Signal Inc.*, 1992 U.S. Comp. Gen. LEXIS 578, *1, *10-17, 92-1 Comp. Gen. Proc. Dec. P461 (Comp. Gen. May 21, 1992) (sole source) (one responsible source) (upholding sole source where award to any other source would result in substantial duplication of cost); *see also Matter of Imperial Tooling & Mfg.*, 1992 U.S. Comp. Gen. LEXIS 1370, *1, 92-2 Comp. Gen. Proc. Dec. P436 (Comp. Gen. December 23, 1992) (sole source) (one responsible source) (upholding sole source where only one source was capable of providing immediately usable, fatigue tested yokes given agency's critical stock shortage); *see also Matter of Servo Corp. of Am.*, 1992 U.S. Comp. Gen. LEXIS 383, *1-2, 92-1 Comp. Gen. Proc. Dec. P322 (Comp. Gen. March 31, 1992) (sole source) (one responsible source) (upholding sole source where only one source could supply item in desired time due to critical time constraints); *see also Matter of Amtech Sys. Corp.*, 1993 U.S. Comp. Gen. LEXIS 621, *1, 93-1 Comp. Gen. Proc. Dec. P500 (Comp. Gen. June 29, 1993) (sole source) (one responsible source) (upholding sole source where only one source possessed the required equipment necessary to meet the agency's needs); *see also Matter of Midwest Dynamometer & Eng'g Co.*, 1994 U.S. Comp. Gen. LEXIS 735, *1, 94-2 Comp. Gen. Proc. Dec. P91 (Comp. Gen. September 02, 1994) (sole source) (one responsible source) (upholding sole source where only one source could furnish a dynamometer system that would meet the agency's needs); *see also Matter of SEMCOR, Inc.*, 1998 U.S. Comp. Gen. LEXIS 281, *1, 98-2 Comp. Gen. Proc. Dec. P43 (Comp. Gen. July 23, 1998) (sole source) (one responsible source) (upholding sole source where only one source could meet agency's aggressive discovery schedule); *see also Matter of McKesson Automation Sys.*, 2003 U.S. Comp. Gen. LEXIS 11, *1, 2003 Comp. Gen. Proc. Dec. P24 (Comp. Gen. January 14, 2003) (sole source) (one responsible source) (sole source award for one responsible source upheld because USAF's inclusion of special certification did not unreasonably restrict competition and, even if three characteristics were unreasonable, first factor was reasonable and rendered review of remaining factors academic); *see also Matter of Raytheon Company-Integrated Def. Sys.*, 2008 U.S. Comp. Gen. LEXIS 221, *1, 2009 Comp. Gen. Proc. Dec. P8 (Comp. Gen. December 22, 2008) (sole source) (one responsible source) (sole source award for one responsible source upheld because Navy's reasonably found that multiple awards would result in substantial duplication of cost not expected to be recovered through competition and would result in unacceptable delays); *see also Matter of T-L-C Sys.*, 2008 U.S. Comp. Gen. LEXIS 278, *1, 2008 Comp. Gen. Proc. Dec. P195 (Comp. Gen. October 23, 2008) (sole source) (one responsible source) (upholding sole source where only one source could be immediately installed to meet agency's need); *see also Matter of Chi. Dryer Co.*, 2009 U.S. Comp. Gen. LEXIS 239, *1, 2009 Comp. Gen. Proc. Dec. P253 (Comp. Gen. December 08, 2009) (sole source) (one responsible source) (upholding sole source where only one responsible source can provide a flatwork ironer meeting the Agency's needs and where protester has not identified a model that can meet the agency's identified requirements); *see also Matter of eAlliant, LLC*, 2014 U.S. Comp. Gen. LEXIS 384, *1, 2015 Comp. Gen. Proc. Dec. P58 (Comp. Gen. December 23, 2014) (sole source) (one responsible source) (upholding sole source where only one responsible source was viewed to be able to meet agency's requirement to ensure uninterrupted service when there is not enough time to conduct a competition and ensure adequate time for a transition to new contractor); *see also Matter of Raytheon Co.*, 2014 U.S. Comp. Gen. LEXIS 175, *1, *9-13 (Comp. Gen. June 24, 2014) (sole source) (one responsible source) (upholding sole source where award to any other source would cause duplication of costs and delays in meeting agency needs); *see also Matter of Piedmont Propulsion Sys., LLC*, 2015 U.S. Comp. Gen. LEXIS 112, *1, 2015 Comp. Gen. Proc. Dec. P119 (Comp. Gen. March 17, 2015) (sole source) (one responsible source) (upholding sole source where only one source could satisfy the agency's requirement without unacceptable delay and finding that the agency's actions do not reflect a lack of advance planning); *see also Matter of Raytheon Co.*, 2017 U.S. Comp. Gen. LEXIS 156, *1, 2017 Comp. Gen. Proc. Dec. P168 (Comp. Gen. May 10, 2017) (sole source) (one responsible source) (upholding sole source where only one responsible source, Systematic, met each of the RFP's requirements, whereas protester Raytheon's products did not meet the solicitation requirements); *see also Matter of Gichner Sys. Grp.*, 2017 U.S. Comp. Gen. LEXIS 143, *1, 2017 Comp. Gen. Proc. Dec. P178 (Comp. Gen. May 31, 2017) (sole source) (one responsible source) (upholding sole source where only one source can meet Army's article testing requirement, thus making decision to issue sole source contract reasonable).

⁶ *Single Screw Compressor, Inc. v. United States Dept. of Navy*, 791 F. Supp. 7, 10 (D.D.C. 1992) (interpreting the identical language in connection with 10 U.S.C. § 2304).

⁷ *Matter of Korean Maint. Co.*, 1986 U.S. Comp. Gen. LEXIS 413, *1, *4-6, 86-2 Comp. Gen. Proc. Dec. P379 (Comp. Gen. October 02, 1986) (total package approach) (SBA bundling or consolidation) (total package approach and bundling upheld, first noting deference to contracting agency and finding rational basis where consolidation results in reduced ammunition costs/duplicative managerial time, and improving system-wide performance by requiring vendor to cover multiple locations); *see also Matter of The Caption Ctr.*, 1986 U.S. Comp. Gen. LEXIS 1508, *1, *11-13, 86-1 Comp. Gen. Proc. Dec. P174 (Comp. Gen. February 19, 1986) (total package approach) (SBA bundling or consolidation) (upholding total package procurement where award to single contractor would result in economies of scale to the benefit of the government and enhanced flexibility); *see also In re A&C Bldg. & Indus. Maint. Corp.*, 1988 U.S. Comp. Gen. LEXIS 766, *1, *6-7, 88-2 Comp. Gen. Proc. Dec. P67 (Comp. Gen. July 21, 1988) (total package approach) (SBA bundling or consolidation) (total package approach and bundling proper and supported by rational basis: (1) unification of myriad services improved operations; (2) reduced duplicative management time; and (3) reduced admin costs); *see also In re CardioMetric*, 1993 U.S. Comp. Gen. LEXIS 712, *1, 93-2 Comp. Gen. Proc. Dec. P64 (Comp. Gen. August 02, 1993) (total package approach) (SBA bundling or consolidation) (bundling of medical support for multiple clinics upheld where consolidation standardized ordering and reduced costs and decreased processing errors); *see also Matter of Sequoia Group, Inc.*, 1993 U.S. Comp. Gen. LEXIS 503, *1, *13, 93-1 Comp. Gen. Proc. Dec. P405 (Comp. Gen. May 24, 1993) (total package approach) (SBA bundling or consolidation) (total package approach and bundling proper, where consolidation of regional requirements enhanced overall service, attracted better service provider, increased competition, and reduced government administration costs); *see also Matter of Border Maint. Serv.*, 1995 U.S. Comp. Gen. LEXIS 413, *1, 95-1 Comp. Gen. Proc. Dec. P287 (Comp. Gen. June 21, 1995) (total package approach) (SBA bundling or consolidation) (total package approach upheld, given "the reality" of extra administrative oversight required for multiple vendors); *see also Matter of Airtrak Travel et al.*, 2003 U.S. Comp. Gen. LEXIS 96, *1-2, 2003 Comp. Gen. Proc. Dec. P117 (Comp. Gen. June 30, 2003) (total package approach) (SBA bundling or consolidation) (total package approach and bundling proper given legitimate requirement to consolidate broad, geographic requirements under a single procurement); *see also Matter of Teximara, Inc.*, 2004 U.S. Comp. Gen. LEXIS 143, *1, 2004 Comp. Gen. Proc. Dec. P151 (Comp. Gen. July 09, 2004) (sole source) (total package approach) (SBA bundling

