



Audit of the Federal Bureau of Investigation's  
Biometric Algorithm Purchase Order Awarded to  
Idemia National Security Solutions, LLC



22-045

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**FEBRUARY 2022**

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# EXECUTIVE SUMMARY

## Audit of the Federal Bureau of Investigation's Biometric Algorithm Purchase Order Awarded to Idemia National Security Solutions, LLC

### Objectives

The Department of Justice (DOJ) Office of the Inspector General (OIG) audited a firm fixed-price purchase order (PO) awarded by the Federal Bureau of Investigation (FBI) to Idemia National Security Solutions, LLC (Idemia NSS). The services provided by Idemia NSS support the FBI Next Generation Identification System (NGI). The OIG's objectives were to assess: (1) the FBI's acquisition planning and selection of Idemia NSS for the PO; (2) the FBI and Idemia NSS's administration and oversight of the PO; and (3) Idemia NSS's performance on the PO, including financial management, monitoring, reporting, and progress toward meeting PO goals and objectives.

### Results in Brief

We found that the FBI needs to improve its pre-award planning to facilitate adequate post-award administration and oversight. For example, the FBI did not finalize contract requirements, obtain strategic approvals, or take other substantive pre-award steps until a week before the prior NGI contract was to end. Also, the FBI's basis for using a PO, which the FAR reserves for smaller, noncompetitive simplified acquisition procedures (SAP), was improper. Separately, the PO did not include the required whistleblower protection clause. Further, the FBI's contract files contained insufficient documentation, impacting our ability to make certain assessments. Additionally, none of the three invoices that the FBI approved and paid included all mandatory elements required by the FAR, FBI policies, or the PO Statement of Work (SOW).

Many of these deficiencies reflect concerns highlighted in recent OIG DOJ-wide management advisories concerning: (1) [contract administration](#) and (2) [compliance with laws and regulations that protect the whistleblower rights of those who support federal contracts](#).

### Audit Results

In June 2018, the FBI awarded Idemia NSS sole-source, firm-fixed price PO 15F06718P0005249 (PO) with a base year, four 1-year options, and a ceiling not to exceed \$87.5 million. Under the PO, Idemia NSS is to maintain and upgrade the software and underlying algorithms that control the speed, accuracy, and interoperability of four NGI biometric modalities: (1) Facial Analysis, Comparison, and Evaluation, (2) Iris, (3) Identification Fingerprint and Repository for Individuals of Special Concern, and (4) Latent Friction Ridge.

#### Procurement Acquisition Lead Times and Procurement Vehicle Selection

We found the Idemia NSS procurement process was largely rushed and driven by expediency rather than the size and complexity of the acquisition, as the Federal Acquisition Regulation (FAR) requires. The FBI improperly cited this expediency, using the FAR's provisions for exigent circumstances, as a part of the reason to award the PO using noncompetitive SAP even though the procurement's estimated total value exceeded the threshold and the FAR prohibits agencies from using lack of planning to justify the use of noncompetitive awards via one of the most expedited SAPs—a PO. As a result, the FBI's purchase documents lacked multiple required clauses designed to mitigate the government's legal and financial exposure by ensuring accountability for performance, privacy, worker protections, and intellectual property. These clauses would have been included in a different type of procurement vehicle better suited to the complex IT scenarios intrinsic to the FBI biometric algorithms.

#### Pricing Analysis

While the FBI used trade studies as a basis for concluding on the fairness and reasonableness of Idemia NSS's proposed costs for each modality, we found that three of the four trade studies that we reviewed were outdated, averaging over 4 years

beyond what the FAR deems acceptable. The FBI also used data that lacked comparability, which was for different lengths of time, different numbers of biometric components, and provided insufficient detail to allow the FBI to project fair and reasonable outyear costs. We believe this weakened the Contracting Officer's (CO) negotiating position.

### **Role of the FBI Office of the Chief Information Officer**

Office of Management and Budget policy and the Federal Information Technology Acquisition Reform Act expanded the role of the Office of the Chief Information Officer (OCIO) to include greater involvement in IT acquisitions. We thus found that the lack of time spent on acquisition planning resulted in a missed opportunity for the FBI to leverage its OCIO to design a meaningful quality assurance surveillance plan or equivalent that would have served as a framework for post-award administration and oversight.

### **Whistleblower Rights and Protections**

Although FBI policies echoed FAR and DOJ guidance on contract worker whistleblower rights, FBI contracting officials did not include a required whistleblower protections clause in the PO or documents for exercised option years. As such, the contracting officials did not follow up with Idemia NSS to ensure that it informed its workers of their whistleblower rights. Had Idemia NSS not implemented its own disclosure framework, this inaction could have adversely affected contract worker knowledge of their rights and responsibilities to disclose wrongdoing. When we brought this issue to the FBI's attention, it unilaterally modified the PO to include the mandatory FAR clause but did not provide evidence that contract workers had been notified of their whistleblower rights and protections.

### **Contract Files and Succession Planning**

The FAR assigns responsibility for maintaining the contract file to the CO and Contracting Officer's Representative (COR). We found that the FBI's contract files lacked required documents and sufficient detail to support the rationale for pertinent decisions throughout the PO lifecycle. For example, the software licensing agreement signed by the prime contractor under the previous NGI contract was part of the basis for PO pre-award pricing decisions. However, we could not confirm the terms and conditions because the contracting officials did not retain a copy of the prior contract. We further found that the contract files did

not include written designations and evidence that all CORs completed FAR-required training. We believe that the FBI's ongoing reorganization of its contracting function potentially contributed to incomplete contract file maintenance and other non-compliances noted in our report. For example, because of the reorganization, the FBI assigned a CO to handle the June 2018 PO who had never planned, administered, or overseen a contract larger than \$750,000.

### **Billing and Payments**

We found that none of the three invoices that Idemia NSS submitted, which the FBI subsequently approved and paid, included all mandatory elements required by the FAR and PO SOW.

### **Performance Evaluation and Reporting**

The FBI submitted contractor performance evaluations to the FAR-required Contractor Performance Assessment Reports System (CPARS) that were either untimely or incomplete and did not cover the correct evaluation periods. We reviewed the two CPARS reports submitted to date for the 2018 PO and found: (1) the Base Year report was submitted 37 days late, (2) the Option Year 1 report did not include all mandatory rating factors, and (3) neither was completed using the performance period from the signed contract documents.

### **Procurement Data Certification and Public Reporting**

We determined that the PO data reported to the Federal Procurement Data System did not comport with the FAR, Justice Acquisition Regulation, and internal policies on timeliness and accuracy.

### **Security and Government Property**

Although the PO's SOW required that all contract workers receive a security briefing within 15 days of assignment to FBI facilities, the FBI was unable to substantiate that two Idemia NSS engineers that serviced the algorithms received security briefings. We also found that the FBI did not comply with four of eight requirements for responsibly administering and overseeing cell phones provided to contract workers before the COVID-19 pandemic.

### **Recommendations**

Our report contains 7 recommendations that will improve the FBI's planning and administration of complex IT procurements.

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## Introduction

The Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division has long maintained repositories of biometric and criminal history information, including latent and palm prints. To increase the range and quality of its identification and investigative capabilities and meet evolving threats, the FBI has sought to integrate iris scan image and facial recognition data with its legacy repositories. The FBI awarded a \$1.1 billion, nearly 10-year contract to design, develop, and deploy the Next Generation Identification System (NGI) in February 2008. The contractor (prime contractor, hereafter) subsequently awarded subcontracts to several businesses that specialized in each of NGI's four primary biometric modalities: (1) Facial Analysis, Comparison, and Evaluation (FACE), (2) Iris, (3) Identification Fingerprint and Repository for Individuals of Special Concern, and (4) Latent Friction Ridge. The prime contractor also entered into perpetual unlimited licensing agreements (PULA) with the FBI for these modalities.<sup>1</sup>

MorphoTrak, Inc. (later known as Idemia National Security Solutions, LLC) received a subcontract for its commercial-off-the-shelf (COTS) latent fingerprint/palm print software along with the underlying searching-matching algorithms, which federal, state, and local law enforcement agencies use to accept, store, search, analyze, and match biometric information against other information held in various criminal, civil, and unsolved repositories.<sup>2</sup> Figure 1 details how these modalities support law enforcement as well as homeland and national security operations, providing a resource for identification and access controls needed for services, such as licensing, employment background checks, and travel checkpoints.

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<sup>1</sup> A PULA allows the license holder like the FBI to use a specific version of a given software program continually with payment of a single fee. Unlimited refers to the number of individuals that the license holder may permit to use and access the software.

<sup>2</sup> The Idemia conglomerate (known as Idemia France SAS), which includes Idemia National Security Solutions, LLC (Idemia NSS), was formed in September 2017 when MorphoTrak's France-based parent company, Safran Identity and Security, merged with Oberthur Technologies. According to USASpending.gov, Idemia NSS is considered a foreign-owned and U.S. incorporated business. However, Idemia NSS is certified through the Defense Counterintelligence and Security Agency's Foreign Ownership Control or Influence mitigation process, which provides assurance tools to anticipate and manage the risk that foreign affiliated management or operations may result in unauthorized access to information or adversely affect the performance of contracts.

Figure 1

FBI NGI Biometric Modalities Obtained via Idemia NSS Services Bundle



**Modality 1: FACE**

Recognizes facial anatomy, lighting, surface changes, and modifications due to changed expression.

Provides law enforcement with investigative leads on crimes and terrorism assessments and on subjects of active investigations. Also, supports the Interstate Photo System.



**Modality 2: Iris**

Searches for matching iris patterns (i.e., unique ridges and folds) in the NGI-Iris Service National Iris Repository, which is populated by local, state, tribal, and federal partners during arrests, subsequent criminal proceedings, incarceration, or post-trial release.



**Modality 3: Identification Fingerprint and Repository for Individuals of Special Concern**

Stores fingerprints of persons who represent special risks to the public, law enforcement personnel, or heightened investigative interest (e.g., suspected terrorists, wanted persons, registered sexual offenders, etc.).



**Modality 4: Latent Friction Ridge**

Searches for matching friction ridge areas of the hand in the latent fingerprints and palm prints repository.

NGI accepts: (1) known palm prints with fingerprints; (2) known palm prints without fingerprints, but with an identifying number; and (3) unknown palm prints.

Note: The modalities operate on Idemia NSS's proprietary cloud platforms (i.e., either the Multi-Biometric Identification System or its legacy Automated Biometric Identification System) and employ its search engine (i.e., Multi-Biometric Search Services) that uses the algorithm to sort, retrieve, and identify the most statistically probable matches.

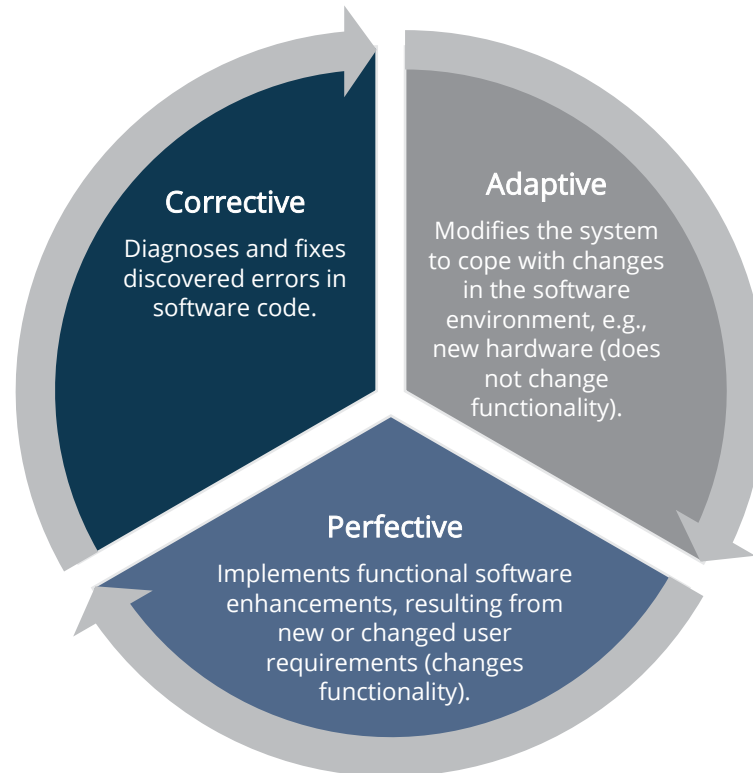
Source: OIG, FBI CJIS Division, FBI Privacy Impact Assessments, and Idemia NSS

When the larger NGI contract (and its subcontracts) ended in May 2018, the FBI sought to establish a direct relationship with Idemia NSS to retain services for maintenance and upgrades to its proprietary COTS software, matching algorithms, and to continue leveraging the PULA. In June 2018, the FBI awarded Idemia NSS a sole-source, firm-fixed price purchase order (PO) 15F06718P0005249 with a base year, four 1-year

options, and a ceiling not to exceed \$87.5 million.<sup>3</sup> The purpose of the acquisition was for Idemia NSS to provide the three types of services (depicted in Figure 2) for the algorithm software that controls the speed, accuracy, and interoperability of the NGI modalities.

**Figure 2**

**Software Maintenance and Upgrade Services Purchased via the FBI Idemia PO**



Source: FBI and OIG Analysis

As Idemia NSS bundled its services, the PO costs encompassed all 4 modalities. As shown in Table 1, as of June 2021, the acquisition was over 3 years into its 5-year performance period and the FBI had obligated \$70 million of the \$87.5 million award.

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<sup>3</sup> The FBI fully funds the base and each option year at the beginning of the performance period by issuing a modification in accordance with FAR Subpart 17.207(g).



Table 1

FBI Idemia PO History

PO Action Awarded	PO Number	Performance Period	PO Value
Base	15F06718P0005249	6/7/2018 – 6/6/2019	\$17,500,000
Option Year 1	15F06718P0005249	6/7/2019 – 6/6/2020	17,500,000
Option Year 2	15F06718P0005249	6/7/2020 – 6/6/2021	17,500,000
Option Year 3	15F06718P0005249	6/7/2021 - 6/6/2022	17,500,000
<b>Total</b>			<b>\$70,000,000</b>

Source: Signed FBI Purchase Documents, Modifications, and OIG Analysis

### Office of the Inspector General Audit Approach

Our objectives were to assess, with regard to the FBI's June 2018 PO: (1) the FBI's acquisition planning and selection of Idemia NSS for the PO awarded; (2) the FBI and Idemia NSS's administration and oversight of the PO awarded; and (3) Idemia NSS's performance on the PO awarded, including financial management, monitoring, reporting, and progress toward meeting PO goals and objectives.

To accomplish these objectives, we interviewed and consulted the key FBI personnel responsible for the acquisition lifecycle (i.e., planning, award, administration, and oversight) as well as the peripheral security and information technology (IT) considerations for the PO and the previous NGI contract to understand their experience, roles, and responsibilities. These individuals included senior officials, former and current Contracting Officers (CO) and Contracting Officer's Representatives (COR), Program Managers, and IT specialists from the: (1) Procurement Section, (2) Finance Division, (3) CJIS, (4) Office of the Chief Information Officer (OCIO), (5) Information Technology Acquisitions Unit, and (6) Security Division. We also reviewed assorted contract file documents maintained by the aforementioned personnel to understand the FBI's rationale for pertinent decisions made throughout the FBI's biometric program lifecycle because previous acquisitions and licensing rights served as the basis for the pricing and services negotiated for the June 2018 PO. From these discussions, we obtained IT standards and internal policies, which we reviewed and considered in the context of the PO.

We also interviewed key FBI personnel, Idemia NSS management, and PO support staff (e.g., software developers and engineers) regarding performance monitoring activities, metrics, and reporting. In addition, we reviewed relevant supporting documents.

