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Office of Inspector General  
United States Department of State

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AUD-CGI-22-34

Office of Audits

August 2022

# **Audit of Department of State Efforts To Promote Competition for Overseas Construction Projects**

CONTRACTS, GRANTS, AND INFRASTRUCTURE DIVISION

UNCLASSIFIED



# HIGHLIGHTS

Office of Inspector General  
United States Department of State

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## What OIG Audited

The Bureau of Overseas Buildings Operations (OBO) directs the worldwide overseas building program for the Department of State (Department) and sets worldwide priorities for the design and construction of projects under its purview. In coordination with OBO, the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM) is responsible for acquisition planning, market research, solicitation, and small business subcontracting plans to, among other things, promote competition and obtain high quality design and construction projects.

The Office of Inspector General (OIG) conducted this audit to determine whether the Department developed and implemented a process to promote competition related to construction contracts, including promoting maximum opportunities for small businesses, in accordance with federal law and Department policy. To perform the audit, OIG assessed eight New Embassy Compound (NEC) or New Consulate Compound (NCC) projects.

## What OIG Recommends

OIG made three recommendations intended to strengthen the Department's efforts to promote competition related to NEC and NCC awards. On the basis of management's response to a draft of this report, OIG considers all three recommendations resolved, pending further action. A synopsis of management's response to the recommendations offered and OIG's reply follow each recommendation in the Audit Results section of this report. Responses from OBO and the Bureau of Administration, Office of the Procurement Executive, to a draft of this report are reprinted in their entirety in Appendices B and C, respectively.

August 2022

OFFICE OF AUDITS

CONTRACTS, GRANTS, AND INFRASTRUCTURE DIVISION

## Audit of Department of State Efforts To Promote Competition for Overseas Construction Projects

### What OIG Found

The Department took steps to promote competition related to construction contracts in accordance with federal law and Department policy but did not develop a formal process for its efforts. In addition, the Department complied with requirements of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and generally promoted subcontracting opportunities for small businesses. However, neither OBO nor AQM fully complied with the acquisition planning and market research requirements in the Federal Acquisition Regulation (FAR) and Department guidance. Specifically, the acquisition planning documentation for the eight selected NEC and NCC projects did not describe how competition would be sought, promoted, and achieved during the acquisition planning process. Nor did the acquisition plans address the extent and results of the market research and indicate its impact on the various elements of the plan in accordance with the FAR. Furthermore, OIG found that the Department did not use "sources sought" notices in advance of prequalification solicitations.

OIG found that the deficiencies identified with acquisition planning and market research occurred, in part, because AQM management did not require compliance with the acquisition planning guidance outlined in AQM Memorandum 15-10. In addition, OBO and AQM did not develop and implement a formal process for executing acquisition plans and market research procedures to help ensure consistent application of the competition requirements. As a result of these deficiencies, the Department missed opportunities to expand its pool of potential construction contractors. Between October 1, 2016, and September 30, 2021, 14 (70 percent) of 20 NEC and NCC contracts awarded by AQM on behalf of OBO were awarded to one contractor. Until the deficiencies are addressed, the Department will not be in full compliance with the FAR and Department acquisition policy and will continue to miss opportunities for increased competition that could enhance the Department's ability to obtain quality construction services at reasonable prices.

## CONTENTS

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OBJECTIVE .....	1
BACKGROUND .....	1
Competition in Contracting Requirements .....	1
Department Roles and Responsibilities .....	2
Acquisition Planning .....	3
Solicitation and Selection Process .....	5
Small Business Subcontracting Plans .....	7
OBO Construction Projects Awarded.....	8
AUDIT RESULTS .....	9
Finding A: The Department Did Not Fully Adhere to Acquisition Planning and Market Research Requirements .....	9
RECOMMENDATIONS.....	22
APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY.....	23
Data Reliability .....	23
Work Related to Internal Control .....	24
Sampling Methodology .....	25
APPENDIX B: BUREAU OF OVERSEAS BUILDINGS OPERATIONS RESPONSE .....	27
APPENDIX C: BUREAU OF ADMINISTRATION, OFFICE OF THE PROCUREMENT EXECUTIVE, RESPONSE .....	30
ABBREVIATIONS .....	31
OIG AUDIT TEAM MEMBERS .....	32

## OBJECTIVE

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The Office of Inspector General (OIG) conducted this audit to determine whether the Department of State (Department) developed and implemented a process to promote competition related to construction contracts, including promoting maximum opportunities for small businesses, in accordance with federal law, Department policy, and other requirements.

## BACKGROUND

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OIG consistently cites the Department's management and oversight of contracts (including overseeing construction projects) and protection of people and facilities (including constructing and maintaining safe and secure diplomatic facilities) as major management challenges.<sup>1</sup> During this project, OIG focused attention on acquisition planning, market research, and solicitation to assist the Department to improve its management of contracts for overseas construction projects.