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or consolidation) (upholding sole source consolidation where it would result in significant efficiencies and savings, and is necessary to meet the agency's needs); *see also* *B.H. Aircraft Co., Inc.*, B-295399.2 (Comp. Gen. July 25, 2005) (total package approach) (SBA bundling or consolidation) (sole-source bundling upheld agency's requirement for consolidated aviation logistics necessary for military aviation readiness).

⁸ *Matter of: Piedmont Propulsion Sys., LLC*, 2015 U.S. Comp. Gen. LEXIS 112, *28, 2015 Comp. Gen. Proc. Dec. P119 (Comp. Gen. March 17, 2015).

⁹ *Matter of Lockheed Martin Sys. Integration*, 2001 U.S. Comp. Gen. LEXIS 103, *28, 2001 Comp. Gen. Proc. Dec. P110 (Comp. Gen. May 25, 2001).

¹⁰ *See, e.g., Reedsport Machine & Fabrication*, B-293110.2; B-293556 (Comp. Gen. Apr. 13, 2004) (noting that "combining the two groups could make the requirement more attractive to some potential bidders, and ultimately result in greater competition overall.").

¹¹ *See, e.g., Reedsport Machine & Fabrication*, B-293110.2; B-293556 (Comp. Gen. Apr. 13, 2004).

¹² *Emery Worldwide Airlines, Inc. v. United States*, 49 Fed. Cl. 211 (2001), *affirmed* 264 F.3d 1071 (Fed. Cir. 2001), *rehearing and rehearing en banc denied*; *see also ATA Defense Indus., Inc. v. United States*, 38 Fed. Cl. 489, 500 (1997) (explaining that "[w]here in fact 'the property or services needed . . . are available from only one responsible source,' and the selling party knows that it is the only source, then this exception is hardly a significant departure from full and open competition. In such a case, if the agency used competitive procedures and solicited offers or bids from other sources, that act would be futile because the supplier would be aware, in setting its price, that it was not bidding against any competition." The Court further elaborated in a footnote, "[f]ull open competition in such a case could bring benefits to the government when the contracting officer is not absolutely certain that only one responsible source is available in that soliciting bids could produce a bid from an unexpected source.").

¹³ *Hydive Shipping, Inc.*, B-194218 (Comp. Gen. Aug. 30, 1979) (citing *Systems Engineering Associates Corporation*, B-189260 (Comp. Gen. Oct. 3, 1977); *see also U.S. Electrodynamics, Inc.*, B-403516; B-403516.2 (Comp. Gen. Nov. 12, 2010) (holding that in determining its bundling requirements, an agency must have a reasonable basis for consolidating the requirements to meet its needs).

¹⁴ *Virginia Elec. and Power Co.*, B-285209; B-285209.2 (Comp. Gen. Aug. 2, 2000) (As the GAO has explained, "where an agency reasonably does not anticipate that it will receive competition for all of its requirements if it solicits separately for them, it properly may combine them in a single procurement.")

¹⁵ *Wit Assocs. v. United States*, 62 Fed. Cl. 657, 662 (2004); *ABF Freight Sys., Inc. v. United States*, 55 Fed. Cl. 392, 409 n.13 (2003) ("The law is well-settled that the determination of an agency's procurement needs and the best method for accommodating them are matters primarily with the agency's discretion.") ("An agency's decision in determining its needs 'is a matter within the broad discretion of agency officials[.]'")

¹⁶ *Emery Worldwide Airlines, Inc. v. United States*, 264 F.3d 1071, 1085 (Fed. Cir. 2001) (quoting *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415, 91 S. Ct. 814, 28 L.Ed.2d 136 (1971)) (In awarding a sole-source contract, an agency's action is entitled to a "presumption of regularity[.]"); *see also Infrastructure Defense Techs., LLC v. United States*, 81 Fed. Cl. 375, 393 (2008) (A "contracting officer's decisions are presumptively proper.").

¹⁷ *Impresa Costruzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324, 1332 (Fed. Cir. 2001).

¹⁸ *AgustaWestland N. Am., Inc. v. United States*, 880 F.3d 1326, 1332 (Fed. Cir. 2018).

¹⁹ *Matter of: eAlliant, LLC*, 2014 U.S. Comp. Gen. LEXIS 384, *10, 2015 Comp. Gen. Proc. Dec. P58 (Comp. Gen. December 23, 2014)

²⁰ *U.S. Electrodynamics, Inc.*, B-403516; B-403516.2 (Comp. Gen. Nov. 12, 2010) (holding that in determining its bundling requirements, an agency must have a reasonable basis for consolidating the requirements to meet its needs) (citing *B.H. Aircraft Co., Inc.*, B-295399.2 (Comp. Gen. July 25, 2005); *Teximara, Inc.*, B-293221.2 (Comp. Gen. July 9, 2004)).

²¹ *See, e.g., Matter of MTU Maint. Can., Ltd.*, 2015 U.S. Comp. Gen. LEXIS 164, *11, 2015 Comp. Gen. Proc. Dec. P179 (Comp. Gen. June 09, 2015)

²² 2018 Annual Review of Diseases Prioritized under the Research and Development Blueprint, World Health Organization.

²³ Within HHS, NIAID is the lead domestic proponent for civilian biodefense.

²⁴ World Health Organization gets ready for 'Disease X' (available online at: <https://www.cnn.com/2018/03/12/health/disease-x-blueprint-who/index.html>)

²⁵ Public Law No: 115-141, Section 4 (incorporating explanatory statement, Congressional Record – House March 22, 2018, page H2853).

²⁶ The Biological Weapons Convention at a Crossroads, Brookings Institute, Bonnie Jenkins (9/6/17) (available online at: <https://www.brookings.edu/blog/center-for-chaos/2017/09/06/the-biological-weapons-convention-at-a-crossroad/>)

²⁷ National Security Strategy of the United States of America, December 2017, pages 7-9.

²⁸ Joint Strategic Plan, FY 2018 – 2022, U.S. Department of State & U.S. Agency for International Development, page 24 (February 2018).