We evaluated the previously mentioned information and considered whether the processes the FBI had in practice were in compliance with the laws, regulations, internal policies, and contractual requirements applicable to the PO. Many of the concerns identified in this audit reflect those underscored in our July 2020

memorandum highlighting Department-wide concerns regarding management and oversight of service contracts.<sup>4</sup> Appendix 1 contains further details on our audit objectives, scope, and methodology.

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<sup>4</sup> [\*Management Advisory Memorandum Concerning the Department of Justice's Administration and Oversight of Contracts\*](#) Audit Report 20-082 (July 2020), [www.oig.justice.gov/sites/default/files/reports/20-082\\_0.pdf](http://www.oig.justice.gov/sites/default/files/reports/20-082_0.pdf). These deficiencies include Contract Oversight Responsibilities, Quality Assurance, Contract File Documentation, and Maximizing Competition. Although this audit's conclusions and recommendations are related specifically to the FBI's biometric algorithm PO, for the reasons set forth in the July 2020 Memorandum, the OIG believes that the deficiencies the OIG has identified in multiple contract-related audits may be systemic in nature and require sustained attention across the organization.

# Audit Results

## The FBI Needs to Improve Pre-Award Planning to Facilitate Adequate Post-Award Administration and Oversight

Eight months before the end of the nearly 10-year contract to integrate biometric components (known as modalities) into the Next Generation Identification System (NGI), the Federal Bureau of Investigation (FBI) began considering the need to support proprietary algorithms used to identify, analyze, and match biometric information. Yet, only until about 30 days before the NGI contract ended did the FBI take substantive action to plan for and award a purchase order (PO) to former subcontractor Idemia National Security Solutions (Idemia NSS) to maintain and upgrade its proprietary commercial-off-the-shelf (COTS) software and searching-matching algorithms that had been integrated into the NGI.

We present our audit results in two sections. The first section reviews FBI acquisition planning and award selection (i.e., pre-award) activities. The second section reviews how the FBI administered and oversaw the PO (i.e., post-award). The FBI neither reported nor did we identify significant deficiencies in Idemia NSS's performance on the June 2018 PO in terms of product accuracy, speed, and interoperability as this was not within our audit scope.

### Section 1: Acquisition Planning and Award Selection

The FBI's use of a PO for the maintenance and upgrades to Idemia NSS's software and algorithms was largely driven by expediency and the desire to continue working with part of the incumbent service team (i.e., subcontractor Idemia NSS) rather than the size and complexity of the acquisition as required by the Federal Acquisition Regulation (FAR). In terms of award size, we examined the circumstances surrounding the noncompetitive award of the PO, which the FBI awarded via Simplified Acquisition Procedures (SAP) even though the total award exceeded the Simplified Acquisition Threshold (SAT) permitted by the FAR.<sup>5</sup> An abbreviated planning process, caused by a lack of comprehensive guidance on Procurement Administrative Lead Times (PALT) from FBI contracting officials led to the FBI to rely on FAR provisions for exigent circumstances. However, the FAR prohibits agencies from using lack of acquisition planning to justify making noncompetitive awards via one of the most expedited SAPs — a PO. The award planning stage also missed opportunities to leverage portions of the FBI's in-house information technology (IT) expertise (namely, its Office of the Chief Information Officer) to design a meaningful quality assurance surveillance plan (QASP) or equivalent that would have aided FBI contracting officials (i.e., Contracting Officer (CO) and Contracting Officer's Representative (COR)) efforts to comply with applicable laws, regulations, internal policies, and PO terms and conditions.

The contract file that the FBI maintained for the June 2018 PO lacked appropriate or otherwise required documents. The contract file lacked evidence to demonstrate that the FBI used current trade studies for three of four modalities necessary to develop Independent Government Cost Estimates (IGCE) or perform market research, both of which are needed to strengthen the CO's ability to negotiate a fair and reasonable price. We further determined that the FBI did not include required contract clauses in the PO, its Statement

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<sup>5</sup> FAR Part 13 details SAPs, which are steps to streamline the purchase of relatively simple supply and service requirements, characterized by a total value not exceeding the SAT. The SAT applicable to the June 2018 PO is \$250,000.

of Work (SOW), or modifications or follow-up with the contractor to ensure that contract workers had been affirmatively informed of their whistleblower rights and protections.

### **Complex Contract Actions Require Sufficient Lead Times and IT and Security Expertise**

Acquisition planning is the process by which those developing an acquisition work to ensure that the procurement fulfills agency needs in the most effective, economical, and timely manner. As such, the FAR prescribes that the acquisition planning team should be multi-faceted with participants from the Contract Office, Program Office, and other stakeholders who will be responsible for significant aspects of the acquisition, such as fiscal, legal, and technical personnel.<sup>6</sup>

### **Setting Appropriate Pre-Acquisition Lead Times**

Because there is an element of strategy involved before the acquisition planning team fully assembles, the FAR advises that acquisition planning should begin as soon as the agency need is identified by Program Office personnel (preferably well in advance of the fiscal year in which contract award or order placement is necessary). To enhance the opportunity for competition and receive better pricing, the Program Office should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules.<sup>7</sup>

Despite these FAR requirements, the June 2018 PO acquisition planning documents demonstrated that while the FBI drafted a Justification for Other Than Full and Open Competition (JOFOC) in October 2017, it did not begin finalizing contract requirements, obtaining strategic approvals, or taking other substantive steps toward completing a pre-award package for the NGI biometric algorithm outyear sustainment costs (i.e., software maintenance and upgrades) until April 30, 2018, only a week before the 2008 NGI system development and implementation contract was scheduled to end on May 6, 2018.

Although the June 2018 PO marked the FBI's entry into a direct relationship with Idemia NSS, the FBI's acquisition plan referred to the June 2018 PO as a "follow-on to the existing NGI development contract that is expiring." This statement implied that the PO was an extension of the contract with the incumbent prime contractor. This statement also demonstrates that the FBI's acquisition planning team did not consider that it was indeed changing the FBI's contractual relationship with Idemia NSS—from subcontractor to prime contractor—when it developed the acquisition milestones shown in Table 2.

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<sup>6</sup> FAR Subpart 7.104.

<sup>7</sup> FAR Subpart 7.102 and 7.104.

Requirements implemented after the Idemia NSS PO was awarded now provide the steps agencies should take to monitor and reduce PALT using modern business practices that shorten the time from the agency's identification of a need to product or service delivery. While these requirements became effective after the FBI awarded the June 2018 PO, we believe that the FBI needs to consider these guidelines during acquisition planning for future iterations of the biometric algorithm contracts. See Office of Management and Budget (OMB) [Memorandum on Reducing Procurement Administrative Lead Time Using Modern Business Practices](#) (January 2021).

Table 2

Acquisition Milestones for the June 2018 PO

Milestone	Planned Date
Acquisition Plan Approval	4/30/2018
Statement of Work Complete	4/30/2018
Specifications Complement (if any)	4/30/2018
Data Requirements Complete	4/30/2018
Completion of Requisition Package	4/30/2018
Justification and Approvals Complete	5/8/2018
Determinations and Findings Approvals (if any)	-
Issuance of Synopsis	-
Issuance of Solicitation	5/11/2018
Due Date for Proposals/Bids/Quotes	2/25/2018
Initial Evaluations	5/30/2018
Start Discussions (if any)	5/30/2018
Finish Negotiations (if any)	6/1/2018
Final Proposal Revisions (if any)	6/4/2018
Pre-Award Acquisition Reviews (e.g., Office of General Counsel, Head Contracting Authority, etc.)	6/4/2018
Contract Award	6/4/2018
<b>Total Days from Planning to Award</b>	<b>35</b>

Source: FBI Acquisition Plan Generated in UFMS Acquisition Milestone/Lead Time Module

The FBI's Acquisition Reference Guide (ARG) 7.104 suggests that contracting officials follow the FBI's Procurement Section Standard Operating Procedure Process 4.1.1-4.1.2 for Requirements Generation to help facilitate acquisition planning and create the necessary attachments (e.g., IGCE, sole source justifications, acquisitions plans) to support the procurement process. Although this process is intended to improve timeliness in the performance of these requirements, the lack of comprehensive guidance on PALT from FBI contracting officials led to the FBI completing important requirement documentation close to the June 2018 PO award date. These circumstances effectively precluded the FBI from considering basic factors that otherwise would have required additional planning time and contributed to the FBI's decision to forgo executing a QASP and instead apply an inappropriate procurement vehicle to effectuate the procurement. We discuss the other circumstances that created these conditions as well as the potential effects on the program supported by the June 2018 PO and the FBI's compliance with applicable laws, regulations, internal policies, and PO terms in the subsequent report sections.

We further examined the FBI's ARG and determined that although it has been updated to include Office of Management and Budget's (OMB) January 2021 guidance, the policy lacked lead time baselines or benchmarks for the various contract types, procurement vehicles, and extent of competition that an acquisition planning team may encounter. To disincentivize rushed planning that does not optimize the chance of a successful contract that complies with applicable laws and regulations while adequately supporting agency programs and the mission, we recommend that the FBI update its policies and procedures (i.e., ARG 7.104) to provide guidance to acquisition planning team members, including

contracting officials, on how to apply the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions above the SAT.

### **OCIO and Security Support on the Acquisition Planning Team**

In addition to establishing sufficient lead times, the FBI needs to make sure the acquisition planning team includes those with the appropriate expertise to guide developing the awards requirements and monitoring plan. While the acquisition planning team for the June 2018 PO consisted of personnel from the FBI's contracting office and programming office (i.e., CJIS), we determined that the FBI did not fully leverage its internal OCIO and its sub-offices (i.e., Acquisition Security Unit-ASU and the Supply Chain Risk Management Unit-SCRM U) for additional IT expertise that would have promoted the design of a meaningful QASP or equivalent, which the FBI did not have in place for this award.<sup>8</sup> Considering the PO's size and complexity, a QASP would have helped contracting officials proactively forecast and mitigate the risks related to the FBI's:

- use of a fixed-price procurement vehicle, including the risk that the contractor could: (1) provide inferior goods and services if an acceptable quality level is not stated explicitly in the PO, or (2) attempt to realize profits through post-award change orders since the FBI and Idemia NSS agreed to pricing upfront;
- multiple interdependent business processes supported by the procured services;
- extent of configuration (i.e., data rights and the PULA); and
- selection of a COTS solution for an area that is rapidly evolving.<sup>9</sup>

The Federal Information Technology Acquisition Reform Act (FITARA) of 2014 enhanced the CIO role by requiring that each federal agency's CIO maintain a significant role in all agency IT decisions, including annual and multi-year planning, programming, budgeting, acquisition, execution, reporting, management, governance, and oversight functions.<sup>10</sup> While an FBI OCIO official authorized some PO planning documents, multiple representatives from FBI OCIO and its sub-offices confirmed that they did not actively participate in the planning process and have not been involved in ongoing monitoring activities. One official referred to the PO as a "smaller acquisition" and told us that this status may explain the lack of FBI OCIO involvement in the planning process; however, when we asked whether any department-wide or FBI policies defined what size an acquisition needed to be to warrant its OCIO input, the official did not know.

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<sup>8</sup> FBI contracting officials appeared to rely disproportionately on the PO's fixed-price structure and contractor's use of agile software development to conclude that the procurement was not risky enough to require the oversight framework and monitoring activities facilitated by a QASP.

<sup>9</sup> FAR Subpart 46.4 states that a QASP prepared with the SOW specifies all activity requiring surveillance (i.e., monitoring and evaluation) and the method of surveillance. A well-designed QASP specifies the timing, location, and extent of surveillance (i.e. monitoring) activities to guide government oversight personnel in performing their contract monitoring roles and responsibilities.

<sup>10</sup> OMB Memorandum M-15-14 reiterates the need for agency CIOs to review, approve, and oversee all IT acquisitions.

Other FBI units that have significant stakes in IT acquisitions (i.e., the Procurement Section and the Information and Technology Branch (ITB)) also do not adequately coordinate to achieve the desired enterprise visibility and management. These units lack internal policies and procedures to prompt positive coordination during pre-award or post-award stages necessary to address requirements such as:

- Foreign affiliated contractors like Idemia NSS must be monitored on an ongoing basis in accordance with the Defense Counterintelligence and Security Agency's guidance on implementing an effective mitigation plan when working with businesses classified as having foreign ownership, control, or influence; and
- An FBI OCIO representative is not required to attend the programming office's annual "architectural roadmap" meetings with Idemia NSS, and they are not consulted afterwards. As specified in the PO, the purpose of these meetings is for Idemia NSS to present the latest modality updates and enhancements to FBI CJIS, which is contractually permitted to select one feature to upgrade annually. The new releases presented often include major modifications or new versions of the software that provide additional features or functionality not provided or performed by the software originally licensed to the FBI. FBI OCIO's absence and the lack of prompted follow-up is problematic because if it does not know the extent of changes made to the system, it cannot ensure that the FBI fulfills its obligations under the E-Government Act of 2002 (E-Government Act).<sup>11</sup>

The Acting FBI CIO told us that in setting the Department's IT strategy, the Department's Investment Review Committee focuses on new programs and not the acquisitions that support related IT systems because it is easier to plan for IT modernization and the future than to budget for existing systems that need maintenance.<sup>12</sup> To meet FITARA's tenets, the FBI OCIO needs to be more involved in IT-based procurements that exceed the SAT to anchor the acquisition team and assist it in forecasting emerging IT and associated enterprise-wide risks.<sup>13</sup> We recommend that the FBI evaluate and update its policies and procedures to ensure that its contracting officials and OCIO personnel assigned to the acquisition planning team coordinate to develop meaningful QASPs in conjunction with the SOW for future biometric algorithm support contracts.

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<sup>11</sup> The E-Government Act (Public Law 107-347), Section 208, requires agencies that develop or procure new IT involving the collection, maintenance, or dissemination of information in identifiable form or that make substantial changes to existing information technology that manages information in identifiable form to make public disclosures called Privacy Impact Assessments (PIA). A PIA analyzes how the agency collects, stores, protects, shares, and manages information in identifiable form and demonstrates that the agency included privacy protections throughout the system life cycle. The Act requires an agency to make PIAs publicly available, with certain exceptions.

<sup>12</sup> Since the start of performance under the June 2018 PO, there have been multiple individuals leading FBI's OCIO (as either CIOs or Acting CIOs) and several reorganizations, one of which established the ASU and the SCRUM U sub-units in April 2019.

<sup>13</sup> Justice Management Division (JMD) Procurement Guidance Document (PGD) 16-02, *Acquisition of IT Equipment Software, and/or Services* (February 2016) further outlines the processes and procedures that DOJ components, such as the FBI, must follow when acquiring covered IT equipment, software, and services. This PGD lists several thresholds starting at \$500,000 to \$2.5 million for IT investment decisions requiring CIO review and approval, but does not fully cover the current range of SAT starting intervals (i.e., SAT starts anywhere from \$250,000 to \$1.5 million). As such, PGD 16-02 presents a different threshold from what DOJ considers a "major acquisition" or "major investment" from that defined by the SAT. The FBI's ARG references PGD 16-02.

## The FBI Requires Updated Market Research and Careful Price Analysis to Negotiate Fair and Reasonable Prices for Noncompetitive Awards

As the government's agent during negotiations, the CO is responsible for evaluating the reasonableness of contractor offered prices.<sup>14</sup> As such, the FAR prescribes multiple techniques and procedures, including cost and price analysis, that the CO may use to ensure that the price is fair and reasonable.<sup>15</sup> Properly performed cost or price analysis helps to develop a negotiation position that permits the CO and vendor an opportunity to agree on a fair and reasonable price.<sup>16</sup>

According to the FBI CO, the FBI based its pre-award determination that Idemia NSS's proposed costs were fair and reasonable on: (1) comparisons to similar companies specializing in biometric algorithms (i.e., trade studies), (2) the FBI's historical contract pricing, (3) an Independent Government Cost Estimate (IGCE), and (4) cost analysis performed after communications with Idemia NSS.<sup>17</sup> To determine whether the PO pricing appeared fair and reasonable, we reviewed the cost and pricing analyses that the FBI used to in part justify award of a noncompetitive PO.