### Competition in Contracting Requirements

The Bureau of Overseas Buildings Operations (OBO), directs the worldwide overseas building program for the Department and the U.S. government community serving abroad under the authority of the chiefs of mission in concert with other Department bureaus, foreign affairs agencies, and Congress. The Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), Facilities Design and Construction Division, awards contracts for OBO construction requirements.<sup>2</sup> AQM manages, plans, and directs the Department's acquisition programs and conducts contract operations in support of worldwide activities.<sup>3</sup> Between FY 2017 and FY 2021, AQM, on behalf of OBO, awarded 20 New Embassy Compound (NEC) and New Consulate Compound (NCC) construction contracts, valued at \$5.55 billion. Of these contracts, 14 were awarded to the same contractor. An Executive Order<sup>4</sup> recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy. The order further states that agencies can and should adopt pro-competitive regulations and approaches to procurement

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<sup>1</sup> OIG, Inspector General Statement on the Department of State's Major Management and Performance Challenges Fiscal Year 2021, page 5 (OIG-EX-22-01, November 2021); OIG, Inspector General Statement on the Department of State's Major Management and Performance Challenges Fiscal Year 2020, pages 1, 4, and 8 (OIG-EX-21-01, November 2020); OIG, Inspector General Statement on the Department of State's Major Management and Performance Challenges Fiscal Year 2019, pages 4, 6, and 8 (OIG-EX-20-02, November 2019).

<sup>2</sup> 1 Foreign Affairs Manual (FAM) 212.2-2(A), "Facilities, Design, and Construction Division (A/OPE/AQM/FDCD)."

<sup>3</sup> 1 FAM 212.2-2(a), "Office of Acquisitions Management (A/OPE/AQM)."

<sup>4</sup> On July 9, 2021, the President issued Executive Order 14036, Promoting Competition in the American Economy, outlining 72 initiatives across a range of federal agencies aimed at tackling competition problems in specific sectors of the economy.

and spending and rescind regulations that create unnecessary barriers to entry that stifle competition.<sup>5</sup>

The Competition in Contracting Act of 1984 (CICA) governs competition in federal procurements.<sup>6</sup> Specifically, CICA requires the use of market research, acquisition planning, and solicitation of proposals to obtain full and open competition.<sup>7</sup> The Federal Acquisition Regulation (FAR) implements CICA by prescribing policies and procedures to promote full and open competition in the federal acquisition process.<sup>8</sup> CICA and the FAR require that agencies enter contracts with “full and open competition through the use of competitive procedures,” unless circumstances permitting noncompetitive procedures exist.<sup>9</sup>

## **Department Roles and Responsibilities**

### ***Bureau of Administration***

The Office of the Procurement Executive provides Department-wide acquisition policies and services, including developing, issuing, and maintaining acquisition regulations, procedures, and guidance.<sup>10</sup> Under the leadership of the Procurement Executive, AQM manages, plans, and directs the Department’s acquisition programs and conducts contract operations in support of activities worldwide. AQM provides a full range of contract management services, including acquisition planning, contract negotiations, and cost and price analysis.<sup>11</sup> The Foreign Affairs Handbook (FAH) states that Contracting Officers (CO) are responsible for negotiating, awarding, administering, modifying, and terminating contracts.<sup>12</sup>

AQM’s Customer Guide for Contracting, a handbook that sets out the process and timelines for procuring contract services, states that “the acquisition process begins with the development of a complete and adequate procurement request . . . package from the Requiring Office (also commonly referred to as the Program Office).”<sup>13</sup> As stated in the FAH, the procurement request package serves as the foundation for the entire acquisition and must be as thorough as possible so that the resulting contract reflects the needs of the program office.<sup>14</sup> Using the information provided by the program office, contracting personnel in AQM prepare the solicitation,

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<sup>5</sup> Executive Order 14036, § 2(g), “The Statutory Basis of a Whole-of-Government Competition Policy,” (July 9, 2021).

<sup>6</sup> 41 United States Code (U.S.C.) § 3301, “Full and open competition,” § 3303, “Exclusion of particular source or restriction of solicitation to small business concerns,” § 3304, “Use of noncompetitive procedures,” and § 3305, “Simplified procedures for small purchases.”

<sup>7</sup> 41 U.S.C. § 3306(a)(1)(A), (B), and (C), “Planning and solicitation requirements.”

<sup>8</sup> FAR 6.1, “Full and Open Competition.”

<sup>9</sup> 41 U.S.C. § 3301(a)(1) and 3304(a), “Use of noncompetitive procedures,” FAR 6.101(b), “Policy,” and FAR 6.302, “Circumstances permitting other than full and open competition.”

<sup>10</sup> 1 FAM 212.2(b), “Office of the Procurement Executive (A/OPE).”

<sup>11</sup> 1 FAM 212.2-2(a).

<sup>12</sup> 14 FAH-2 H-141(a), “Responsibilities of the Contracting Officer.”