²⁹ Joint Strategic Plan, FY 2018 – 2022, U.S. Department of State & U.S. Agency for International Development, page 49 (February 2018).

³⁰ Joint Strategic Plan, FY 2018 – 2022, U.S. Department of State & U.S. Agency for International Development, page 59 (February 2018).

³¹ *See* AUD-CGI 16-40 (page 2, FN7). *See also*, Joint Forces Command Operation United Assistance Case Study, Center for Army Lessons Learned (CALL) (No. 16-22), page 125:

Issue: Lack of Air MEDEVAC Assets

Discussion. Acquiring inter-theater medical evacuation aircraft was a habitual problem. Due to other priorities (e.g., Iraq and Africa), "gray tail" aircraft were often unavailable or took greater than three days to arrive. To mitigate this risk, the U.S. Transportation Command contracted for transportation needs, but this was often unreliable (in one case it took five days to evacuate a patient with meningitis^{*}). In an immature, high-risk environment (especially with no Role 3 assets available), prioritization of aircraft is essential. . . .

Lessons Learned/Insights/Recommendations. . . . In addition, the aircraft must be staged on the continent (regionally). Civilian contract medical flights are unreliable.

^{*} Upon information and belief, the CALL Report is referencing a Meningitis MEDEVAC performed by PAG under SAQMMA15C0022 (Mission D15-019 on October 2, 2015).

³² *See, e.g.*, 04 STATE 131726, Subject: Reference Cable, SARS MEDEVACS and Lessons Learned ("During the 2003 epidemic, private medevac companies essentially refused to transport individuals infected with SARS"). *See also* GAO-04-564 pages 21-22. *See also* 7 FAM 363.2(j)-(k) ("Note, however, that during the 2003 SARS epidemic, some private medical evacuation companies refused to transport individuals infected with SARS.") ("Ultimately, it is the medical evacuation company's decision on whether they have the capability to transport a patient if the person has an illness of public health concern. If another new, communicable disease is encountered, the commercial medical evacuation companies may refuse to transport patients until more is known about the disease and its transmission and potential risks to the patient and the planes medical crew.")

³³ Decision of the Comptroller Gen., 1979 U.S. Comp. Gen. LEXIS 2098, *3 (Comp. Gen. August 30, 1979).

³⁴ Decision of the Comptroller Gen., 1979 U.S. Comp. Gen. LEXIS 2098, *5-6 (Comp. Gen. August 30, 1979).

³⁵ Decision of the Comptroller Gen., 1979 U.S. Comp. Gen. LEXIS 2098, *5-6 (Comp. Gen. August 30, 1979).

³⁶ Decision of the Comptroller Gen., 1979 U.S. Comp. Gen. LEXIS 2098, *12 (Comp. Gen. August 30, 1979).

³⁷ *Matter of Teximara, Inc.*, 2004 U.S. Comp. Gen. LEXIS 143, *8-10, 2004 Comp. Gen. Proc. Dec. P151 (Comp. Gen. July 09, 2004).

³⁸ *Matter of Teximara, Inc.*, 2004 U.S. Comp. Gen. LEXIS 143, *8-10, 2004 Comp. Gen. Proc. Dec. P151 (Comp. Gen. July 09, 2004).

³⁹ *AT&T Communications, Inc. v. Witel, Inc.* 1 F.3d 1201, 1205 (Fed. Cir. 1993).

⁴⁰ *Allied Material*, *supra* note 122, at 565.

⁴¹ *Matter of: Zodiac of N. Am., Inc.*, 2017 U.S. Comp. Gen. LEXIS 83, *9-10, 2017 Comp. Gen. Proc. Dec. P107 (Comp. Gen. March 28, 2017).

⁴² 17 CONAKRY 472

⁴³ 17 USMISSION SOMALIA 221

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⁴⁴ *Aircraft Charter Sols, Inc. v. United States*, 109 Fed. Cl. 398, 415 (2013) (in INL/A-related contract dispute, the Court denied relief and found that no CICA-related Cardinal Change occurred and that protester could have reasonably anticipated contested modifications, in light of multiple air missions contemplated by the contract, "multiple and prominent references to flexibility, adaptation and change" and "unique challenges of protecting the interests of the United States in Afghanistan.")

Northrop Grumman Corp. v. United States, 50 Fed. Cl. 443, 468 (2001) (modifications reasonably required to meet original requirements do not constitute a Cardinal Change) (finding that modification did not fundamentally change the physical or performance characteristics of developmental system)). *Matter of: Zodiac of N. Am., Inc.*, 2017 U.S. Comp. Gen. LEXIS 83, *8-13, 2017 Comp. Gen. Proc. Dec. P107 (Comp. Gen. March 28, 2017) (changes to purchase descriptions must be viewed against the entirety of the contract specifications. The Court found that "the changes to the contract could reasonably have been anticipated by competitors for the initial solicitation, and the changes to the contract would not have had a substantial impact on the field of competition for the original contract award.") *Matter of Pegasus Global Strategic Solutions, LLC*, 2009 U.S. Comp. Gen. LEXIS 62, *17-18, 2009 Comp. Gen. Proc. Dec. P73 (Comp. Gen. March 24, 2009) (upholding Army Sole Source award and not finding a CICA violation given the need to continually evolve and update defense system to counter a changing threat) ("it is beyond cavil that an agency need not risk injury to personnel or property in order to conduct a competitive acquisition").

⁴⁵ The Department subsequently applied for and received a waiver to that restriction from the FAA on October 24, 2017.

⁴⁶ *Prohibition Against Certain Flights in the Territory and Airspace of Somalia*, 81 FR 721 (1/7/2016).

⁴⁷ *Extension of the Prohibition Against Certain Flights in the Territory and Airspace of Somalia* 82 FR 58547 (12/13/2017) (Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in the territory and airspace of Somalia at altitudes below FL260, the FAA extends the expiration date of SFAR No. 107, § 91.1613, from January 7, 2018, to January 7, 2020, and maintains the prohibition on flight operations in the territory and airspace of Somalia at altitudes below FL260").

⁴⁸ See, e.g., House Communication 115 - EC2904, 115th Congress (10/24/17) (continuing declaration of national emergency with respect to Somalia) ("Abstract: A letter from the Secretary, Department of the Treasury, transmitting a six-month periodic report on the national emergency with respect to Somalia that was declared in Executive Order 13536 of April 12, 2010, pursuant to 50 U.S.C. 1641(c); Public Law 94-412, section 401(c); (90 Stat. 1257) and 50 U.S.C. 1703(c); Public Law 95-223, Sec 204(c); (91 Stat. 1627); to the Committee on Foreign Affairs").

⁴⁹ U.N. Security Council Resolution 2372 (2017).

⁵⁰ *Golden Mfg. Co. v. United States*, 107 Fed. Cl. 264, 280 (Cl. Ct. 2012) (no Cardinal Change where "no indication in the record that different offerors would have competed ... or that their price proposals would have been restructured in response to" a modification).