The FAR advises that program office personnel, such as the COR, should develop the IGCE in conjunction with requirements documents, including the SOW, during acquisition planning to identify all costs associated with a requirement. However, the FBI based its IGCE on verbal quotes from Idemia NSS and did not maintain in the contract files evidence of this communication, including details to substantiate that it received this pricing information during acquisition planning. Idemia NSS did not provide written quotes until June 1, 2018—almost 2 months after the FBI completed acquisition planning and 5 days from the PO award date.

The FAR also permits the government to compare proposed prices to historical prices paid for the same items. While the CO told us that the FBI compared the historical pricing data from the 2008 NGI contract to the proposed pricing for the June 2018 PO, we determined that the data sets lacked sufficient comparability. Specifically, the FBI used pricing data that reflected different lengths of time (i.e., comparing rates over 10 years to 5 years), different numbers of biometric components (i.e., rates for 4 modalities to those for 5), and provided insufficient detail to allow the FBI to project what would constitute fair and reasonable outyear costs.

Because the FBI did not maintain the pricing quotes and historical pricing support in its contract files, the contract files do not support the fairness and reasonableness of the costs that the FBI ultimately used to negotiate the PO. A lack of clear, supported pricing places a CO at a disadvantage during pre-award negotiations. Therefore, we recommend that the FBI enhance its cost and price analysis policies and

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<sup>14</sup> FAR Subpart 1.602-1, Authority.

<sup>15</sup> The acquisition's complexity dictates the level of analysis and detail required. FAR Subpart 15.404-1, Proposal Analysis Techniques.

<sup>16</sup> FAR Subpart 15.405(a).

<sup>17</sup> An IGCE is an estimate of the expected cost of a contract or task order, which is developed by government personnel before soliciting contractor proposals or making contract awards.



procedures to require that contracting officials document all relevant supporting information, such as data sources, underlying assumptions, and methodologies, in accordance with the FAR.

In addition, the FAR advocates using current, accurate, and relevant market research, such as trade studies, published not more than 18 months in advance of the award date to help the agency to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.<sup>18</sup> As shown in Table 3, we compared December 2016, 18 months in advance of the PO's award date, to the trade study report issuance dates to verify whether the FBI used current market research as defined by the FAR. We determined that the FBI used one trade study report that was issued within the acceptable range, but three trade studies ranged from 836 to 2,740 days (average of 1,471 days, or over 4 years ) beyond what the FAR deems acceptable.

**Table 3**

**Timeliness of Trade Studies on NGI Modalities**

Name of Trade Study	Funding Entity	Trade Study Issue Date	Trade Study Expiration Date	Older than 18 Months (Yes/No)?	Total Days Acceptable Range Exceeded
Facial Recognition Trade Study Report Version 2.0 Final	Previous Prime Contractor	5/16/2018	12/5/2016	Yes	0
Identification Fingerprint Search and Slap Segmentation Trade Study Report Version 2.0 Final	Previous Prime Contractor	6/5/2009	12/5/2016	Yes	2,740
Iris Recognition Trade Study Report Version 2.0 Final	CJIS	8/22/2014	12/5/2016	Yes	836
Latent Fingerprint and Palm Trade Study Report Version 2.0 Final	Previous Prime Contractor	8/10/2010	12/5/2016	Yes	2,309
<b>Average Days Acceptable Range for Market Research Exceeded</b>					<b>1,471</b>

Source: OIG Analysis and FBI

Using outdated input for market research hinders the forward-looking decision making required by technology-based procurements that support mission-critical systems like FBI's NGI. The FBI needs to ensure that its COs enter negotiations with current, accurate, and timely information that will help to assess commercial suppliers' capabilities toward meeting evolving needs continuously. Therefore, we recommend that the FBI enhance its policies and procedures to survey the market proactively and more regularly for viable options to anticipate threats and other developments.

<sup>18</sup> FAR Part 10 and Subpart 10.002(b)(1) states that the extent of market research varies depending on such factors as urgency, estimated dollar value, complexity, and past experiences. The CO may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant.

## The FBI Needs to Select Appropriate Vehicles for Procurements Valued Above the Simplified Acquisition Threshold

FAR Part 13 establishes Simplified Acquisition Procedures (SAP) as one of three purchase methods based on specific conditions (such as size, value and complexity) of the contract action.<sup>19</sup> The purposes of SAP are to: (1) reduce administrative costs, (2) improve small business government contract opportunities, (3) promote efficient and economic contracting, and (4) avoid unnecessary burdens for agencies and contractors.<sup>20</sup> By using SAP, agencies can obtain supplies or services via non-competitive POs and Blanket Purchase Agreements (BPA).

While FAR Subpart 13.003(a) requires contracting officers to employ the SAP to the maximum extent practicable, because it allows an agency to award sole-source contracts, the FAR curtails SAP use for larger, more complicated acquisitions with little exception. Unless certain conditions are met, the SAP may only be applied to procurement actions below the SAT—which, as of February 2018, was \$250,000—subject to the limitations outlined in Table 4.<sup>21</sup>

Table 4

### Prohibitions on Simplified Acquisition Procedures (SAP)

SAP is prohibited if:

- (1) An agency can meet its requirement using: (a) required sources under FAR Part 8 (e.g., Federal Prison Industries, AbilityOne, etc.); (b) existing indefinite delivery/indefinite quantity contracts; or (c) other established contracts. *FAR Subpart 13.003, Policy or*
- (2) The anticipated award will exceed the SAT or \$7.5 million (\$15 million for acquisitions as described in FAR Subpart 13.500(c), including options, for acquisitions of commercial items using FAR Subpart 13.5. *FAR Subpart 13.003(c)*

Source: FAR and OIG Analysis

Pre-award documents demonstrated that the FBI estimated the total cost of its biometric needs at \$87.5 million. Although this figure far exceeded the SAT, the FBI nevertheless applied SAP to award the multi-year sole-source PO to Idemia NSS.<sup>22</sup>

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<sup>19</sup> For further details on the other two purchasing methods (i.e., Sealed Bidding and Negotiation), see Appendix 2.

<sup>20</sup> FAR Subpart 13.002, Purpose.

<sup>21</sup> FAR Subpart 2.101. The SAT for acquisitions of supplies or services that supported contingency operations and facilitate defense against or recovery from an attack have an SAT of \$750,000 if performed inside the United States or \$1.5 million if performed outside the United States. Unlike POs, the FAR permits BPAs that exceed the SAT under certain conditions. *FAR Subpart 8.405-3.*

<sup>22</sup> The FBI estimated the cost of the base and each of the 4 option years at \$17.5 million each (cumulatively \$87.5 million).

We discussed the decision to use the non-competitive PO as the award's procurement vehicle with FBI contracting officials. The CO told us that only 3 months before the previous long-term NGI contract neared its end, the FBI realized that it had not finalized its plans for maintaining and updating the searching-matching algorithms. At or around this time, the FBI ultimately determined that awarding an algorithm maintenance and upgrade PO to Idemia NSS was optimal because the FBI:

- Had already decided to continue to work with Idemia NSS based on multiple factors that we discuss later in this section.
- Did not start substantive acquisition planning for further algorithm support until March or April 2018. It nevertheless recognized that without proper maintenance and upgrades to the algorithm, its NGI would become vulnerable, sluggish, or even inoperable.
- Wanted to incorporate the terms of the PULA that it had purchased under the NGI contract so Idemia NSS could continue to service the algorithm that it designed.<sup>23</sup>

The PO's April 2018 JOFOC cited as FBI's rationale for awarding the sole-source PO: (1) 2009 and 2010 trade studies (facilitated by the prime contractor using National Institute of Standards and Technology evaluation criteria) as support for FAR Subpart 6.302-1, *Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements*, (2) the proprietary searching-matching algorithm behind the fingerprint and palm print software; and; (3) urgency.<sup>24</sup> Based on these factors, we determined the FBI

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<sup>23</sup> The June 2018 PO only referenced a May 2008 agreement rather than detailing the terms and conditions, which would have indicated whether a PULA or another type of configuration applied. According to FBI contracting officials, the May 2008 agreement allowed FBI to lock in the pricing for the fingerprint/palm print software with subcontractor MorphoTrak (now Idemia NSS) without having to separately compete the requirement. FBI contracting officials further informed us that the agreement required MorphoTrak to configure the software using "open architecture" (i.e., in a manner that would permit another vendor to maintain and upgrade the software, if necessary). However, an Idemia NSS official told us that while another vendor may maintain and upgrade the software, because Idemia NSS's algorithm is built with proprietary code, no other vendor can perform the maintenance and upgrades to the algorithm.

Neither FBI nor Idemia NSS could provide us a copy of the May 2008 agreement referenced by the June 2018 PO because it was maintained by the prime contractor. Although we have not seen this licensing agreement and cannot confirm the contracting parties or terms and conditions, we know that the PO under audit is unattached to any parent contract or agreement.

FBI contracting officials should have retained a copy of the agreement in the contract file to: (1) provide a complete background as a basis for informed decisions throughout the acquisition process; (2) support actions taken; (3) provide information for reviews and investigations; and (4) furnish essential facts in the event of a litigation in accordance with FAR Subpart 4.801(b).

<sup>24</sup> FAR Subpart 6.302-1(a)(2) states that when the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. The FAR lists several conditions necessary to substantiate that only one source exists. In addition, FAR Subpart 7.104 advises that acquisition planning should begin as soon as the agency identifies a need (preferably well in advance of the fiscal year in which the contract award is necessary). To enhance the opportunity for competition and receive better pricing, the Program Office should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules.

sought to award some form of a sole-source contract in part to avoid spending a lengthy period of time on pre-award (i.e., solicitation and award) activity.

The FAR prescribes policies and methodologies for procuring supplies and services on a sole-source basis to afford COs the flexibility to engage the one supplier most capable of addressing the need; however, the FAR does not consider lack of advance agency planning to be an adequate justification for limiting competition.<sup>25</sup> The JOFOC's rationale for non-competitively awarding the algorithm support to Idemia NSS—namely urgency caused by lack of planning—thus did not permit the FBI to use SAP or its procurement vehicles to address that rationale. Instead, the procedures for limiting competition during negotiations outlined in FAR Subpart 8.405-3 or FAR Part 15 would have been more appropriate.<sup>26</sup>

By applying SAP to award a PO rather than more suitable procurement vehicles (e.g., definitized contract, or indefinite delivery/indefinite quantity (ID/IQ)), the FBI also did not include required contract clauses designed to ensure transparency, accountability, and adequately protect the government, contractor, and contract workers.<sup>27</sup> Additionally, because the FBI did not substantively plan to support the maintenance of the algorithm from the software until about 3 months before the NGI contract ended, we believe that the contracting officials did not have time to ensure that PO deliverables or requirements aligned with applicable regulations.<sup>28</sup> Specifically, we noted that the PO, SOW, and other executed documents did not reference the E-Government Act of 2002 or *Office of Management and Budget Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002* (M-03-22), which GAO linked to process deficiencies surrounding NGI in its March 2017 report on *Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to ensure Privacy and Accuracy*.<sup>29</sup>

The FBI's decision to employ SAP to expedite a sole-source PO to allow critical operations to continue uninterrupted impermissibly bypassed the FAR's fundamental requirements for acquisitions above the SAT and did not adhere to guidance on developing sufficient acquisition lead times. Consequently, we conclude that the FBI did not undertake the planning necessary to properly oversee and administer an acquisition commensurate with the size and complexity of its biometric algorithm support needs—such as algorithm maintenance—which rely heavily on an external multi-national business to integrate and maintain several

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<sup>25</sup> FAR Subpart 6.301(c)(1).

<sup>26</sup> FAR Subpart 8.405-3 allows the agency's Head of Contracting Activity to approve single-award BPAs with an estimated total value that exceeds \$100 million (including options) if a written determination substantiates that: (1) the orders expected under the BPA are so integrally related that only a single source can reasonably perform the work; (2) the BPA provides only for firm-fixed priced orders for products with unit prices established in the BPA or services with prices established in the BPA for specific tasks to be performed; (3) only one source is qualified and capable of performing the work at a reasonable price to the Government; or (4) it is necessary in the public interest to award the BPA to a single source for exceptional circumstances. Similarly, FAR Subparts 5.002(a) and 15.607(b)(2) allow for negotiated sole-source acquisitions when the previously discussed conditions under FAR Subpart 6.3 are satisfied.

<sup>27</sup> For example, FAR Subpart 13.006 exempts procurements under the SAP from several provisions and clauses (e.g. FAR 52.203-5, *Covenant Against Contingent Fees*; FAR 52.203-7, *Anti-Kickback Procedures*; FAR 52.215-2, *Audits and Records-Negotiation*; FAR 52.222-4 *Contract Work Hours and Safety Standards-Overtime Compensation*).

<sup>28</sup> The FBI's ARG does not include minimum lead times from the CO's receipt of a complete, approved procurement request through the award and we believe that this lack of specificity may have contributed to the FBI's late planning.

<sup>29</sup> U.S. Government Accountability Office (GAO), [Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to ensure Privacy and Accuracy](#), GAO-17-489T (March 2017).

modalities. For future option years and procurements related to this award, we recommend that the FBI: (1) select a procurement vehicle suitable for acquisitions that exceed the SAT; (2) enhance its policies and procedures to include lead time minimums for clarity and realism and require contracting officials to notify program officials of expiring contracts in a timely manner; and (3) ensure that the selected vehicle conforms to the uniform contract format in FAR Subpart 15.204-1, which requires agencies to include certain clauses to ensure accountability for performance, privacy, worker protections, and intellectual property, thereby mitigating legal and financial exposure.

### **Lack of Evidence that Contract Workers Had Been Advised of Whistleblower Protections**

In August 2016, the Justice Management Division (JMD) issued Procurement Guidance Document (PGD) 16-05, *Implementation of Requirement Notification to Contractors of Employee Whistleblower Rights*, directing all DOJ COs to follow immediately the requirements of 41 U.S.C. § 4712 and FAR Subpart 3.908-9.<sup>30</sup> Table 5 details these requirements as the PGD directly applied to new and existing contracts, as well as FBI's compliance with this order for the subject PO.

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<sup>30</sup> Title 41 U.S.C. § 4712 prohibits a federal contractor from discharging, demoting, or otherwise discriminating against a contract worker as a reprisal for disclosing information that the worker reasonably believes is evidence of gross waste, gross mismanagement, abuse of authority, or a violation of law, rule, or regulation related to a contract. The statute also requires the head of each executive agency to ensure that its contractors inform their workers in writing of the rights and remedies under the statute.

FAR Subpart 3.903, Whistleblower Protections for Contractor Employees, Policy, prohibits government contractors from retaliating against a contract worker for making a protected disclosure. The regulation also requires COs to insert FAR clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights in all solicitations and contracts that exceed the SAT.

FAR Subpart 2.101, Definitions, states that SATs are not to exceed \$150,000 for acquisitions of supplies and services. The SAT increased to \$250,000 for acquisitions of supplies and services on February 16, 2018. Additionally, acquisitions of supplies or services that support contingency operations and facilitate defense against or recovery from an attack have a SAT defined as: (1) \$750,000 for any contract to be awarded and performed inside the United States and (2) \$1.5 million for any contract to be awarded and performed outside the United States.