Matter of Pegasus Global Strategic Solutions, LLC, 2009 U.S. Comp. Gen. LEXIS 62, *18, 2009 Comp. Gen. Proc. Dec. P73 (Comp. Gen. March 24, 2009) (upholding Army Sole Source award and not finding a CICA violation given the need to continually evolve and update defense system to counter a changing threat) ("it is beyond cavil that an agency need not risk injury to personnel or property in order to conduct a competitive acquisition"). *Matter of: Zodiac of N. Am., Inc.*, 2017 U.S. Comp. Gen. LEXIS 83, *13, 2017 Comp. Gen. Proc. Dec. P107 (Comp. Gen. March 28, 2017) (finding that the U.S. Army did not "improperly relax the specifications because original nature and purpose of the solicitation and contract" had not been changed. The Court also found that "the changes to the contract could reasonably have been anticipated by competitors for the initial solicitation, and the changes to the contract would not have had a substantial impact on the field of competition for the original contract award.")

⁵¹ 109 Fed. Cl. 398 (2013).

⁵² *Aircraft Charter Solutions, Inc. v. United States*, 109 Fed. Cl. 398, 413, 2013 U.S. Claims LEXIS 143, *39-40 (Cl. Ct. 2013).

⁵³ *Aircraft Charter Solutions, Inc. v. United States*, 109 Fed. Cl. 398, 413, 2013 U.S. Claims LEXIS 143, *55 (Cl. Ct. 2013).

⁵⁴ *Construction and Application of Competition in Contracting Act of 1984* ("CICA"), codified in part at 31 U.S.C.A. §§ 3301, 3304, 3551 to 3556, 81 A.L.R. Fed. 2d 333, 6 (updated weekly) (accessed: 3/16/2018). As summarized by ALR:

In *Aircraft Charter Solutions, Inc. v. United States*, 109 Fed. Cl. 398 (2013), the court of federal claims held that the government did not violate CICA's mandate to obtain full and open competition by soliciting a counternarcotics contract that might overlap with a previous contract for aviation services in Afghanistan. The plaintiff was a contractor providing air passenger and cargo service with the United States Agency for International Development (USAID). It brought this post-award bid protest, requesting injunctive and declaratory relief, alleging that the government violated the Competition in Contracting Act by ordering commercial passenger and cargo transportation within Afghanistan from another contractor. It claimed that this frustrated open competition by making a "cardinal change" to a contract after bids were accepted and the contract awarded. The other contractor intervened in the suit. The court noted that CICA, 41 U.S.C.A. § 3301(a) (1), requires executive agencies, when procuring services, to "obtain full and open competition through the use of competitive procedures" unless certain specified exceptions apply. A cardinal change meant something that potential bidders would not have expected to fall within the original procurement. The court therefore analyzed the context of services described in the original solicitation for aviation support services in various countries. That solicitation provided country-specific descriptions of required contract services, requiring somewhat different services in each location. Thus, the court opined, bidders would reasonably assume that different types of aviation support services would be required under the contract in each country. The new contractor would provide counternarcotics services, and its contract provided for aerial transportation of personnel and cargo. The court found that the references in the counternarcotics solicitation sufficiently alerted prospective bidders to the possibility that the government would use the resulting contract as a vehicle to obtain full scale commercial equivalent passenger and cargo services regardless of any connection to the specific counternarcotics missions identified in the solicitation. Concluding that aerial transportation of passengers and cargo within Afghanistan was within the scope of the solicitation, the court granted judgment on the administrative record for the government and intervenor.

⁵⁵ National Transportation Safety Board. Public Aircraft Safety. Safety Study NTSB/SS-01/01, Page V Washington, DC: NTSB, 2001.

⁵⁶ GAO-04-645: FEDERAL AIRCRAFT: Inaccurate Cost Data and Weaknesses in Fleet Management Hamper Cost Effective Operations, page 30 (June 2004).

⁵⁷ 48 CFR 2.101

⁵⁸ 48 CFR 2.101 ("sold competitively in substantial quantities in the commercial marketplace based on ... market prices for specific tasks performed or outcomes to be achieved under standard commercial terms").

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(U) APPENDIX D: BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS RESPONSE




United States Department of State

Washington, D.C. 20520

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June 29, 2018

MEMORANDUM FOR NORMAN P. BROWN, ASSISTANT INSPECTOR GENERAL FOR AUDITS

FROM: INL – Erin M. Barclay, Executive Director 

SUBJECT: INL Response to the Draft Report, “Management Assistance Report: Modification and Oversight of the Bureau of Medical Services’ Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements” (AUD-SI-18-XX, June 2018)

The Bureau of International Narcotics and Law Enforcement Affairs (INL) welcomes the opportunity to comment on this draft OIG report.

INL Responses to the OIG’s Recommendations

Recommendation 3: OIG recommends that if it is determined that one or more new contracts is necessary (Recommendation 2), that the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, perform acquisition planning to establish detailed requirements essential to supporting the contracted air mission capabilities and assess those requirements annually against current conditions.

INL Response (June 2018): INL concurs with this recommendation. If such a determination is made by the Deputy Under Secretary for Management, INL stands ready to work with the Bureaus of Administration and Medical Services to perform acquisition planning, establish detailed requirements, and reassess those requirements annually.

Recommendation 4: OIG recommends that, if it is determined that one or more new contracts is necessary (Recommendation 2), the Bureau of Administration, in coordination with the Bureaus of Medical Services and International Narcotics and Law Enforcement Affairs, execute the contract solicitation using full and open competition, to the extent required by the Federal Acquisition Regulation (FAR),

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and that any solicitation and award determined to be justified as a sole-source or other form of less-than-fully-and-openly competed procurement be confined to the specific goods or services that satisfy the FAR criteria for other than full and open competition.

INL Response (June 2018): INL concurs with this recommendation. If such a determination is made by the Deputy Under Secretary for Management, INL stands ready to work with the Bureaus of Administration and Medical Services to execute the contract solicitation in accordance with the FAR, including meeting criteria for full and open competition, if applicable.

Recommendation 6: OIG recommends that the Bureau of Administration, in coordination with the Bureau of International Narcotics and Law Enforcement, use the existing worldwide aviation support services contract or award a contract using full and open competition to establish air shuttle services between Kenya and Somalia.

INL Response (June 2018): INL concurs with this recommendation. Once requirements are fully defined, INL stands prepared, in cooperation with the Bureau of Administration, to provide air shuttle services as needed through its existing worldwide aviation support services contract or through a separate contract using full and open competition.

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(U) APPENDIX E: OIG'S REPLY TO THE DEPUTY UNDER SECRETARY FOR MANAGEMENT'S RESPONSE

(U) In addition to commenting on the recommendations made in this report, the Deputy Under Secretary for Management provided general comments regarding the findings (see Appendix C). Below is a summary of the Deputy Under Secretary for Management's comments and Office of Inspector General's (OIG) reply as well as OIG's overall comments.

(U) Overall Comments

(U) The Department of State's (Department) lengthy response, to a large extent, misses the point of this report and relies on straw arguments. OIG is not taking the position that the Department should not have a biomedical evacuation capability or that the Department should not ensure, more generally, that its personnel in East Africa can be evacuated if needed. OIG also does not purport to question the Department's policy decisions regarding how best to account for risk as a general matter.