Table 5

PGD 16-05 Requirements for Contracting Officers

Contracting Officers Must:	New Contracts <sup>a</sup>	Existing Contracts	Applicable Requirements Followed for the PO? Yes/No
1. Insert FAR clause 52.203-17 in all contract actions over the SAT.	X	--	No
2. Provide contractors with a Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees document (Whistleblower Information document).	X	X	No
3. Direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees.	X	X	No
4. Direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.	X	X	No

<sup>a</sup> New contracts are those awarded on or after the effective date of PGD 16-05, August 9, 2016.

Source: OIG Analysis and JMD

Although the FBI cited FAR Subpart 52.203-17, FAR Subpart 3.9, and DOJ-wide PGD 16-05 in its ARG, FBI contracting officials did not include the mandatory clause in the PO, or otherwise follow up with Idemia NSS, to ensure that contract workers were informed of their whistleblower rights and protections until nearly 4 years after the effective date of PGD 16-05 (over 2 years into the PO). This oversight could have undermined the contract workers’ knowledge of their rights and responsibilities to report waste, abuse, or other violations of laws and regulations had Idemia NSS not implemented its own disclosure framework.<sup>31</sup>

On March 22, 2021, following a Department-wide memorandum from the OIG regarding this concern, the FBI unilaterally modified the PO to include mandatory FAR clause 52.203-17.<sup>32</sup> Despite this adjustment, the

<sup>31</sup> We followed up with the FBI to determine whether this oversight is unique to the Idemia NSS PO or if this is a more pervasive issue. Specifically, we inquired: (1) How many FBI POs exceed the SAT? Of these, how many do not include the required FAR clause and consequently did not receive the follow-up with contractors required in PGD 16-05; and (2) How many other FBI contract actions (i.e., task/delivery orders, indefinite delivery/indefinite quantity vehicles, letter contracts, etc.) do not comply with the FAR and PGD 16-05 contract worker whistleblower protection requirements? To date, the FBI has not provided the OIG with a response to this request.

<sup>32</sup> U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [Management Advisory: Notification of Concerns Regarding the Department of Justice’s Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting Department of Justice Programs](#), Audit Report 21-038 (February 2021), [www.oig.justice.gov/sites/default/files/reports/21-038.pdf](http://www.oig.justice.gov/sites/default/files/reports/21-038.pdf).

In response to the February 2021 MAM, JMD issued Acquisition Policy Notice (APN) 2021-03A, which rescinded some of the requirements in PGD 16-05 effective March 19, 2021, and was updated on June 3, 2021, to instruct DOJ components on when to apply PGD 16-05 rather than APN 2021-03A.

FBI could not provide support demonstrating that it had: (1) provided Idemia NSS with the required Whistleblower Information document and (2) verified whether Idemia NSS notified its workers of their whistleblower rights or protections. Therefore, we recommend that the FBI update its ARG to ensure: (1) adherence to FAR clause 52.203-17, FAR Subpart 3.9, and 41 U.S.C. § 4712; and (2) that contracting officials understand that these requirements apply to all acquisitions above the SAT. In addressing this recommendation, the FBI should coordinate with JMD to ensure any new or updated policies comport with evolving DOJ whistleblower protection guidance for contractors.

## **Section 2: Contract Administration and Oversight**

This section reviews FBI post-award compliance with the FAR, internal agency and DOJ policies, and the PO terms and conditions. The FBI: (1) approved and paid invoices that did not comport with the FAR's requirements for a proper invoice; (2) submitted its contractor performance evaluations via the Contract Performance Assessment Reporting System 37 days late, did not include all mandatory reporting factors, and did not always apply the correct evaluation period; (3) publicly reported and subsequently certified inaccurate data for the PO; (4) could not substantiate that the two contract engineers that service the biometric algorithms received security briefings; and (5) did not adhere to the FAR on responsibly administering and overseeing government-furnished property for the cellphones provided to Idemia NSS contract workers before the COVID-19 pandemic.

These areas of non-compliance could have been avoided had the FBI (1) developed a comprehensive plan for administration and oversight during pre-award and (2) better prepared its contracting officials for administering and overseeing an award with the magnitude of the June 2018 PO.

### **FBI Contract Files Must Demonstrate Contracting Personnel Responsibilities and Training to Improve Award Administration and Succession Planning**

The FAR requires that contracting officials maintain a contract file that provides a complete history of the transaction. According to FAR Subpart 4.801(b), contract files should: (1) provide a complete background as a basis for informed decisions at each step in the acquisition process; (2) support actions taken; (3) provide information for reviews and investigations; and (4) furnish essential facts in the event of litigation or congressional inquiries. As noted in prior report sections, the FBI's contract files lacked a complete (1) QASP or equivalent, (2) PULA, and (3) support for cost and pricing decisions. Moreover, the June 2018 PO contract file lacked copies of required, written COR designations and evidence that requisite training was completed for all COR equivalents assigned since the PO was awarded.<sup>33</sup>

The FBI appropriately determined that the size and complexity of the June 2018 PO warranted that its CO designate CORs throughout the procurement lifecycle. FAR Subpart 1.602-2(d)(7) requires the CO to

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<sup>33</sup> FAR Subpart 4.802(c) states, "Files must be maintained at organizational levels that ensure (1) effective documentation of contract actions, (2) ready accessibility to principal users, (3) minimal establishment of duplicate and working files, (4) the safeguarding of classified documents, and (5) conformance with agency regulations for file location and maintenance."

FAR Subpart 1.604(a) further states that "A COR assists in the technical monitoring or administration of a contract. The COR shall maintain a file for each assigned contract and the file must include, at a minimum - a copy of the CO's letter of designation and other documents describing the COR's duties and responsibilities.

designate the COR in writing, with copies furnished to the contractor and the contract administration office confirming: (1) the extent of the COR's authority to act on behalf of the CO; (2) the limitations on the COR's authority; (3) the period covered by the designation; (4) that the authority is not re-delegable; and (5) that the COR may be personally liable for unauthorized acts. The FBI CO is required to maintain copies of these written designations.

We could not verify that FBI met the FAR requirements for its CORs because the contracting officials did not maintain copies of the written designations in the contract files. For example, we found that contracting officials were unable to demonstrate that all CORs had a written designation letter for this acquisition.

Additionally, the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) program establishes policy on implementing a Department-wide structured certification program for CORs and other individuals performing these functions. DOJ policy specifies the requirements, training, and competencies necessary to obtain initial FAC-COR certification and recertification as requiring completion of the following training: FAC 018 – Green Purchasing for Civilian Acquisition (or proof of similar training), FAC 031 – Small Business Programs (or proof of similar training), and FAC 043 (FED) – Ethics & Procurement Integrity for the acquisition workforce (or proof of similar training).<sup>34</sup> However, FBI contracting officials did not provide adequate documentation to support that the CORs completed this training.

FBI officials did not maintain a complete and accurate contract file to inform and support contract decisions. At the time the FBI was making many important decisions regarding the June 2018 PO, it was also reorganizing its contract support function to a new location and changing the scope of employee duties.<sup>35</sup> This larger, agency-wide effort likely contributed to lapses in CO oversight and training, which we believe adversely affected the FBI's ability to ensure that it maintained a complete and accurate contract file for the June 2018 PO.<sup>36</sup>

Therefore, we recommend that the FBI: (1) train contracting officials on maintaining a complete contract file that complies with FAR requirements and internal policies regarding contract file maintenance, training and document retention; and (2) update its policies and procedures to include guidelines for succession planning to demonstrate that historical knowledge of the June 2018 PO is preserved in a manner that facilitates effective, continuous administration and oversight of the June 2018 PO.

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<sup>34</sup> DOJ Instruction 1301.03.01, Acquisition Career Management- Program Federal Acquisition Certification for Contracting Officer's Representatives (January 2018).

<sup>35</sup> In December 2020, the FBI updated the OIG on its ongoing reorganization of several functions requiring the relocation of at least 3,400 personnel to Redstone Arsenal in Huntsville, Alabama by 2026. FBI officials informed us that they plan to hire and train additional full-time contracting officials and will discontinue contract oversight assignments as a collateral duty. As of December 2020, 30 percent of the FBI contracting positions were vacant.

<sup>36</sup> The FBI assigned the June 2018 PO to a CO that had not planned, administered, and overseen a contract larger than \$750,000, and because the CO did not receive an unlimited warrant until August 2019, a CO supervising official signed the initial purchase documents.



## **Billing and Payments**

The FAR, FBI internal policies, and the PO SOW require contracting officials to review invoices to ensure that certain mandatory information is included prior to accepting and paying for the services billed. Contractors must include this information on their invoices in order to receive payment. As detailed in Table 6 and later in the following discussion, we tested the three invoices that Idemia NSS submitted to date for the 2018 PO, which totaled \$52.5 million (or \$17.5 million each), and determined that the invoices did not include mandatory elements of a proper invoice.

**Table 6**

**Compliance of Three Test Invoices with Requirements for a Proper Invoice**

Required Information	Criteria	All Tested Invoices Complied?	Invoice Number		
			TDT00158	000000291	0000001376
1. Contractor Name and Address	FAR Subpart 32.905(b) and SOW	No	Yes	No	No
2. Invoice Date and Number	FAR Subpart 32.905(b) and SOW	Yes	Yes	Yes	Yes
3. Contract Number or Other Authorization for Supplies/Services	FAR Subpart 32.905(b) and SOW	Yes	Yes	Yes	Yes
4. Description, Quantity, Unit of Measure, Unit Price, and Extended Price of Supplies/Services	FAR Subpart 32.905(b) and SOW	Yes	Yes	Yes	Yes
5. Shipping and Payment Terms	FAR Subpart 32.905(b), FAR Subpart 52.232-25, and SOW	Yes	Yes	Yes	Yes
6. Name and Address of Contractor Payment Recipient	FAR Subpart 32.905(b) and SOW	No	Yes	No	No
7. Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice	FAR Subpart 32.905(b) and SOW	No	No	No	Yes
8. Taxpayer Identification Number (TIN)	FAR Subpart 32.905(b) and SOW	Yes	Yes	Yes	Yes
9. Electronic Funds Transfer Banking Information	FAR Subpart 32.905(b)	Yes	Yes	Yes	Yes
10. Contract Specific Required Information or Documentation	FAR Subpart 32.905(b)	Yes	Yes	Yes	Yes
11. Service Start and End Dates Listed	FAR Subpart 52.213-2	Yes	Yes	Yes	Yes
12. Submitted before payment made. (i.e., The invoice states either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.)	FAR Subpart 52.213-2	No	No	No	No
<b>Number of Missing Required Information per Invoice</b>		<b>4</b>	<b>2</b>	<b>4</b>	<b>3</b>

Source: OIG Analysis, FAR, and FBI

The FAR, PO SOW, and guidance in existing FBI policies and procedures for contract billing and payments were designed to prevent improper payment to unintended parties. However, the contracting officials did not detect the invoice deficiencies and we believe that if these errors persist, the FBI risks paying an unintended party. For example, prior to approving payment, if FBI contracting officials do not ensure that submitted invoices contain valid company names, addresses, and points of contact, malicious parties may receive payments intended for legitimate contractors.

Further, while the FAR exempts POs from several additional requirements not listed in Table 5, considering our previously stated concerns about the FBI's decision to use the PO vehicle for a procurement of the size and complexity of the NGI biometric algorithm upgrades and maintenance, we believe that the invoices should have adhered to the level of detail required for a larger more complex contract type.

When we discussed the invoice non-compliances with the FBI, officials told us that they were unaware of any deficiencies in their processes that would have led to the acceptance and payment of improper invoices. We recommend that the FBI update its internal policies and procedures as well as the SOWs accompanying acquisition vehicles to ensure comportment with FAR requirements for a proper invoice and retrain contracting officials on the updated policies.

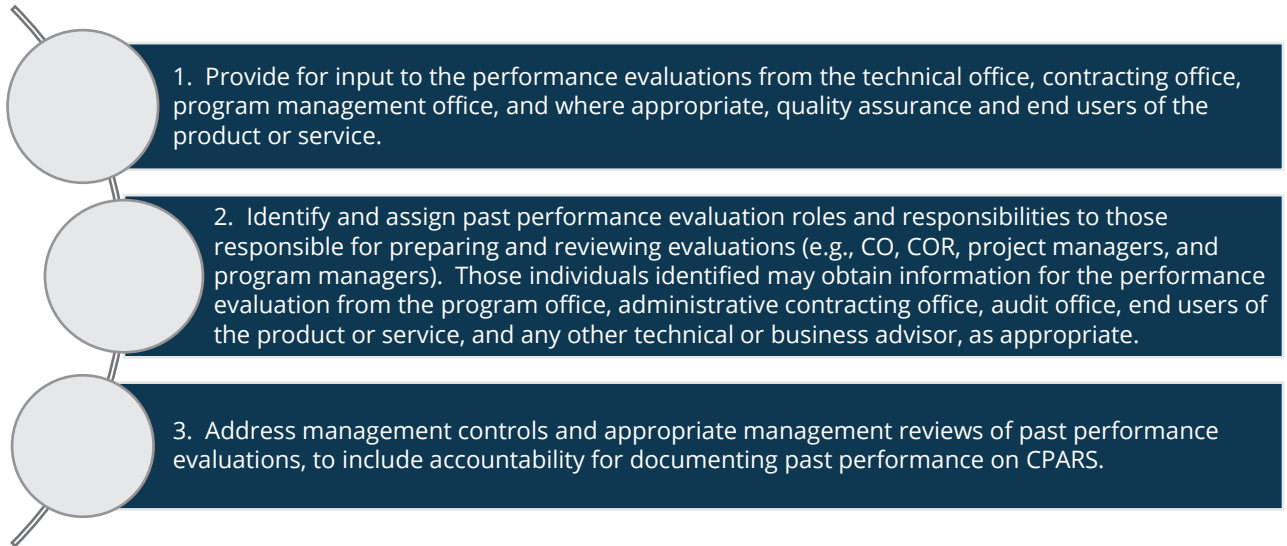
### **The FBI Must Submit Timely, Complete, and Accurate Contractor Performance Reports**

When contracting officials do not complete or submit performance evaluations in the Contractor Performance Assessment Reporting System (CPARS) timely, apply the correct rating period, and do not include narratives for each rating, other government agencies may lose confidence in the government-wide reporting apparatus or unknowingly engage an underperforming contractor instead of one that is qualified to provide the desired product or service. Such an underperforming contractor could, in turn, setback innumerable government programs, resulting in unnecessary delays and a waste of taxpayer dollars.

The FAR holds that a contractor's past performance information (including the ratings and supporting narratives) is information relevant for future source selection purposes. As such, agencies need to monitor compliance with past performance evaluation requirements outlined in FAR Subpart 42.1502, use the CPARS metric tool to measure the quality and timely reporting of past performance information, and assign responsibility and management accountability for the completeness of past performance submissions. Figure 3 details the procedural requirements for past performance evaluation.

Figure 3

### Past Performance Evaluation System Procedural Requirements



Source: FAR Subpart 42.15, *Contractor Performance Information* and FAR Subpart 42.1503, *Procedures*.

The FBI's ARG requires COs to complete applicable interim and final performance assessments where applicable.<sup>37</sup> This timeframe includes the contractor representative 60-day comment period. Table 7 outlines the characteristics of past performance evaluation for firm-fixed price contracts and orders.

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<sup>37</sup> This applies to: (1) contracts exceeding the SAT, (2) orders exceeding the SAT issued under a Federal Supply Schedule contract, (3) task/delivery orders exceeding the SAT issued under a contract awarded by another agency, (4) construction contracts exceeding \$650,000, and (5) architect and engineering service contracts exceeding \$30,000 within 120 calendar days after the end of the performance period.

Table 7

Performance Evaluation Characteristics for Firm-Fixed Price Contracts and Orders

Performance Evaluation Criterion	Mandatory	Discretionary
Clear, non-technical description of the principal purpose of the contract or order.	—	FAR Subpart 42.1503
Reflective of contractor performance.	—	FAR Subpart 42.1503 <sup>38</sup>
Based on performance in the areas of Technical, Schedule, Management, Small Business Subcontracting, Regulatory Compliance, and other areas as applicable.	FAR Subpart 42.1503 and FBI ARG	—
Completed within 120 days following the end of the performance period.	FBI ARG	—
Based on established factors and subfactors supported by narrative.	FAR Subpart 42.1503 and FBI ARG	—

Source: FAR Subpart 42.1503, *Requirements* and FBI Acquisition Reference Guide.

We reviewed both CPARS reports completed for the PO, shown in Table 8. We found that the FBI did not always use the mandatory rating factors established in the FAR and its own ARG to assess Idemia NSS's performance on the PO. Specifically, the CPARS report for Option Year 1 (ending June 3, 2020) did not include an assessment of Idemia NSS's regulatory compliance. Instead, the CO entered "N/A" and provided no explanation for not addressing a mandatory assessment factor. We further found that the FBI submitted the Base Year CPARS report 37 days late and the performance evaluation period applied to the CPARS reports for the Base Year and Option Year 1 differed slightly from the performance period in the signed purchase documents.

<sup>38</sup> FAR expands the meaning of "reflective of contractor performance" to include: (1) clear relevant information that accurately depicts the contractor's performance; (2) objective facts supported by program and contract or order performance data; and (3) contract type, size, content, and complexity of the contractual requirements.

**Table 8**

**Contract Performance Assessment Reporting System Compliance**

Performance Evaluation Period	All Mandatory Rating Factors Addressed	Completed Timely	Number of Days Late (After 120 Days)
Base Year: 6/5/2018 – 6/4/2019 <sup>a</sup>	Yes	No	37
Option Year 1: 6/5/2019 – 6/3/2020 <sup>b</sup>	No	Yes	0

<sup>a</sup> The performance period in the signed purchase document is 6/7/2018 through 6/6/2019.

<sup>b</sup> The performance period in the signed purchase document is 6/7/2019 through 6/6/2020.

Source: OIG analysis of FBI compliance with FAR Subpart 42.1503 requirements.

We recommend that the FBI evaluate and implement procedures to ensure acquisition personnel: (1) adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS; (2) include all mandatory evaluation criteria in accordance with the FAR and FBI ARG; and (3) ensure that the evaluation period corresponds to the performance period in the signed contract documents.

**The FBI Needs to Ensure Federal Procurement Data for its Contract Actions is Complete and Accurate**

Congress, OMB, and other government stakeholders rely on publicly available contract data, particularly data housed in the Federal Procurement Data System-Next Generation (FPDS-NG), to oversee the nation’s contract spending and make informed decisions about the programs supported by those contracts. Recognizing that it is important that such publicly available contract data is timely, accurate, and complete to support these decisions, the Federal Funding Accountability and Transparency Act of 2006 (Pub.L.109-282) and FAR Subpart 4.603 require agencies to make publicly accessible (via FPDS-NG) all unclassified Federal award data for contract actions above the micro-purchase threshold.<sup>39</sup> This includes modifications to those actions that change previously reported contract action data, regardless of dollar value.

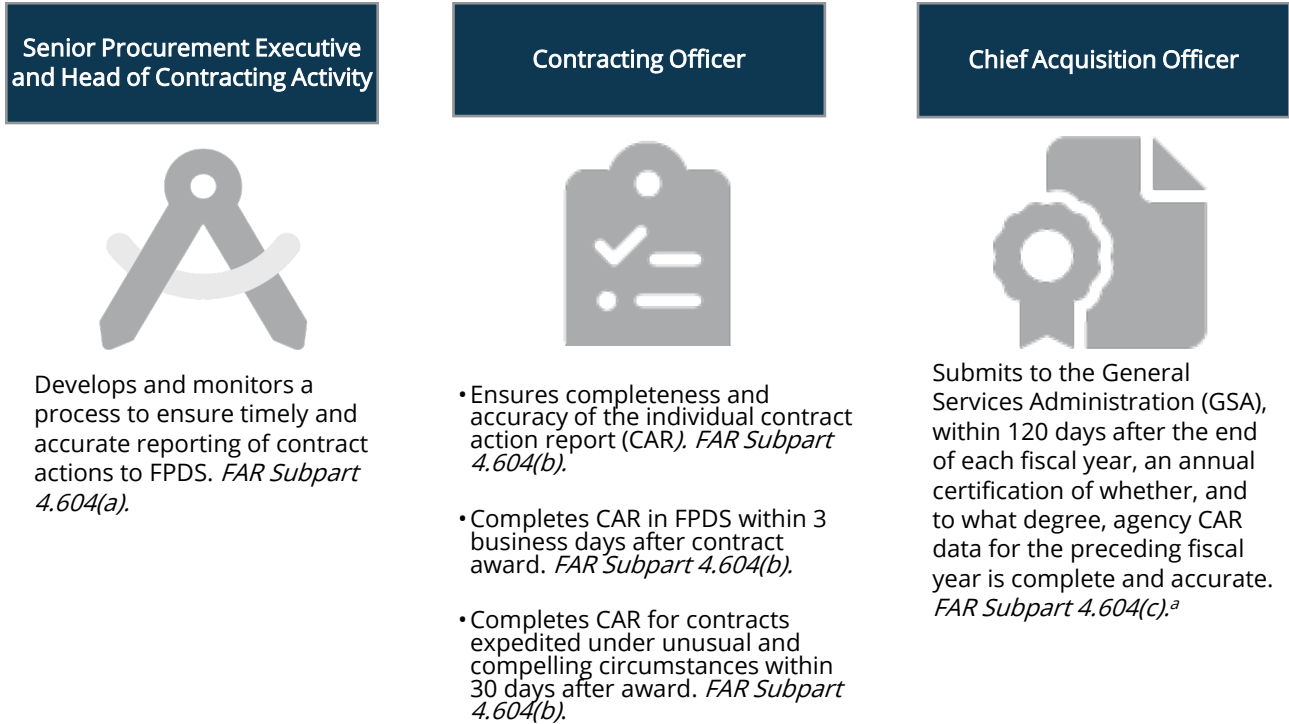
As outlined in Figure 4, the FAR also assigns reporting responsibilities to various agency personnel, contains timeliness requirements, and explicitly details what should be uploaded to FPDS.

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<sup>39</sup> Since the effective date of the FBI PO awarded to Idemia NSS is June 5, 2018, its applicable micro-purchase threshold is \$10,000, as set by the 2018 National Defense Authorization Act, effective December 12, 2017.

Figure 4

FPDS-NG Data Reporting Requirements



<sup>a</sup> The FBI ARG designates the FBI Procurement Section/Bureau Procurement Chief as the Chief Acquisition Officer.

Source: FAR

To facilitate compliance with the FAR's reporting requirements, the FBI's ARG cites Justice Acquisition Regulation 2804.602, which requires that DOJ components submit contract action report (CAR) data to the DOJ Procurement Policy and Review Group within 20 days of the close of each of the first 3 quarters of the fiscal year and within 30 days after the close of the fourth quarter. Nonetheless, we found that the FBI did not meet this timeline to populate the FPDS-NG data. Specifically, while the FBI signed and exercised Option Year 2 in August 2020, it had not updated FPDS-NG for the corresponding contract action as of June 2021. Additionally, we found that the FBI incorrectly populated the FPDS-NG "Contract Total Value" field for the PO Base Year as well as Option Years 1 and 2. For example, Figure 5 displays the incorrect FPDS-NG entry for Option Year 1. The FPDS-NG User's Manual defines the Total Contract Value as the mutually agreed upon total contract or order value, including the estimated value for all options that the agency expects to place against the vehicle.

Figure 5

FPDS-NG Data for PO 15F06718P0005249 Option Year 1

Dates		Amounts		
Date Signed (mm/dd/yyyy) :	07/12/2019		Current	Total
Period of Performance Start Date (mm/dd/yyyy) :	07/12/2019	Action Obligation:	\$17,500,000.00	\$35,000,000.00
Completion Date (mm/dd/yyyy) :	06/06/2023	Base And Exercised Options Value:	\$17,500,000.00	\$35,000,000.00
Est. Ultimate Completion Date (mm/dd/yyyy) :	06/06/2023	Base and All Options Value (Total Contract Value):	\$17,500,000.00	\$35,000,000.00
Solicitation Date (mm/dd/yyyy) :		Fee Paid for Use of IDV:	\$0.00	

Note: The circled amount should reflect \$87.5 million, which is the estimated total value of the PO base year and 4 option years (i.e., the PO ceiling) according to the FBI planning documents and PO.

Source: Extract from FPDS-NG as of June 25, 2021.

As a result, the signed purchase documents differ from the publicly available data, which is even more concerning given that the FBI certified that the data was valid, reliable, and complete for all options exercised for the Idemia NSS PO (i.e., FYs 2018 through 2020) and these attestations, along with that of other DOJ components, formed the basis for the DOJ Procurement Policy and Review Group’s annual certifications to GSA. The FBI still recorded incomplete and inaccurate PO data in FPDS-NG as of as of June 2021.<sup>40</sup>

Because poor data integrity can lead to inaccurate reporting, which hinders decision making, we recommend that the FBI train its contracting officials on policies and procedures (i.e., ARG) related to FPDS-NG reporting and certification requirements. We further recommend that the FBI enhance its policies and procedures to improve the timeliness, accuracy, and completeness of the contract data reported in FPDS-NG.

**The FBI Needs to Strengthen Contract Worker Security and Accountable Property Controls**

The PO SOW requires that all contract workers receive a security briefing within 15 days of assignment to FBI facilities. Such briefings provide a preventative control to acclimate contract workers to federal laws, regulations, internal policies, and security program administrative information to assist them in fulfilling their responsibilities to safeguard sensitive as well as national security information. Nevertheless, Idemia NSS’s two contract engineers that service the algorithm did not receive security briefings.

Idemia NSS contract workers have access to FBI facilities and personally identifiable information via the NGI. By not enforcing this requirement, the FBI is not ensuring Idemia meets the terms of the award and increases the risk that contract workers will not adequately safeguard access to FBI facilities and

<sup>40</sup> The OIG previously noted discrepancies with the FBI’s publicly reported contract data in U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [Audit of the FBI’s Fuel Procurement Contracts Awarded to the Petroleum Traders Corporation](#), Audit Report 16-25 (September 2016), [www.oig.justice.gov/reports/2016/a1625.pdf](http://www.oig.justice.gov/reports/2016/a1625.pdf) and U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [Audit of the FBI’s Aircraft Lease Contract Awarded to Midwest Jet Center, LLC, dba Reynolds Jet Management](#), Audit Report 17-30 (July 2017), [www.oversight.gov/sites/default/files/oig-reports/a1730.pdf](http://www.oversight.gov/sites/default/files/oig-reports/a1730.pdf).



information. Therefore, we recommend that the FBI develop a process to ensure that contracting officials and security personnel coordinate regarding contract worker onboarding. Coordination efforts should position contracting officials to have information on contract worker background check and briefing status readily available in the contract files.

In addition, the PO stated that the FBI would provide contract workers with mobile devices to assist in carrying out their work on the NGI. Although used by contract workers, these devices remain federal property subject to various controls. The FAR acknowledges certain circumstances when it is optimal for agencies to provide government property to contractors and establishes requirements for administering and overseeing such property.<sup>41</sup> As shown in Table 9, we determined that the FBI's dissemination and handling of the government property (i.e., cell phones) issued to Idemia NSS contract workers before the COVID-19 pandemic did not adhere to four out of the eight identified requirements for responsibly administering and overseeing government-furnished property.

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<sup>41</sup> FAR Subpart 45.101 defines Government Property as property that is owned or leased by the Government, including government-furnished property and contractor-acquired property, such as material, equipment, special tooling, special test equipment, and real property.

FAR Subpart 45.102 ordinarily requires contractors to furnish all property necessary to perform contracts. However, COs must provide property to contractors when it is clearly demonstrated that: (1) it is in the Government's best interest; (2) the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal; (3) providing the property does not substantially increase the Government's assumption of risk; and (4) Government requirements cannot otherwise be met.

Table 9

FBI Compliance with Requirements for Administering and Overseeing Government Property

Property Requirement	Criteria	Description of Evidence Provided and Examined (where applicable)	Compliance Supported (Yes/No)?
(1) Agency conducted analysis of the contractor's property management policies, procedures, practices, and systems.	FAR Subpart 45.105(a)	N/A	No
(2) CO included clause FAR 52.245-1, <i>Government Property</i> , in the fixed-price solicitation and contract.	FAR Subpart 45.107(a)(1)(ii)	PO, SOW, and Modifications	No <sup>a</sup>
(3) CO included clause FAR 52.245-1, <i>Government Property</i> , in contracts or modifications above the SAT.	FAR Subpart 45.107(a)(1)(iii)	PO, SOW, and Modifications	No
(4) CO issued government equipment authorization to the Authorizing Official (AO) and maintained the written authorization in the contract file.	FAR Subpart 51.102(a);	N/A	No
(5) AO granted the contract workers the authority to operate information systems, including assets, at an acceptable level of risk to the organization.	Mobile Device Security Supplement and DOJ Order 0904	N/A	Yes
(6) FBI created and maintained inventory document(s) that listed all mobile device.	Mobile Device Security Supplement	Inventory Documents	Yes
(7) CIO or designee granted waiver to contract workers for using external storage devices (i.e., USBs, CDs, and hard drives) on personal computers.	DOJ Security Awareness Rules of Behavior	Trusted End Node Security (TENS) Media Waiver Document	Yes
(8) Contract workers completed: (a) mandatory privacy, (b) role-based privacy, and (c) cybersecurity awareness trainings.	DOJ Security Awareness Rules of Behavior	N/A	Yes
<b>Total Non-compliances</b>			<b>4</b>

<sup>a</sup> The FBI used noncompetitive procedures (rather than Full and Open Competition via advertisement or public solicitation) to award the June 2018 PO so there are no associated solicitation documents.

Source: OIG Analysis and FBI

Idemia NSS PO contract files included no evidence to demonstrate that the acquisition planning team adequately considered the aforementioned requirements for government property and we believe this contributed to the non-compliance in the FBI's administration and oversight of the cell phones issued to the contract workers. More specifically, FAR Subpart 7.105(b)(15) requires that written acquisition plans identify government-furnished property, but the FBI's acquisition plan listed government property as "not applicable" and did not mention the cellphones or prescribe monitoring activities for any future issuance of government property. We recommend that the FBI update its policies and procedures to ensure that

government property is adequately considered during acquisition planning to facilitate COs: (1) inserting the appropriate clauses into the contract and (2) designing and implementing post-award monitoring protocols.

## Conclusion and Recommendations

Our review of the FBI's planning, administration, and oversight of its June 2018 biometric algorithm PO awarded to Idemia NSS identified various potential areas for improvement. While the FBI did not report and we did not identify significant deficiencies in Idemia NSS' performance on the PO in terms of product accuracy, speed, and interoperability (as this was not within our audit scope), we found that the FBI needs to improve pre-award planning to facilitate adequate post-award administration and oversight. For instance, we determined that a lack of comprehensive guidance on PALT resulted in a rushed planning process and the FBI did not finalize contract requirements, obtain strategic approvals, or take other substantive pre-award steps until a week before the prior NGI contract was to end. The FBI then relied on FAR provisions for exigent circumstances to justify a noncompetitive award via one of the most expedited SAPs (i.e., a PO), even though the FAR prohibits a lack of planning as a basis for such awards. Further, inadequate planning resulted in a missed opportunity for the FBI to leverage portions of its in-house IT expertise to design a meaningful QASP or equivalent that would have served as a framework for post-award administration and oversight.