(U) Instead, OIG questions the Department's use of a unique contracting vehicle—a non-competitive, sole source award for a specific purpose—to address these needs. It is indisputable that there is a very strong presumption in favor of competitively awarded contracts; even aside from Federal regulations and statutes requiring competition in most cases, extensive literature confirms that non-competitively awarded contracts are typically more expensive. Non-competitive awards are, accordingly, proper only in unique circumstances. And here, as set forth in detail throughout the report, the original non-competitive sole source award was predicated on the notion that Phoenix Air Group (PAG) could provide a truly unique service at the time. That unique service was aeromedical biocontainment evacuation. Although the original contracting vehicle included references to other, peripheral services, there was no suggestion that the Department had contemplated, much less justified, any need to award a contract for routine air transport by using this non-standard mechanism. Through the modification, however, this sole-source contract, which was justified based on a specific need for a specific service at a specific time, was transformed into what was essentially a routine air taxi—a service that could be provided by any number of other vendors.

(U) OIG's concerns are not merely hypothetical: the use of this sole source award has led to increased costs that would not otherwise have been incurred. OIG's analysis demonstrates that the use of the PAG sole-source contract to perform these routine air taxi services will cost an additional \$5.9 million over the course of 2 years. Although the Department contends the contract modification allowing the routine use of the PAG aircraft *saved* money, this is only because the Department's calculations exclude the majority of costs associated with the contract. That is, the Department's analysis factors *out* the very features of the contract that make it more expensive and inappropriate for these purposes.

(U) Finally, OIG notes that much of the Department's analysis appears to have been developed after-the-fact. To take one example, the information that OIG reviewed in the course of its fieldwork did not suggest that the Department had justified its contractual approach based on a "total package approach," although this contention is now at the heart of the Department's position. Similarly, OIG reviewed no information that evidenced that the Department had performed an accurate and supported cost-benefit analysis prior to entering into modification 11. The evolution and addition of various arguments reinforces OIG's belief that the 2017 modification of the sole-source contract was not properly considered and that the option years for this modified contract should not be exercised.

(U) Deputy Under Secretary for Management's General Comment Regarding Overall Decision-making and Budgetary Concerns

(U) "The Department engaged in a careful decision-making process for this requirement and found that use of [SAQMMA16C0077] provided the best value solution to the requirement."

~~(SBU)~~ The Deputy Under Secretary for Management stated, "In December of 2016 Congress appropriated \$6.0 [million] as part of the Security Assistance Appropriations Act...for Mogadishu [Somalia] aviation support for [FYs] 2017 and 2018." The Deputy Under Secretary for Management also stated that "at that time, the small U.S. presence in Somalia was operating without a dedicated health unit and without any medical evacuation capability. Overall U.S. policy concerning a diplomatic presence in Somalia is changing and (b) (5)

(b) (5)

(b) (5) Recognizing the uncertain budgetary future for the U.S. Mission to Somalia and that establishing a long-term [Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation (INL/A)] run federal aviation operation would require a longer-term investment that may not be available in future years, in March of 2017 the Deputy Under Secretary for Management staff requested that [the Bureau of Medical Services (MED)] advise on the feasibility of utilizing [SAQMMA16C0077] to support the U.S. Mission to Mogadishu."

(U) The Deputy Under Secretary for Management provided additional details concerning the approval process for entering into SAQMMA16C0077, and stated that each mission from Nairobi [Kenya] to Mogadishu costs on average \$27,890. The Deputy Under Secretary for Management also stated that the significant contract overhead costs should not be included in the cost benefit analysis used to determine whether SAQMMA16C0077 should be used to conduct routine air transport because "based on an analysis of mission costs, overhead costs and flight hours, it is clear that [MED] derives the majority of the use and the flight hours on the contract." The Deputy Under Secretary for Management also discussed the various options for aviation support, and stated "the Department does not agree with the [OIG] recommendation to eliminate the Department's only on call aviation asset that can perform crisis response, biocontainment aviation support, and medical evacuation."

(U) OIG Reply

(U) Even recognizing the uncertain nature of future budgets, a contract for routine air transport between two locations should have been handled with existing aviation resources or procured through full-and-open competition rather than by modifying a sole source contract. As noted in the Results section of this report, the primary use of contract SAQMMA16C0077 is now routine air transportation between Nairobi, Kenya, and Mogadishu, Somalia. Specifically, between October 5, 2017 and March 30, 2018, contract SAQMMA16C0077 was used 72 times to conduct routine air transport between Nairobi and Mogadishu and only 3 times for other purposes.

(U) In addition, the Department's analysis understates the costs associated with the use of the PAG contract. To fully assess the costs associated with aviation services, the Department must take into account all of the related costs—not just the flight hour costs, as its analysis suggests. For example, the figure used in the Department's response is \$27,890. OIG notes as an initial matter that its own analysis of all related invoices establishes that the average cost is actually \$33,397, excluding overhead or fixed costs. More fundamentally, this figure only includes the basic charge for flight hours. It does not include many other costs that are associated with basing the aircraft in Nairobi. For example, the Department pays \$9.5 million each year just to have the aircraft located in Kenya and \$1.1 million related to contractor travel costs for the Nairobi-based personnel. The true expense of each flight cannot be accurately determined without accounting for these costs. In short, OIG generally questions the Department's efforts to exclude the higher costs inherent in this sole source contract from its analysis of the costs associated with the modification. Even if those costs could be justified initially because of specific needs for specific services at that time, when the contract was modified to change its overall purpose and location, those costs should have been fully considered in assessing different options. The Department's decision not to do so meant that the underlying financial assumptions justifying the modification were inaccurate, as set forth in more detail in the report itself.

(U) With respect to the Deputy Under Secretary for Management's comment related to "eliminating the Department's only on call aviation asset...", OIG does not dispute there may be a need for crisis response, biocontainment aviation support, and medical evacuation. However, for more than 2 years, contract SAQMMA16C0077 has never been used to conduct an aeromedical biocontainment evacuation. Moreover, the Department has not established that, as of September 2018, PAG is the only option to address a trans-oceanic crisis response that also has a need for biocontainment capability. To the contrary, as noted previously, there are apparently other options.

(U) First, the Department of Defense has other aviation assets that are potentially capable of supporting a trans-oceanic crisis response that also have a biocontainment capability. According to Department of Defense officials, in 2015, the large scale Ebola outbreak became a catalyst for the U.S. Air Force to develop a large system to isolate highly contagious patients during air transport. Specifically, in January 2015, the U.S. Transportation Command rolled out a capability that allows the Department of Defense to use air transport to move multiple patients with highly

infectious diseases, such as Ebola. The aircraft include a specialized isolation module that has a disposable liner and an air filtration system. The aircraft can maintain a negative interior pressure to keep contaminants inside the chamber. The U.S. Air Force procured 25 isolation units, which provides biocontainment for a combination of up to 9 patients.¹ A U.S. Transportation Command official stated "now we have the capacity to isolate a single person and provide tactical and strategic worldwide patient transport capability in case of a biological event...It is the only capability of its kind other than the small-scale single-evacuation capability that's available on commercial carriers."²

(U) Further, the Department of Defense has conducted multiple training events since the system was developed in 2015. For example, on July 18, 2018, airmen from the 628th Medical Group at Joint Base Charleston, the 375th Aeromedical Evacuation Squadron from Scott Air Force Base, Illinois, and medical researchers from universities in Indiana and Nebraska, conducted a joint training to implement and evaluate the procedures for transporting highly infectious patients from one location to another using aeromedical evacuation.³

(U) Finally, OIG questions the Department's decision to use an aircraft purportedly designated for aeromedical evacuations for routine air transport. This was not the intent of the original sole-source contract for aeromedical biocontainment evacuation services, which was not based on any justification for procuring routine air transport services on a sole-source basis, or for non-emergency operations. For routine air transportation, the Department should have used either existing aviation assets or procured the aviation services using full and open competition as required by the Federal Acquisition Regulation.

(U) Deputy Under Secretary for Management's General Comment Regarding "High-Risk, High-Threat Environments"

(U) "The Secretary [of State] has emphasized the need to provide adequate protection to our diplomats in high-risk, high-threat environments and [SAQMMA16C0077] provides the Department strategic mobility for crisis response, as called for by the Secretary and authorities recommendations."

(U) The Deputy Under Secretary for Management stated that "the Department submits that eliminating the [U.S. Government's] only biocontainment capability by not exercising option years on [SAQMMA16C0077] would mean the loss of strategic mobility of the Department's crisis response teams – a capability that Secretary Pompeo made clear was critical for protecting [chief of mission] personnel." The Deputy Under Secretary for Management additionally described the various capabilities of the contractor in regards to crisis response and stated that SAQMMA16C0077 provides the Department with strategic options during the time of highly

¹ (U) "Medical Evacuations of Patients with Highly Contagious Diseases: Update to Current Options, Capabilities, Policy Challenges, and Resource Gaps," March 21, 2015, 3.

² (U) <https://www.af.mil/News/Article-Display/Article/562739/scott-airmen-train-on-transport-isolation-system/>.

³ (U) <http://www.jbcharleston.jb.mil/News/Article/1581973/airmen-and-medical-researchers-team-up-for-inflight-tis-training/>.

complex international crises. The Deputy Under Secretary for Management stated that “[SAQMMA16C0077] provides a solution to the void that existed during the time of Benghazi.”

(U) OIG Reply

(U) OIG does not dispute the need to provide adequate protection to diplomats in high-risk, high threat environments. However, this capability should be provided through a contract based on full-and-open competition, as aviation support is a commercially available service. For example, INL/A utilizes a contractor that has “extensive experience in operating in a number of locations and operating environments, including exposure to deadly hostile fire, outside of Iraq and Afghanistan.” It should also be noted that Department owned aircraft that could have been made available for the mission were uniquely equipped with Aircraft Survivability Equipment (defensive anti-missile systems), which offer additional protection from threats resulting from instability in Somalia. Aircraft in this configuration are not available through [commercial aviation services (CAS)].⁴ Notwithstanding, contract SAQMMA16C0077 is primarily being used to conduct routine air transport, which was not identified as a service that was needed on a sole source basis or that only PAG can uniquely provide.

(U) OIG has already addressed the contention that contract SAQMMA16C0077 is the “[U.S. Government’s] only biocontainment capability.” See response to previous comments.

(U) Deputy Under Secretary for Management’s General Comment Regarding Scope of the Original Contract

(U) The Deputy Under Secretary for Management stated that the “[multi-mission aviation support services] contract was properly awarded as a multi-mission aviation support capability at the time of award and throughout performance.” The Deputy Under Secretary for Management also stated that OIG “states that the ability to evacuate patients with highly-pathogenic infectious diseases is no longer required by the [U.S. Government], rationalizing that at some point in time the threat to individuals under chief of mission authority vanished.” The Deputy Under Secretary for Management further stated that “the Department expresses concern with the underlying premise of the [OIG’s] position in this regard, with the view that divestment of the [U.S. Government’s] only proven biocontainment evacuation capability would potentially prevent the Department from fulfilling its obligation to establish policies and programs for the protection of [chief of mission] personnel.” The Deputy Under Secretary for Management provided a list of highly contagious diseases, and stated that SAQMMA16C0077 is also needed in the event of biochemical warfare or weapons of mass destruction.

(U) Within this section, the Deputy Under Secretary for Management also addressed his rationale for modifying the scope of SAQMMA16C0077 to include routine air transport. Specifically, the Deputy Under Secretary stated that “the Department’s consolidated, total

⁴ (U) Information Memo from INL/A, “Comments and Technical Corrections – Information Provided by MED/DMD/OM at Management Assistance Report Exit Briefing,” June 15, 2018.

package approach was documented contemporaneously and included a clearly articulated rational basis.” The Deputy Under Secretary for Management also presented case law related to procurements that include a combination of requirements that permit operational efficiency.

(U) OIG Reply

(U) At no time has OIG suggested that threats to chief of mission personnel “vanished.” Rather, OIG is encouraging the Department to engage in acquisition planning and perform appropriate cost benefit analyses. In addition, full-and-open competition should be used to obtain the best value for the American public. OIG has already set forth information explaining that other parts of the Government may have an appropriate biocontainment capability.

(U) With respect to the Deputy Under Secretary for Management’s statement regarding use of the “total package approach,” OIG disagrees with the Department’s claim that it justified the use of the PAG aircraft as described here. First, the Department has in place a worldwide aviation support services contract. Instead of modifying a sole source contract, this existing aviation support services contract could have been used for routine air transportation between Nairobi, Kenya, and Mogadishu, Somalia.

(U) Second, as OIG discussed in greater detail in the Results section of this report, a procuring agency must justify the “total package approach” on some reasonable basis that demonstrates significant cost savings, avoidance of unacceptable technical risk to mission success, economies of scale, or the like. The “total package approach” does not support a modification that fundamentally altered the nature of a contract that was, in the first instance, awarded noncompetitively. Put another way, the contract here was not based on any justification to procure routine air taxi service on a sole-source basis. The “total package approach” does not justify adding to a sole source contract services that are available at lower cost from various other sources unless the agency provides a reasonable showing that such bundling will produce benefits such as those mentioned above. Conclusory statements do not suffice; the agency must demonstrate that it conducted a genuine inquiry enabling it to reach a rational decision to exclude other sources—in this case, other sources that could have provided air taxi service at lower cost.⁵ The Department has made no such showing. Furthermore, the case law presented by the Deputy Under Secretary does not support a situation in which an organization modified

⁵ (U) In *Palantir USG, Inc. v. United States*, 129 Fed. Cl. 218 (2016) the court permanently enjoined the government from issuing a contract because its market research contained only conclusory statements to exclude other sources without any examples or support. An agency is entitled to substantial deference in deciding what to include in procurements, but the Federal Acquisition Regulation contains at least a “minimal requirement of demonstrating that [the agency] conducted a genuine inquiry that could enable it to reach a rational conclusion not to consider” other sources. *Palantir*, 129 Fed. Cl. at 275; see also *Matter of: Intermem Corp.*, 1984 U.S. Comp. Gen. LEXIS 751, B-212964 (1984) (explaining that combining sole-source items with competitive items is permitted if agency demonstrates reasonable basis, but “[h]ere, the Air Force has not presented any basis at all for not breaking out the [component] for competition”); *Honeywell Info. Sys., Inc.*, B-215224 (1984) (stating that there is no justification for single award; “if either an aggregate award or multiple awards would satisfy the agency’s needs, . . . an aggregate award requirement is improper”); *Interscience Systems, Inc.; Cencom Systems, Inc.*, 59 Comp. Gen. 438, modified, 59 Comp. Gen. 658 (1980) (finding that procuring competitive and sole-source items together operated to unfairly limit competition).

an existing sole source contract and changed its primary purpose from a specialized mission, such as aeromedical biocontainment evacuations, to include routine air transport.