As the procurement was largely driven by expediency rather than the size and complexity of the acquisition as required by the FAR, the FBI opted to award Idemia NSS a PO even though the estimated total value of the procurement exceeded the SAT. As such, not only did the FBI cite improper reasons to award the PO noncompetitively, the FBI's purchase documents (i.e., PO, SOW, and modifications) also lacked multiple required clauses to ensure accountability for performance, privacy, worker protections, and intellectual property. These clauses would have been included as a part of the standard clauses in procurement vehicles better suited to a complex IT contract that exceeds the SAT. Among the missing contract clauses was FAR clause 52.203-17, which contains protections for contract worker whistleblower rights and protections. Moreover, had Idemia NSS not established its own disclosure framework, the contract workers may have been unaware of their whistleblower rights and protections.

We further found that the FBI used three outdated trade studies, which averaged 1,471 days, or over 4 years beyond what the FAR deems as acceptable, as a basis for determining that the Idemia NSS proposed costs for each modality were fair and reasonable. The FBI used pricing data that reflected different lengths of time (i.e., comparing rates over 10 years to 5 years), different numbers of biometric components (i.e., rates for 4 modalities to those for 5), and provided insufficient detail to allow the FBI to project what would constitute fair and reasonable outyear costs. We believe this weakened the CO's negotiating position.

We also identified several areas of post-award non-compliance with the FAR, internal agency and DOJ policies, and the PO terms and conditions, including instances when the FBI: (1) approved and paid invoices that did not comport with the FAR's requirements for a proper invoice; (2) submitted contractor performance evaluations via the CPARS 37 days late, did not include all mandatory reporting factors, and did not always apply the correct evaluation period; (3) publicly reported and subsequently certified inaccurate data for the PO; (4) could not substantiate that the two contract engineers that service the biometric algorithms received security briefings; and (5) did not adhere to the FAR on responsibly administering and overseeing government-furnished property for the cellphones provided to Idemia NSS contract workers before the COVID-19 pandemic.

We recommend that the FBI:

1. Update its policies and procedures to:
  - a. provide guidance to acquisition planning team members, including contracting officials, on how to apply the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions above the SAT.
  - b. ensure: (1) adherence to FAR clause 52.203-17, FAR Subpart 3.9, and 41 U.S.C. § 4712; and (2) that contracting officials understand that these requirements apply to all acquisitions above the SAT. In addressing this recommendation, the FBI should coordinate with JMD to ensure any new or updated policies comport with evolving DOJ whistleblower protection guidance for contractors.
  - c. include guidelines for succession planning to demonstrate that historical knowledge of the June 2018 PO is preserved in a manner that facilitates effective, continuous administration and oversight of the June 2018 PO.
  - d. ensure comportment with FAR requirements for a proper invoice and retrain contracting officials on the updated policies for acquisition vehicles and accompanying SOWs.
  - e. ensure that government property is adequately considered during acquisition planning to facilitate COs: (1) inserting the appropriate clauses into the contract and (2) designing and implementing post-award monitoring protocols.
2. Evaluate and update its policies and procedures to ensure that its contracting officials and OCIO personnel assigned to the acquisition planning team coordinate to develop meaningful QASPs in conjunction with the SOW for future biometric algorithm support contracts.
3. Enhance its policies and procedures:
  - a. on cost and price analysis policies and procedures to require that contracting officials document all relevant supporting information, such as data sources, underlying assumptions, and methodologies, in accordance with the FAR.
  - b. to survey the market proactively and more regularly for viable options to anticipate threats and other developments.
  - c. to include lead time minimums for clarity and realism and require contracting officials to notify program officials of expiring contracts in a timely manner.

4. For future option years and procurements related to this award:
  - a. select a procurement vehicle suitable for acquisitions that exceed the SAT; and
  - b. ensure that the selected vehicle conforms to the uniform contract format in FAR Subpart 15.204-1, which requires agencies to include certain clauses to ensure accountability for performance, privacy, worker protections, and intellectual property, thereby mitigating legal and financial exposure.
5. Train contracting officials on:
  - a. the tenets of a complete contract file that complies with FAR requirements and internal policies regarding contract file maintenance, training, and document retention.
  - b. policies and procedures (i.e., ARG) related to FPDS-NG reporting and certification requirements and enhance policies and procedures to improve the timeliness, accuracy, and completeness of the contract data reported in FPDS-NG.
6. Evaluate and implement procedures to ensure acquisition personnel:
  - a. adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS;
  - b. include all mandatory evaluation criteria in accordance with the FAR and FBI ARG; and
  - c. ensure that the evaluation period corresponds to the performance period in the signed contract documents.
7. Develop a process to ensure that contracting officials and security personnel coordinate regarding contract worker onboarding. Coordination efforts should position contracting officials to have information on contract worker background check and briefing status readily available in the contract files.

# APPENDIX 1: Objectives, Scope, and Methodology

## Objectives

The objectives of this audit were to assess: (1) the Federal Bureau of Investigation's (FBI) acquisition planning and selection of Idemia National Security Solutions, LLC (Idemia NSS) for the purchase order (PO) awarded; (2) the FBI and Idemia NSS's administration and oversight of the PO awarded; and (3) Idemia NSS's performance on the PO awarded, including financial management, monitoring, reporting, and progress toward meeting PO goals and objectives.

## Scope and Methodology

The scope of our audit focused on PO 15F06718P0005249, a sole-source, firm-fixed price, multi-year procurement instrument that the FBI awarded to Idemia NSS to continue supporting the Next Generation Identification System's (NGI) biometric components (known as "modalities") and underlying algorithms. The PO has a base year, four 1-year options, and a ceiling not to exceed \$87.5 million. The FBI has paid Idemia NSS \$70 million as of June 2021.

To accomplish our objectives, we reviewed and analyzed assorted documents to understand: (1) the FBI's biometric system acquisitions history and strategy, including key decisions regarding the previous NGI contract and the PO awarded to Idemia NSS, (2) performance indicators, and (3) monitoring activities. In addition to the PO, the documents examined included, but were not limited to:

- Trade Studies,
- Simplified Acquisition Checklist,
- Independent Government Cost Estimate,
- Acquisition Plan,
- FBI Information Technology (IT) Strategic Plan,
- Statement of Work (SOW),
- Justification for Other than Full Competition, and
- System Architectural Roadmaps.

We also reviewed relevant Federal Acquisition Regulation (FAR), Department of Justice (DOJ) and FBI policies governing acquisition processes, and relevant IT-focused standards, such as those published by the National Institute of Standards and Technology.

## Interviews and Consultations

We interviewed and consulted FBI officials responsible for the planning, administration, and oversight of the Idemia NSS PO as demonstrated by their knowledge and maintenance of the aforementioned documents or related process ownership. These individuals included personnel from the FBI's Procurement Section, Finance Division, Criminal Justice Information Services (CJIS) Division, Information Technology Management Section, and Biometric Services Sections that comprised the acquisition planning team (i.e., FBI's Contracting

Officer, Contracting Officer's Representatives, CJIS Chief, Assistant Section Chief for Biometric Services, and Supervisory IT Specialists), members of the PO source selection panel, and officials from the Office of the Chief Information Officer, including its Acquisition Security and Supply Chain Risk Management Units. We also interviewed the Idemia NSS Vice President of Operations, Vice President of Delivery, Senior Director of Delivery as well as the four contract workers that service the PO regarding performance metrics and contract monitoring. Specifically:

- two senior software engineers based in Idemia NSS's Morgantown, West Virginia office, and
- two engineers embedded in CJIS.

Additionally, we consulted Government Accountability Office personnel responsible for various reviews of the FBI's biometric programs and systems to gain an understanding of prior findings and open recommendations potentially impacting the nature, timing, and extent of our audit procedures.

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

To assess the adequacy of the FBI's acquisition planning, administration, and oversight of the PO and its 3 exercised option years, we reviewed FAR, FBI and DOJ policies and Office of Management and Budget (OMB) memoranda that establish requirements and guidelines for the complete acquisition lifecycle. We also reviewed and analyzed related Idemia NSS policies and procedures.

Contracting and program officials provided insight on events surrounding the pre-award and administration of the contracts, as well as roles and responsibilities during the contract life cycle. We analyzed the SOWs associated with the contract to gain an understanding of the contract requirements and the biometric upgrades and maintenance services during the performance periods. We identified key written considerations for acquisition planning as defined in documents, such as the determination of fair and reasonable pricing and performance-based acquisition methodology.

We designed procedures to gain an understanding of the nature and extent of the biometric maintenance and upgrade services provided under the PO. We also reviewed PO clauses, contracting officials' files, FBI's mission statement, strategic planning documents, and program area descriptions.

### **Performance**

While we did not evaluate Idemia NSS's performance in terms of the accuracy, interoperability, and speed of the software, algorithm, upgrades, and maintenance provided; we assessed the contractor's performance based on compliance with the terms, conditions, deliverables, and other requirements detailed in the purchase agreement, SOW, and modifications to exercise option years. The PO and option years reviewed included specific security and technical experience requirements for the Idemia NSS biometric software algorithm upgrades and maintenance services. To assess the FBI's and Idemia NSS's compliance with these requirements, we requested evidence of valid background investigations, signed non-disclosure agreements, and completion of training on security and annual information systems security awareness.

We also judgmentally selected timesheets to reconcile direct costs to supporting documentation. We then interviewed FBI and Idemia NSS personnel, and reviewed past performance evaluations, invoices, and other relevant documents to determine if Idemia NSS complied with the PO requirements. Furthermore, we



examined the government officials' supporting documents for the financial management, monitoring, reporting, and progress of the PO under audit.

Overall, we:

- Determined that Idemia NSS submitted, and the FBI approved, 3 invoices that did not adhere to 4 of 12 elements of a proper invoice as dictated by the FAR and OMB Circular A-123.
- Identified non-compliances with various PO security and monitoring requirements, which we discuss in the Audit Results section of this report. In our judgment, the areas of non-compliance we identified further demonstrate FBI's inadequate PO oversight and administration.

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

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

### **Internal Controls**

In this audit, we performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of the FBI and Idemia NSS to provide assurance on its internal control structure as a whole. FBI and Idemia NSS management are responsible for the establishment and maintenance of internal controls in accordance with the FAR and OMB Circular A-123. Because we do not express an opinion on the FBI's and Idemia NSS's internal control structure as a whole, we offer this statement solely for the information and use of the FBI and Idemia NSS.<sup>42</sup>

We assessed the design, implementation, and operating effectiveness of these internal controls and identified deficiencies that we believe could affect the FBI's and Idemia NSS's ability to ensure compliance with laws and regulations. The internal control deficiencies we found are discussed in the *Audit Results* section of this report. However, because our review was limited to these internal control components and underlying principles that we found significant to the objectives of this audit, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

### **Compliance with Laws and Regulations**

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

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<sup>42</sup> This restriction is not intended to limit the distribution of this report, which is a matter of public record. However, because this report contains sensitive information that must be appropriately controlled, a redacted copy of this report with sensitive information removed will be made available publicly.

and Idemia NSS's operations:

- FAR Subpart 1.6, Career Development, Contracting Authority, and Responsibilities;
- FAR Subpart 2.101, Definitions;
- FAR Subpart 3.9, Whistleblower Protections for Contractor Employees;
- FAR Subpart 4.6, Contract Reporting;
- FAR Subpart 4.8, Government Contract Files;
- FAR Subpart 6.3, Other Than Full and Open Competition;
- FAR Subpart 7.1, Acquisition Plans;
- FAR Part 8, Required Sources of Supplies and Services;
- FAR Part 10, Market Research;
- FAR Part 13, Simplified Acquisition Procedures;
- FAR Part 15, Negotiation;
- FAR Subpart 32.905, Payment Documentation and Process;
- FAR Subpart 42.15, Contractor Performance Information;
- FAR Subpart 46.4, Government Contract Quality Assurance;
- FAR Clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
- FAR Clause 52.245-1, Government Property; and
- Title 41 U.S.C. § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information.

This testing included analyzing contract files and related documentation, interviewing FBI and Idemia personnel, and reviewing invoices and supporting documentation. As noted in the *Audit Results* section of this report, we found that FBI and Idemia NSS did not comply with federal regulations related to acquisition planning, administration and oversight, invoicing, and whistleblower protections.

### Sample-Based Testing

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




We tested all three annual invoices corresponding to each exercised option year for compliance with the FAR and the SOW. For payroll testing, we selected two separate 2-week pay periods for the two contract workers embedded in CJIS, to ensure that contract workers properly coded and charged expenses to the biometric algorithm PO from the timesheets to the paystubs. To assess whether the FBI complied with requirements for reporting and certifying publicly available data housed in the Federal Procurement Data System-Next Generation and the CPARS, we reviewed the mandatory reports uploaded to the databases

and annual Departmental certifications for the PO base year and four 1-year options and evaluated the reported information using requirements in the FAR, Justice Acquisition Regulation, and internal policies.

### **Computer-Processed Data**

During our audit, we obtained information from the CPARS, Federal Procurement Data System, and USASpending.gov. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

## APPENDIX 2: Federal Procurement Methods

Characteristics	 <b>FAR Part 13, Simplified Acquisition Procedures (SAP)</b>	 <b>FAR Part 14, Sealed Bidding</b>	 <b>FAR Part 15, Negotiation</b>
<b>Description</b>	Steps to streamline the purchase of relatively simple supply and service requirements, characterized by a total value not exceeding the Simplified Acquisition Threshold (SAT). <sup>a</sup>	A method of contracting that begins with a public invitation to bid and employs competitive bids, public opening of bids, and awards. <i>FAR Subpart 14.101, Element of Sealed Bidding</i>	Competitive and noncompetitive acquisitions awarded using other than sealed bidding procedures. <i>FAR Subpart 15.000, Scope of Part and FAR Subpart, 15.002, Types of Negotiated Acquisition</i>
<b>Conditions</b>	Required to the maximum extent practicable if procurement is below the SAT. <i>FAR Subpart 13.003(a), Policy</i> . Prohibited if an agency can meet its requirement using: (1) Required sources of supply under FAR Subpart 8 (e.g., Federal Prison Industries, AbilityOne); (2) Existing indefinite delivery/indefinite quantity contracts; or (3) Other established contracts. <i>FAR Subpart 13.003, Policy</i>	Required if: (1) Time permits the solicitation, submission, and evaluation of sealed bids; (2) The award will be made on the basis of price and other price-related factors; (3) It is not necessary to conduct discussions with the responding offerors about their bids; and (4) There is a reasonable expectation of receiving more than one sealed bid. <i>FAR Subpart 14.103-1, General</i>	Required if conditions not met for SAP or Sealed Bidding.
<b>Advantages</b>	(1) Reduces administrative costs, (2) Improves opportunities for small businesses to obtain a fair proportion of Government contracts, (3) Promotes efficiency and economy in contracting, and (4) Avoids unnecessary burdens for agencies and contractors. <i>FAR Subpart 13.002, Purpose</i>	An award is made to the responsible bidder whose bid is responsive to the terms of the initiation for bids and is most advantageous to the Government, considering only price and the price related factors included in the invitation. <i>FAR Subpart 14.103-2(d)</i>	Offers three source selection techniques that facilitate the agency designing competitive strategies suitable for the specific circumstances of the acquisition: (1) Best value continuum, (2) Tradeoff; and (3) Lowest Price Technically Acceptable. <i>FAR Subpart 15.1, Source Selection Processes and Techniques</i>
<b>Procurement Vehicles</b>	Purchase Orders and Blanket Purchase Agreements, <i>FAR Subparts 13.302 and 13.303<sup>b</sup></i>	Uniform Contract Format or Simplified Contract Form, <i>FAR Subparts 14.201-1 and 14.201-9</i> (e.g., definitized contract or ID/IQ contract)	Uniform Contract Format. <i>FAR Subpart 15.204-1</i> (e.g., definitized contract or ID/IQ contract)

<sup>a</sup> FAR Subpart 2.101, Definitions, states that SATs are not to exceed \$250,000 for acquisitions of supplies and services as of February 16, 2018. Additionally, acquisitions of supplies or services that support contingency operations and facilitate defense against or recovery from an attack have a SAT defined as: (1) \$750,000 for any contract to be awarded and performed inside the United States and (2) \$1.5 million for any contract to be awarded and performed outside the United States.