(U) Indeed, the case on which the Department heavily relies, *Aircraft Charter Solutions, Inc. v. United States*, 109 Fed. Cl. 398 (Ct. Cl. 2013), did not involve a sole source contract at all but instead concerned a competitively awarded contract under which the Department procured a broad range of aviation support services to support INL/A's anti-narcotics mission in various countries. The solicitation in that case, unlike in the present case, expressly stated that the "government is interested in a best value approach that can provide all necessary services efficiently and safely." The solicitation originally covered four countries, not including Afghanistan, but stated that contract services were anticipated in Afghanistan in the near future. When the Department modified the contract to include Afghanistan, a previously unsuccessful bidder protested the modification as a cardinal change—an argument the court easily rejected on the facts stated. That case is not comparable to the situation here, where the original justification for awarding a sole source contract to PAG was the need for an Aeromedical Biocontainment System (ABCS) capability that only PAG could provide, but the sole source contract was later modified to permit PAG to provide routine air taxi services that could have been provided, potentially at lower cost, by various vendors as well as by the Department's own aircraft.

(U) Deputy Under Secretary for Management's General Comment Regarding Compliance with Department Procedures and "Cardinal Change"

(U) The Deputy Under Secretary for Management stated that "Modification 11 to [SAQMMA16C0077] was properly reviewed, cleared, and awarded in accordance with Department and Federal requirements." The Deputy Under Secretary for Management also stated, "the Department maintains its position regarding the necessity of a biocontainment aviation asset, as divestment of the Department's capability would be irresponsible and inconsistent with the Department's obligation to protect [chief of mission] personnel and provide for the safe evacuation of U.S. citizens when their lives are endangered as required under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Review of the decision-making process shows that the Deputy Under Secretary for Management retained final decision-making authority based on price and non-price factors and did so after careful review and after multiple months of deliberation with INL, [Bureau of African Affairs], and MED. Additionally, after consultation with [the Bureau of Administration], [Bureau of Legal Affairs, Office of Buildings and Acquisitions], and the [head contracting authority], it is clear that all procurement-related processes and procedures were followed as required."

(U)The Deputy Under Secretary for Management also provided a table showing the extent of changes in the type of work between the original contract and the modification. From this analysis, the Department contends that there was no "cardinal change."

(U) OIG Reply

(U) As noted in the reply to recommendation 5, OIG acknowledges that the modification was apparently cleared by all appropriate levels of the Department. OIG does not, however, agree with the Department's rationale at the time or now for that change.

(U) To the contrary, OIG reviewed the information provided and concludes that the type of work performed and the costs associated with contract SAQMMA16C0077 significantly changed under Modification 11 and circumvented the competition requirement. Specifically, based on the information provided in the modification and intra-agency agreement, OIG concludes that the purpose of the modification was to change the original contract from one that was awarded to provide aeromedical biocontainment evacuations to a contract used to perform routine transportation between two Department posts. Most notably, the modification required the contractor within three weeks to "[r]each Initial Operating Capacity (IOC), with the ability, space, and resources to conduct three missions per week and maintain N+12 medical evacuation response posture for all other periods" and, within six weeks, to "[r]each Full Operating Capacity (FOC), with the ability space, and resources to conduct three missions per week and maintain N+6 medical evacuation response posture for all other periods."⁶ As discussed in the Results section of this report, the substantive justification for the original contract clearly demonstrated that the contractor's unique qualifications related solely to the contractor's biocontainment capabilities. In addition, it is equally clear that the contractor is not uniquely qualified to perform routine air transport services between two overseas locations. Accordingly, Modification 11, which added services that numerous other contractors could provide, went beyond the scope of the original justification for use of other than full-and-open competition because the sole-source justification was for aeromedical biocontainment evacuation services.

(U) In *Air-A-Plane Corporation v. United States*, 408 F.2d 1030 (Ct. Cl. 1969), the court stated that the basic standard for determining whether there has been a cardinal change to a contract is whether the modified job was essentially the same work as the parties bargained for when the contract was awarded. There is a cardinal change if the deviations altered the nature of the thing to be done. The Government Accountability Office has similarly defined the question as:

whether the original purpose or nature of the contract has been so substantially changed by the modification that the contract for which competition was held and

⁶ (U) The modification moreover quite explicitly identified this different purpose: "The [Department] has a requirement for a rapidly deployable aviation capability transporting response personnel and retrieving eligible persons and critically ill patients safely, swiftly and securely to and from locations within Somalia, while continuing to support medical evacuation and biocontainment requirements on the African continent. With the move from Dakar to Nairobi, the Department will maximize the efficiency of aviation operations in Africa by leveraging spare capacity within the existing multi-mission aviation support services contract to support Mission Somalia from a base in Nairobi, Kenya." Modification 11 to SAQMMA16C0077.

the contract to be performed are essentially different. In other words, was the field of competition materially changed due to the modification.⁷

(U) In keeping with this authority from both the federal courts and from the GAO, when, as here, the original contract was not competed in the first place, modifying the contract, again without competition, by permitting a sole-source contractor to do work that could be done by other vendors at potentially lower cost is a substantial change, especially when such work becomes the primary activity under the contract. In the present case, Modification 11 permitted the PAG specialized aircraft to be used for routine air taxi services, which were not procured under the original contract, and allowed PAG to be paid for such services at the same high rates paid for the specialized biomedical containment evacuation services that were procured under the original contract. Moreover, these routine air taxi services became the primary activity performed under this sole-source contract. Under these facts, Modification 11 was a substantial change to the original contract scope.

(U) According to Federal Acquisition Regulation, Part 6, modifications beyond the scope of an existing contract (out-of-scope modifications) must be awarded competitively.⁸ Modification 11 changed the contract's scope of work and was "materially different" from the original sole-source contract.

(U) Deputy Under Secretary for Management's General Comment Regarding Compliance with Aviation Guidance

(U) The Deputy Under Secretary for Management stated that MED substantially complied with applicable guidance and justified the [SAQMMA16C0077] to the Office of Management and Budget and Congress, and once [aware] of additional reporting requirements, MED completed all required submissions. The Deputy Under Secretary for Management also stated that "MED is in compliance with the Federal Aviation Interactive Reporting System (FAIRS). MED has submitted FAIRS reporting to INL/A to upload into FAIRS between January 22, 2018, and February 1, 2018, and MED also actively worked with INL/A and [the General Services Administration (GSA)] to retroactively update the FAIRS record."

(U) OIG Reply

(U) During OIG's initial meeting with MED on October 5, 2017, OIG discovered that MED was not in compliance with a number of 41 Code of Federal Regulations (C.F.R.) 102-33 requirements, including FAIRS reporting. At that time, MED argued that the contractor's aircraft did not meet the definition of CAS, and therefore, MED did not have to follow the federal requirements.

⁷ (U) *Webcraft Packaging*, B-194087 (Comp. Gen. Aug. 14, 1979).

⁸ (U) FAR 6.001 (c) states that the competition requirements apply to all acquisitions except "contract modifications...that are within the scope and under the terms of an existing contract." Therefore, out-of-scope modifications need to be competitively awarded.