<sup>b</sup> Unlike Purchase Orders, the FAR permits Blanket Purchase Agreements that exceed the SAT under certain conditions. *FAR Subpart 8.405-3*.

Source: FAR and OIG Analysis

# APPENDIX 3: Federal Bureau of Investigation's Response to the Draft Audit Report



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535-0001

January 13, 2022

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

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, *Audit of the Federal Bureau of Investigation's Biometric Algorithm Support Purchase Order Awarded to Idemia National Security Solutions, LLC*.

We look forward to working with the Office of the Inspector General to address the concerns and recommendations provided in the report. The FBI has made contract management a priority and has seen multiple process improvements since this contract was awarded. We appreciate your feedback as we continue to enhance our acquisition management.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Dimos", is written over a light blue horizontal line.

Nicholas Dimos  
Assistant Director,  
Finance and Facilities Division

Enclosure

**Audit of the Federal Bureau of Investigation's Biometric Algorithm Support Purchase  
Order Awarded to Idemia National Security Solutions, LLC**

**January 13, 2022**

**OIG Recommendation 1a:** Update its policies and procedures to:

a. Provide guidance to acquisition planning team members, including contracting officials, on how to apply the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions above the SAT.

**FBI Response to OIG Recommendation:** Concur. The FBI agrees to the importance of acquisition planning, and adequate time being allowed for Procurement Administrative Lead Times (PALT). The Next Generation Identification (NGI) development contract had been crafted to allow the federal government to secure perpetual unlimited license agreements (PULAs); which would provide the FBI the rights to use the software perpetually and, more importantly, obtain rights to future software upgrades. The FBI weighed the costs and benefits of a noncompetitive award against the potential benefits of doing a full and open competition with a new algorithm provider and found the noncompetitive award to be the most effective option. Section 6.302-1 of the FAR permits agencies to consider the "substantial duplication of cost" with respect to follow-on contractual relationships. The decisions with respect to this procurement were not driven by a failure to understand or implement PALT.

**OIG Recommendation 1b:** Update its policies and procedures to:

b. ensure: (i) adherence to FAR clause 52.203-17, FAR Subpart 3.9, and 41 U.S.C. § 4712; and (ii) that contracting officials understand that these requirements apply to all acquisitions above the SAT. In addressing this recommendation, the FBI should coordinate with JMD to ensure any new or updated policies comport with evolving DOJ whistleblower protection guidance for contractors.

**FBI Response to OIG Recommendation:** Concur. Over the past six months, the DOJ Office of Acquisition Management has issued several Acquisition Policy Notices (APNs) dealing with whistleblower protections and compliance verification requirements. The FBI Procurement Policy Team notified Procurement Section (PS) personnel of these changes via Acquisition Alerts (AAs) and implemented the APNs actions.

**OIG Recommendation 1c:** Update its policies and procedures to:

c. include guidelines for succession planning to demonstrate that historical knowledge of the June 2018 PO is preserved in a manner that facilitates effective, continuous administration and oversight of the June 2018 PO.

**FBI Response to OIG Recommendation:** Concur. The FBI's PS has already taken proactive steps to facilitate better succession planning. The Head of Contracting Activity (HCA) has required a certified COR be appointed on all contracts at, or more than, the Simplified Acquisition Threshold (SAT). As noted below, in the FBI's response to recommendation 5a, the FBI has made a major commitment to improving the quality and detail of contract files. The ingestion of the Electronic File Contract System (EFCS) into the FBI's Unified Financial Management System (UFMS) intends to greatly enhance the ability of new PS personnel to extract historical data from the system.

**OIG Recommendation 1d:** Update its policies and procedures to:

d. (as well as the SOWs accompanying acquisition vehicles) to ensure comportment with FAR requirements for a proper invoice and retrain contracting officials on the updated policies.

**FBI Response to OIG Recommendation:** Concur. The FBI utilized the Invoice Management System (IMS) over the life of this contract/audit. Currently, the FBI is transitioning to an entirely new system developed by the Department of Treasury known as the Invoice Processing Platform (IPP). The IPP is a web-based, secure, electronic invoicing system provided by the Department of Treasury's Bureau of Fiscal Services. The PS has conducted numerous training sessions with Contracting Officers and Contracting Officer Representatives concerning review and approval of invoices. In addition, COR performance objectives have also been updated to include review and approval of invoices under their purview. The FBI believes the switch to IPP addresses the problems regarding invoices identified by the OIG.

**OIG Recommendation 1e:** Update its policies and procedures to:

e. ensure that government property is adequately considered during acquisition planning to facilitate COs: (i) inserting the appropriate clauses into the contract and (ii) designing and implementing post-award monitoring protocols.

**FBI Response to OIG Recommendation:** Concur. As a general matter, the FBI agrees with the OIG that government property must be appropriately considered during the acquisition planning process. The FBI does have a Corporate Policy Directive, "Return of Government Property Upon Separation From the FBI," which refers to FAR Subpart 45.1 and FAR clause 52.245-1. Additionally, the FBI has implemented a peer review program that will provide oversight to verify adequacy of acquisition plans and use of Government furnished property. The FBI would note the Government property clause, 52.245-1, was not included at time of award for this specific contract because it was not expected the contractor's employees would sign for Government property. The COVID-19 crisis caused a reassessment of that assumption.

**OIG Recommendation 2:** Evaluate and update its policies and procedures to ensure that its contracting officials and OCIO personnel assigned to the acquisition planning team coordinate to develop meaningful QASPs in conjunction with the SOW for future biometric algorithm support contracts.

**FBI Response to OIG Recommendation:** Concur. Since the Idemia contract was awarded, the Head of Contracting Activity (HCA) has required a certified COR be appointed on all contracts at, or more than, the Simplified Acquisition Threshold (SAT). As noted below, in the FBI's response to recommendation 5a, the FBI has made a major commitment to ensuring resources are aligned to perform government surveillance functions. Additionally, the FBI has implemented a peer review program that will confirm government surveillance is addressed and resourced appropriately. The Procurement Compliance Handbook was published on March 2, 2021.

**OIG Recommendation 3a:** Enhance its policies and procedures:

a. on cost and price analysis policies and procedures to require that contracting officials document all relevant supporting information, such as data sources, underlying assumptions, and methodologies, in accordance with the FAR.

**FBI Response to OIG Recommendation:** Concur. Since the Idemia contract was awarded, the FBI Procurement Section has proactively taken several steps to assist contracting personnel with respect to cost and price analyses. On 11/23/2020, the Procurement Section (PS) conducted a training session for PS personnel on "Proposal Price and Cost Evaluation." Additionally, the FBI has implemented a peer review program that reviews acquisition documentation throughout the process.

**OIG Recommendation 3b:** Enhance its policies and procedures:

b. to survey the market proactively and more regularly for viable options to anticipate threats and other developments.

**FBI Response to OIG Recommendation:** Concur. As a general matter, the FBI understands the importance of robust market research at the start of any acquisition process. For this specific contract, the OIG contends that the FBI rushed into a noncompetitive procurement approach due to time constraints. OIG reasons that a lack of acquisition planning resulted in a noncompetitive award. On this specific issue, the FBI respectfully disagrees with the OIG's conclusion. The Next Generation Identification (NGI) development contract had been crafted to allow the Government to secure perpetual unlimited license agreements (PULAs), which would provide the FBI the rights to use the software perpetually and, more importantly, obtain rights to future software upgrades. The FBI does not believe additional market surveys and research would have any bearing on the specific approach taken for this contract.



**OIG Recommendation 3c:** Enhance its policies and procedures:

c. to include lead time minimums for clarity and realism and require contracting officials to notify program officials of expiring contracts in a timely manner.

**FBI Response to OIG Recommendation:** Concur. The FBI supports the PALT concept and encourages its COs to make use of it in acquisition planning and will continue to do so in the future. However, the FBI does not conclude that insufficient lead time led to the FBI's decision in the contract strategy implemented for this specific Idemia contract.

**OIG Recommendation 4:** For future option years and procurements related to this award:

- a. select a procurement vehicle suitable for acquisitions that exceed the SAT; and
- b. ensure that the selected vehicle conforms to the uniform contract format in FAR Subpart 15.204-1, which requires agencies to include certain clauses to ensure accountability for performance, privacy, worker protections, and intellectual property, thereby mitigating legal and financial exposure.

**FBI Response to OIG Recommendation:** Concur. The FBI will research the best way to address the procurement vehicle suitability and uniform contract format concerns raised by the OIG. The FBI will balance the timing of the associated mitigation plan, as required, with the operational need to sustain vital biometric algorithm support to the FBI. The FBI cannot commit that mitigation efforts will be completed prior to the end of the current period of performance.

**OIG Recommendation 5a:** Train contracting officials on:

- a. the tenets of a complete contract file that complies with FAR requirements and internal policies regarding contract file maintenance, training, and document retention.

**FBI Response to OIG Recommendation:** Concur. At the time the Idemia contract was awarded, the FBI Procurement Section relied upon hard copy paper contract files. Effective 11/01/2018, the Procurement Section (PS) implemented the Electronic Contract Filing System (ECFS) and effective 12/23/2019, the ECFS records were ingested into the Unified Financial Management System (UFMS) environment. This location is now the official system of record for contract files in the FBI.

**OIG Recommendation 5b:** Train contracting officials on

b. policies and procedures (i.e., ARG) related to FPDS-NG reporting and certification requirements and enhance policies and procedures to improve the timeliness, accuracy, and completeness of the contract data reported in FPDS-NG.

**FBI Response to OIG Recommendation:** Concur. Since the award of the Idemia contract, the FBI Procurement Section (PS) has conducted extensive training with respect to FPDS-NG reporting. FPDS-NG compliance reports are generated by the Justice Management Division (JMD) and sent to the Procurement Section Front Office (PSFO) and the Business Tools and Process Lead. The JMD report details any discrepancies, errors, or outstanding/missing items that PS personnel must fix within the FPDS-NG database. In response to the monthly findings, the Business Tools and Process lead conducts individual outreach to PS personnel with discrepancies/errors to communicate the errors and provide guidance on resolutions. Once the errors have been resolved, the PSFO then provides an update to JMD on status.

**OIG Recommendation 6:** Evaluate and implement procedures to ensure acquisition personnel:

- a. adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS;
- b. include all mandatory evaluation criteria in accordance with the FAR and FBI ARG; and
- c. ensure that the evaluation period corresponds to the performance period in the signed contract documents.

**FBI Response to OIG Recommendation:** Concur. Since the Idemia contract was awarded, CPARS compliance efforts have improved significantly. CPARS compliance is the percentage of CPARS Reports that a CO/CS has completed out of every CPARS Report they are required to complete. CPARS reports are generated monthly by the CPARS Focal Point and distributed monthly to Unit Chiefs and the PSFO. The FBI is leading the Department with our CPARS compliance rating of greater than 96%.

**OIG Recommendation 7:** Develop a process to ensure that contracting officials and security personnel coordinate regarding contract worker onboarding. Coordination efforts should position contracting officials to have information on contract worker background check and briefing status readily available in the contract files.

**FBI Response to OIG Recommendation:** Concur. The process for the onboarding of contractor employees is set forth in several FBI and DOJ policies. The DOJ Office of Acquisition Management (OAM) issued Acquisition Policy Notice 2021-01, captioned "Personnel Security Requirements for Contractor Employees (Nov 2021)." This APN from OAM established the creation of a new contract clause that addresses the most common contractor personnel security requirements as well as alternative provisions for classified

contracts. The clause was promulgated following the issuance of DOJ Policy Statement 1700.01, "Contractor Security Requirements," and serves to establish baseline security requirements for contractor personnel who require access to DOJ information, DOJ IT systems and/or DOJ facilities and/or space. Related to the responses provided in 1.c. & d., the FBI has an initiative to provide Contracting Officer Representatives access to the Phoenix database to have increased visibility of security clearance actions. We estimate this initiative will be implemented by 3<sup>rd</sup> Quarter, FY 2022.

## APPENDIX 4: Office of the Inspector General Analysis and Summary of Action Necessary to Close the Report

The OIG provided a draft of this audit report to the Federal Bureau of Investigations (FBI) and Idemia National Security Solutions, LLC (Idemia NSS). The FBI's response is incorporated in Appendix 3 of this final report. Idemia NSS elected not to provide a written response to the final report. In response to our audit, the FBI concurred with all seven of our recommendations, but it did not indicate sufficient planned corrective actions that completely addressed certain recommendations. The following provides the summary of actions necessary to sustain the resolved status of and ultimately close this report.

### Recommendations for the FB

1. **Update its policies and procedures to:**
  - a. **provide guidance to acquisition planning team members, including contracting officials, on how to apply the best practices outlined in OMB's January 2021 memorandum on Procurement Acquisition Lead Times (PALT) for all contract actions above the Simplified Acquisition Threshold (SAT).**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it agreed with the importance of acquisition planning and allowing adequate time for PALT. The FBI also stated that it had secured perpetual unlimited license agreements (PULAs), which included rights to future software upgrades, via the 2008 Next Generation Identification (NGI) System development contract that preceded the June 2018 Purchase Order (PO). It also stated it had weighed the costs and benefits of awarding the next iteration of the 2008 NGI contract noncompetitively or using full and open competition with a new algorithm provider. The FBI stated that it ultimately determined that the noncompetitive award via FAR Subpart 6.302-1 was the most effective option because this clause permits agencies to consider the "substantial duplication of cost" with respect to follow-on contract relationships. The FBI also stated that its decisions were not driven by a failure to understand or implement PALT.

We understand that the FBI sought to leverage the PULA services and upgrades provided by Idemia NSS while it was the subcontractor under the 2008 NGI development contract. However, the FBI did not furnish evidence to support that the June 2018 PO was an order issued under the 2008 contract continuation (i.e., a follow-on). Instead, based on the evidence provided, the audit found that the June 2018 PO was an unattached PO (i.e., no parent contract) and thus established a direct relationship with Idemia NSS to continue the biometric algorithm services. The sole-source justification indicated that the FBI realized that the 2008 NGI development contract would end on May 6, 2018, and granted the NGI developer a 30-day extension to continue services while separately procuring services from Idemia NSS. The FBI ultimately determined it best to award a separate sole-source, firm fixed-price PO as the procurement vehicle to continue supporting the NGI system's critical functions and the Idemia NSS software therein.

While the status of this portion of the recommendation is resolved based on the FBI's concurrence, the FBI's response did not detail corrective action that will be sufficient to close the recommendation. Specifically, we remain concerned that the FBI's actions to date did not comport with the planning requirements in the FAR, which the guidelines in OMB's January 2021 memorandum on PALT would mitigate. More specifically, FAR

Subpart 7.104 advises that acquisition planning should begin as soon as the agency identifies a need (preferably well in advance of the fiscal year in which the contract award is necessary). To enhance the opportunity for competition and receive better pricing, the Program Office should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules. Therefore, to sustain the resolved status of this part of the recommendation, the FBI needs to provide information regarding corrective action that will address this concern.

This part of the recommendation can be closed when the FBI updates its policies and procedures to include guidance for acquisition planning team members, including contracting officials, on how to apply the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions above the SAT. To effectuate closure, once implemented, this guidance should address lead time baselines or benchmarks for various contract types, procurement vehicles, and scenarios surrounding the extent of competition that an acquisition planning team may encounter in addition to those set forth in FAR Subpart 6.302-1.

- b. ensure: (1) adherence to FAR clause 52.203-17, FAR Subpart 3.9, and 41 U.S.C. § 4712; and (2) that contracting officials understand that these requirements apply to all acquisitions above the SAT. In addressing this recommendation, the FBI should coordinate with JMD to ensure any new or updated policies comport with evolving DOJ whistleblower protection guidance for contractors.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that, over the past 6 months, the Justice Management Division's (JMD) Office of has issued several Acquisition Policy Notices (APNs) dealing with whistleblower protections and compliance verification requirements.<sup>43</sup> The FBI further stated that the Procurement Policy Team notified Procurement Section (PS) personnel of these changes via Acquisition Alerts (AAs) and implemented the APN actions.

This part of the recommendation can be closed when the FBI: (1) furnishes copies of the relevant AAs, (2) evidence that these AAs have been disseminated to FBI contracting officials, and (3) describes how its Acquisition Reference Guide and monitoring processes will incorporate the deployed Department contractor whistleblower protection actions (e.g., the Robotic Process Automation bot).

- c. include guidelines for succession planning to demonstrate that historical knowledge of the June 2018 PO is preserved in a manner that facilitates effective, continuous administration and oversight of the June 2018 PO.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that the PS has taken the following steps to enhance succession planning: (1) the Head of Contracting Activity now requires that all FBI contracts greater than the SAT have a designated Contracting Officer's Representative and (2) has improved the quality and

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<sup>43</sup> See OIG Management Advisory Memorandum (MAM) 21-038: Notification of Concerns Regarding the Department of Justice's Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting Department of Justice Programs. These Department-wide APNs address adherence to FAR clause 52.203-17, FAR Subpart 3.9, and 41 U.S.C. § 4712, as well as the relevance of these requirements to acquisitions above the SAT.

detail of its contract files by adding the Electronic File Contract System (EFCS) to the FBI's Unified Financial Management System (UFMS). The FBI stated that this will enhance the ability of new PS personnel to extract historical data from the system.

This part of the recommendation can be closed when the FBI provides evidence that it has updated its policies and procedures to capture these enhanced contracting processes, to include: (1) guidelines for succession planning in the event of contracting official departure from the respective FBI contract team and (2) demonstrating that the EFCS makes pertinent contract information (e.g., QASP or equivalent, PULA, support for costs and pricing decisions, written COR designations, and evidence that requisite COR training was completed) readily accessible to appropriate contracting officials.

- d. to ensure comportment with FAR requirements for a proper invoice and retrain contracting officials on the updated policies for acquisition vehicles and accompanying SOWs.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it used the Invoice Management System (IMS) over the life of this contract (i.e., the June 2018 PO) and is transitioning to the Invoice Processing Platform (IPP), which is a new web-based, secure, electronic invoicing system developed by the U.S. Department of the Treasury's Bureau of Fiscal Services. The FBI further stated that the PS has conducted numerous training sessions with FBI contracting officials (i.e., COs and CORs) on invoice review and approval. In addition, the FBI stated that it has updated the COR performance objectives to include review and approval of invoices for contract actions under their purview. The FBI stated that it believes the switch to IPP will address the problems that the OIG identified regarding invoices.

While the status of this part of the recommendation is resolved based on the FBI's concurrence, the FBI's response did not detail corrective action that will be sufficient to close the recommendation. The FBI's current process still does not ensure that invoices submitted to the FBI for payment meet all FAR requirements. For example, an October 26, 2021 invoice that the FBI paid, which the contractor submitted via IPP for Option Year 3 (after our fieldwork ended), still lacked 7 of the 12 required invoice elements. To sustain the resolved status of this portion of the recommendation, the FBI needs to provide information regarding corrective action that will address this concern.

This recommendation can be closed when the FBI provides evidence that, as part of the switch to IPP, it has: (1) updated internal policies and procedures (as well as the SOWs accompanying acquisition vehicles) to ensure comportment with FAR requirements for a proper invoice within the IPP system and (2) trained its contracting officials on these updated policies.

- e. ensure that government property is adequately considered during acquisition planning to facilitate COs: (1) inserting the appropriate clauses into the contract and (2) designing and implementing post-award monitoring protocols.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it agrees with the OIG that government property must be appropriately considered during the acquisition planning process. The FBI also stated it has a Corporate Policy Directive, titled "Return of Government Property Upon Separation From the FBI," which references FAR Subpart 45.1 and FAR Subpart 52.245-1. Additionally, the FBI stated it

has implemented a peer review program that will provide oversight to verify the adequacy of acquisition plans and use of Government-furnished property. The FBI noted that it had not included the Government property clause (i.e., FAR Subpart 52.245-1) in the June 2018 PO because it did not anticipate issuing to contractors the government property necessitated by the COVID-19 pandemic.

The FBI's response included sufficient proposed actions to address concerns regarding FAR Subpart 52.245-1. However, the FBI did not yet propose remedial actions to address noncompliances regarding the administration and oversight of Government-furnished property to contractors in accordance with FAR Subparts 45.105 (a) and 51.102 (a).

This part of the recommendation can be closed when the FBI provides evidence that it has updated its policies and procedures to ensure that Government property is adequately considered during acquisition planning to facilitate COs: (1) inserting the appropriate clauses into the contract and (2) designing and implementing post-award monitoring protocols under FAR Subparts 45.105 (a), 52.245-1, and 51.102 (a).

2. **Evaluate and update its policies and procedures to ensure that its contracting officials and OCIO personnel assigned to the acquisition planning team coordinate to develop meaningful QASPs in conjunction with the SOW for future biometric algorithm support contracts.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that since the Idemia contract was awarded, the Head of Contracting Activity has required a certified COR be appointed on all contracts at, or more than, the SAT. The FBI also stated it has made a major commitment to ensuring resources are aligned to perform government surveillance functions. Additionally, the FBI stated it has implemented a peer review program that will confirm government surveillance is addressed and resourced appropriately. Furthermore, the Procurement Compliance Handbook with this surveillance guidance was published on March 2, 2021.

This recommendation can be closed when the FBI provides a copy of the final Compliance Handbook as well as other updates to its policies, procedures, and operations that prompt contracting officials and OCIO personnel assigned to the acquisition planning team to coordinate to develop meaningful QASPs in conjunction with the SOW for future biometric algorithm support contracts.

3. **Enhance its policies and procedures:**
  - a. **on cost and price analysis policies and procedures to require that contracting officials document all relevant supporting information, such as data sources, underlying assumptions, and methodologies, in accordance with the FAR.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that since it awarded the Idemia contract, the FBI Procurement Section (PS) has proactively taken several steps to assist contracting personnel with respect to cost and pricing analyses. Specifically, the FBI stated that on November 23, 2020, the PS conducted a training session for its personnel on proposal price and cost evaluation. The FBI further stated it has implemented a peer review program that reviews acquisition documentation throughout the process.

This part of the recommendation can be closed when the FBI provides its June 2018 PO peer review steps and results. Additionally, the FBI should provide evidence of the PS-conducted training session content and the attendance for PS personnel.

**b. to survey the market proactively and more regularly for viable options to anticipate threats and other developments.**

Resolved. The FBI concurred with our recommendation. The FBI response noted the importance of robust market research at the start of an acquisition process but did not provide corrective action necessary to address this part of the recommendation.

The FBI stated the Next Generation Identification (NGI) development contract had been crafted to allow the Government to secure PULAs, which would provide the FBI the rights to use the software perpetually and, more importantly, obtain rights to future software upgrades. The FBI thus does not believe additional market surveys and research would have had any bearing on the specific approach taken for this contract. The FBI stated that it thus respectfully disagreed with our conclusions that: (1) it rushed into a noncompetitive procurement approach for the June 2018 PO due to time constraints and (2) the lack of acquisition planning resulted in the June 2018 PO being awarded noncompetitively.

Regardless, FAR Subpart 10.002(b)(1) advocates using current, accurate, and relevant market research, such as trade studies, published not more than 18 months in advance of the award date to help the agency to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. A lack of current market research fails to ensure that COs enter negotiations with current, accurate, and timely information we still consider this a concern.

While the status of this part of the recommendation is resolved based on the FBI's concurrence, the FBI's response did not detail corrective action that will be sufficient to close this portion of the recommendation. Specifically, the FBI did not detail how it will enhance its policies and procedures to ensure that the contract file contains adequate support for the market research, including cost comparisons performed. For example, the FBI's response did not mention enhancements to the ARG Part 10 or other guidance related to sole-source and simplified acquisition procedures to clearly provide instructions to the contracting officials on the tenets of adequate market research and compliance with FAR Subpart 10.002(b)(i) requirements. Therefore, to sustain the resolved status of this part of the recommendation, the FBI needs to provide information regarding corrective action that will address this concern.

To effectuate closure, the FBI should provide evidence that its policies and procedures have been updated to ensure COs survey the market proactively and more regularly search for viable options to anticipate threats and other developments.

**c. to include lead time minimums for clarity and realism and require contracting officials to notify program officials of expiring contracts in a timely manner.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it supports the PALT concept and encourages its COs to make use of it in acquisition planning and will continue to do so in the future. However, the FBI stated it did not conclude that insufficient lead time led to the audit's concerns regarding the contract strategy that it implemented for the June 2018 PO.



While the status of this part of the recommendation is resolved based on the FBI's concurrence, the FBI's response did not detail sufficient, corrective action necessary to close the recommendation. Specifically, as mentioned in Recommendation 1(a), we remain concerned that the FBI's response did not detail plans to incorporate into its processes the guidance in OMB's January 2021 memorandum on PALT. Therefore, to sustain the resolved status of this part of the recommendation, the FBI needs to provide information regarding corrective action that will address this concern.

To effectuate closure, the FBI needs to provide evidence that it has updated PALT policies and procedures to include lead time minimums for clarity and realism and require contracting officials to notify program officials of expiring contracts in a timely manner.

4. **For future option years and procurements related to this award, select a procurement vehicle suitable for acquisitions that exceed the SAT; and ensure that the selected vehicle conforms to the uniform contract format in FAR Subpart 15.204-1, which requires agencies to include certain clauses to ensure accountability for performance, privacy, worker protections, and intellectual property, thereby mitigating legal and financial exposure.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it will research the best way to address the procurement vehicle suitability and uniform contract format concerns raised by the OIG. The FBI also stated it will balance the timing of the associated mitigation plan, as required, with the operational need to sustain vital biometric algorithm support to the FBI. However, the FBI further stated it cannot commit to completing mitigation efforts prior to the end of the June 2018 PO performance period.

While the status of this recommendation is resolved based on the FBI's concurrence, the FBI's response did not detail corrective action that will be sufficient to close the recommendation. Considering that, at the time of this report, the June 2018 PO has 2 remaining option years, we believe the FBI has sufficient opportunity to take administrative action without disrupting operations or impacting the mission (e.g., work stoppages). For example, the FBI could readily modify the subject PO to include an addendum with the required FAR clauses and contract requirements appropriate for the size and complexity of the Idemia acquisition. For future acquisitions of the Idemia NSS services, the FBI should also ensure that the selected vehicle conforms to the uniform contract format in FAR Subpart 15.204-1, which requires agencies to include certain clauses to ensure accountability in the several areas previously mentioned in our report. Therefore, to sustain the resolved status of this recommendation, the FBI needs to provide information regarding corrective action that will address this concern.

This recommendation can be closed when the FBI provides evidence that it has taken appropriate action to address the recommendation. To effectuate closure, the FBI needs to provide evidence that it has updated the ongoing PO and began planning for an appropriate contract type for future iterations of the procurement.

5. **Train contracting officials on:**
  - a. **the tenets of a complete contract file that complies with FAR requirements and internal policies regarding contract file maintenance, training, and document retention.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that when it awarded the June 2018 PO, the FBI PS relied on hard-copy, paper contract

files. The FBI further stated that effective December 1, 2018, the PS implemented the Electronic Contract Filing System (ECFS) and effective December 23, 2019, the FBI integrated the ECFS records into the UFMS environment, making the UFMS the official system of record for FBI contract files.

This recommendation can be closed when the FBI provides evidence that the ECFS complies with the FAR requirements and internal policies regarding contract file maintenance, training, and document retention. The FBI should also provide details on its training session content as well as the attendance records to substantiate that all contracting officials have received training on the use of ECFS and contract file maintenance that is consistent with FAR Subpart 4.801(b).

- b. policies and procedures (i.e., ARG) related to FPDS-NG reporting and certification requirements and enhance policies and procedures to improve the timeliness, accuracy, and completeness of the contract data reported in FPDS-NG.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that since the award of the Idemia PO, the FBI Procurement Section (PS) has trained FBI personnel extensively on FPDS-NG reporting. The FBI stated that the Justice Management Division (JMD) generates FPDS-NG compliance reports and then sends them to the PS Front Office (PSFO) and the Business Tools and Process Lead. The FBI also stated that the JMD report details discrepancies, errors, or outstanding/missing items that PS personnel must fix within the FPDS-NG database.

The FBI stated that in response to the monthly findings, the Business Tools and Process Lead reaches out to PS personnel who have submitted discrepancies/errors to communicate the errors and provide guidance on resolutions. Once the personnel resolve the errors, the PSFO updates JMD on the status.

This recommendation can be closed when the FBI provides evidence that its policies and procedures (i.e., ARG) include: (1) FPDS-NG reporting and certification requirements and (2) guidance to improve the timeliness, accuracy, and completeness of the contract data reported in FPDS-NG.

**6. Evaluate and implement procedures to ensure acquisition personnel:**

- a. adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS.**
- b. include all mandatory evaluation criteria in accordance with the FAR and FBI ARG; and**
- c. ensure that the evaluation period corresponds to the performance period in the signed contract documents.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that since the Idemia PO was awarded, its CPARS compliance efforts have improved significantly. The FBI stated that it now tracks its CPARS compliance rate, which is the percentage of CPARS Reports that a CO/Contract Specialist has completed out of every CPARS Report they are required to complete. The FBI further stated the CPARS reports are generated monthly by the CPARS Focal Point and distributed monthly to Unit Chiefs and the PSFO. The FBI stated they are currently leading the DOJ with CPARS compliance ratings of greater than 96 percent.

This recommendation can be closed when the FBI provides evidence documenting its CPARS initiative and provides the procedures that it has implemented to ensure compliance by: (1) adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS; (2) including all mandatory evaluation criteria in accordance with the FAR and FBI ARG; and (3) ensuring that the evaluation period corresponds to the performance period in the signed contract documents.

7. **Develop a process to ensure that contracting officials and security personnel coordinate regarding contract worker onboarding. Coordination efforts should position contracting officials to have information on contract worker background check and briefing status readily available in the contract files.**

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that its process for onboarding contract workers has been memorialized in several FBI and DOJ policies. The FBI also stated the DOJ Office of Acquisition Management (OAM) issued Acquisition Policy Notice 2021-01, "Personnel Security Requirements for Contractor Employees (Nov 2021)." This APN established a new contract clause that addresses the most common contractor personnel security requirements as well as alternative provisions for classified contracts. The FBI further stated this clause was promulgated following the issuance of DOJ Policy Statement 1700.01, "Contractor Security Requirements," and serves to establish baseline security requirements for contractor personnel who require access to DOJ information, DOJ IT systems and/or DOJ facilities and/or space. In addition, the FBI also has an initiative to provide Contracting Officer Representatives access to the Phoenix database to have increased visibility of security clearance actions. The FBI estimated that it will implement this initiative by 3rd Quarter, FY 2022.

This recommendation can be closed when the FBI provides copies of the OAM-established policies that address contract clauses for classified contracts (e.g., background checks and briefing status readily available in the contract files) and provides DOJ Policy Statement 1700.01.