During the audit, GSA advised MED that contract SAQMMA16C0077 did in fact meet the definition of CAS, and MED then took steps to comply with the regulations. OIG obtained MED's FAIRS submissions and confirmed that they were submitted to INL/A. However, in verifying the information within the submissions, OIG found that MED had inaccurately reported the costs of the aviation services. Specifically, the costs were underreported by over 67 percent, as shown in Table E.1.

(U) Table E.1: Actual MED Aviation Costs Compared to FAIRS Submission

Time Period	Amount Reported to FAIRS	Amount From Invoices	Amount of Variance	Percent Variance
June 2014 – December 2014	\$2,639,964	\$4,311,106	(\$1,671,141.93)	39
January 2015 – December 2015	\$1,854,981	\$11,916,776	(\$10,061,795)	84
January 2016 – December 2016	\$1,940,017	\$11,510,060	(\$9,570,043)	83
January 2017 – December 2017	\$5,785,281	\$12,516,858	(\$6,731,576)	54
January 2018 – April 2018	\$2,114,379	\$3,767,519	(\$1,653,140)	44
Total	\$14,334,622	\$44,022,319	(\$29,687,697)	67

Source: Prepared by OIG on the basis of MED's FAIRS submission information and Phoenix Air Group invoices.

(U) Deputy Under Secretary for Management's General Comment

(U) The Deputy Under Secretary for Management stated, "The Department properly justified the use of CAS in accordance with 41 C.F.R. § 102-33 and [Office of Management and Budget] Circular A-126, [SAQMMA16C0077] exceeded all safety requirements, and the Department substantially complied with applicable aviation policy and guidance." In this section, the Deputy Under Secretary for Management also stated, "ensuring the safety of Department personnel transported aboard [the contracted] aircraft is of utmost importance to the Department. Review of the contract and the adoption of more rigorous 14 C.F.R. Part 135 requirements shows that services under [SAQMMA16C0077] are held to safety standards and maintenance requirements beyond those required by other Department Federal Aircraft."

(U)The Deputy Under Secretary for Management also stated "from the Department's perspective, there appears to be confusion...with respect to the requirements for federal aircraft and CAS operating under civil aviation authority. Unlike CAS conducting civil aviation operations, federal aircraft operate in an unregulated environment as they exist outside the civil aviation system and are not subject to the same level of scrutiny applied to CAS conducting civil aviation operations. This is why the Department requires that Government Technical Monitors (GTM) be placed at every location where federal aircraft are being operated. The adoption of more rigorous 14 C.F.R. Part 135 requirements shows that services under [SAQMMA16C0077]

are held to a recognized safety standard and established maintenance requirements beyond those required for federal aircraft. Further, by operating as CAS, the Contractor is subject to both scheduled and unscheduled inspections...Thus, the same requirement for an on-sight GTM to monitor day-to-day operations under SAQMMA16C0077 is not needed. In fact, [the Bureau of Administration] confirmed at the June 5, 2018, Exit Briefing that this is the standard for operators conducting regulated civil aviation operations under the Federal Aviation Regulations."

(U) The Deputy Under Secretary for Management also stated, "With respect to cost analysis, MED and [the Bureau of Administration, Office of Acquisition Management] conducted market research to ensure that use of [CAS] was more cost effective than use of Federal Aircraft as required by the Federal Management Regulation and [Office of Management and Budget] Circular A-126. Moreover, per 41 C.F.R. §102-33.50(a)(1), use of Federal Aircraft would have violated the Federal Management Regulation because of the CAS model's superior cost and safety standards. Lastly, by relying on the Contractor's existing (established by the [Federal Aviation Administration] and consistent with industry best practices) quality assurance system, the Department is meeting the requirements set forth in Federal Acquisition Regulation Part 46."

(U) OIG Reply

(U) Federal aviation regulations do not give the Department the choice of which aviation requirements it would like to adhere to. As set forth in the Results section of this report, the important oversight requirements outlined in 41 C.F.R. § 102-33 have not been implemented within MED. Total reliance on Federal Aviation Administration inspections, which do not occur in Nairobi, is not sufficient oversight of a contract that provides routine air transport services for Federal officials between two overseas locations. The Deputy Under Secretary for Management's response stated Somalia has "a deteriorating security situation and persistence of violence as posing an extraordinary threat to U.S. national security and foreign policy." This security situation underscores the importance of having an aviation expert on the ground to provide oversight of operational, safety, and maintenance of the dedicated aircraft that is providing routine transportation between two Department posts. Additionally, MED was unable to provide OIG with complete information regarding the use of the contractor's aircraft, which calls into question the adequacy of its oversight.

(U) OIG understands the requirements for federal aircraft as opposed to CAS. GTM's are in place at locations where federal aircraft are being operated because this is in accordance with the Department's own Flight Program Standards and the Department of State Acquisition Regulation. Specifically, the Department of State Acquisition Regulation states that "the contracting officer may appoint a [GTM] to assist the [COR] in monitoring a contractor's performance. The contracting officer may appoint a GTM because of physical proximity to the contractor's work site, or because of special skills or knowledge necessary for monitoring the contractor's work. The contracting officer may also appoint a GTM to represent the interests of another requirements office or post concerned with the contractor's work." Contract SAQMMA16C0077 meets the DOSAR definition – specifically, special skills are needed to oversee an aviation contract, and because the contract's primary purpose is serving the needs of

the U.S. Mission to Somalia, the post would be particularly concerned with the contractor's work. Furthermore, to clarify the comments made at the exit briefing, the attendee from the Bureau of Administration, Office of Logistics Management, was referring to the oversight of cargo shipments, not the routine transport of chief of mission personnel in and out of a high threat location.

(U) In response to the Deputy Under Secretary for Management's statement that the contract has "superior cost," OIG maintains that the Deputy Under Secretary for Management did not consider a significant portion of fixed overhead costs when making this determination.

(U) Deputy Under Secretary for Management's General Comment Regarding Personnel Qualifications

(U) The Deputy Under Secretary for Management stated "MED has qualified personnel to conduct contract oversight and with the requisite aviation expertise to manage the [unique] mission set."

(U) OIG Reply

(U) The Department employs aviation specialists in INL/A, whose mission is to be the Department's aviation service provider. INL/A has more than 75 personnel and 40 personal services contractors who have decades of experience in flying, maintaining, providing logistical support, and managing other aspects of aviation services. Many of the employees, prior to their employment with the Department, spent their entire careers operating or overseeing aviation operations within Government agencies, such as the Department of Defense. As such, INL/A is best positioned to oversee aviation contracts for the Department. OIG concludes that MED should focus on its responsibilities in executing the Department's worldwide medical program.

(U) ABBREVIATIONS

ABCS	Aeromedical Biocontainment System
AGB	Aviation Governing Board
C.F.R.	Code of Federal Regulation
CGFS	Bureau of the Comptroller and Global Financial Services
COR	Contracting Officer's Representative
DOD	Department of Defense
FAIRS	Federal Aviation Interactive Reporting System
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
GSA	General Services Administration
GTM	Government Technical Monitor
ILMS	Integrated Logistic Management System
INL/A	Bureau of International Narcotics and Law Enforcement Affairs, Office of Aviation
JOFOC	Justification for Other than Full and Open Competition
MED	Bureau of Medical Services
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAG	Phoenix Air Group
U.S.C.	United States Code

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