<sup>13</sup> AQM, Customer Guide for Contracting, page 4 (updated March 2021).

<sup>14</sup> 14 FAH-2 H-331(b), “Purpose and Use.”

coordinate the actions resulting in contractor selection, and prepare a contract setting forth the requirements, responsibilities, and provisions governing contractor performance.

### ***Bureau of Overseas Buildings Operations***

OBO's Office of Project Development and Coordination leads OBO's acquisition activities for projects in coordination with and in support of AQM, including the development of the solicitation and supporting documentation and contract award.<sup>15</sup> According to AQM's Customer Guide for Contracting, the program office and AQM are responsible for acquisition planning and market research.<sup>16</sup>

### **Acquisition Planning**

Acquisition planning is described in FAR Part 7 and the Department of State Acquisition Regulation (DOSAR) Part 607. It is the Department's policy that every acquisition be conducted, and the contract file documented, in conformance with the requirements for acquisition planning described in FAR Part 7.<sup>17</sup> The FAH states that acquisition planning is the key to effective use of public funds and the economical accomplishment of program objectives.<sup>18</sup> Acquisition planning must be initiated by the program office as soon as a need is identified, preferably well in advance of the fiscal year in which the contract action is necessary.<sup>19</sup> Acquisition planning activities should integrate the efforts of all personnel responsible for significant aspects of the acquisition.<sup>20</sup> Generally, program and contracting offices share responsibility for acquisition planning activities.<sup>21</sup> Furthermore, the FAR directs agency heads to establish acquisition planning procedures.<sup>22</sup> According to an AQM memorandum, the contract specialist and program manager will coordinate with personnel responsible for significant aspects of the plan. The acquisition plan will be signed by the CO and the program manager; in addition, formal acquisition plans for service contracts over \$25 million must also be approved by the program office's Assistant Secretary before submitting them to AQM.<sup>23</sup>

### ***Market Research***

The FAR provides general policies and procedures for conducting market research with the goal of arriving at the most suitable approach to acquiring, distributing, and supporting supplies and services.<sup>24</sup> According to the AQM Customer Guide for Contracting, before submitting a

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<sup>15</sup> 1 FAM 285.3(5), "Office of Project Development and Coordination (OBO/PDCS/PDC)."

<sup>16</sup> AQM, Customer Guide for Contracting, pages 11 and 13 (updated March 2021).

<sup>17</sup> DOSAR 607.102, "Policy."

<sup>18</sup> 14 FAH-2 H-321, "Acquisition Planning."

<sup>19</sup> FAR 7.104(a), "General Procedures."

<sup>20</sup> FAR 7.102(b), "Policy."

<sup>21</sup> AQM, Customer Guide for Contracting, pages 10-11 (updated March 2021).

<sup>22</sup> FAR 7.103, "Agency-Head Responsibilities."

<sup>23</sup> AQM Memorandum 15-10, "Acquisition Plans" (March 18, 2015); DOSAR 607.103, "Agency-head responsibilities."

<sup>24</sup> FAR 10.000, "Scope."

procurement request to the CO, the program office must do the necessary market research to “see what’s out there” and determine what supplies or services are currently offered in the market, by whom, and at what competitive range in price. The result of this market research must be included as part of the procurement package.<sup>25</sup>

According to the AQM Customer Guide for Contracting, there are two types of market research—strategic and tactical. Strategic market research is performed by program office personnel on a continual basis to keep abreast of new developments and trends in their area of expertise. Tactical market research is performed by the program office to narrow down requirements to apply specifically to a new acquisition or re-compete of an existing contract.<sup>26</sup>

The FAR states that techniques for conducting market research may include any or all of the following:

- Contacting knowledgeable individuals in government and industry regarding market capabilities to meet requirements.
- Reviewing the results of recent market research undertaken to meet similar or identical requirements.
- Publishing formal requests for information in appropriate technical or scientific journals or business publications.
- Participating in interactive, online communication among industry stakeholders, acquisition personnel, and customers.
- Obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources.
- Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available online.
- Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.
- Reviewing systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration's Dynamic Small Business Search.<sup>27</sup>

Federal regulations provide flexibility in terms of how and to what extent market research shall be conducted, considering the nature of the procurement. Specifically, the FAR provides that the extent of market research depends on factors such as urgency, estimated dollar value, complexity, and past experience.<sup>28</sup> The FAR also states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition but does not prescribe any particular format or specific elements for documentation.<sup>29</sup>

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<sup>25</sup> AQM, Customer Guide for Contracting, page 28 (updated March 2021).

<sup>26</sup> AQM, Customer Guide for Contracting, page 28 (updated March 2021).

<sup>27</sup> FAR 10.002(b)(2), “Procedures.”

<sup>28</sup> FAR 10.002(b)(1).

<sup>29</sup> FAR 10.002(b)(2)(e).

### ***Exchanges of Information With Industry***

The FAR states that exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged.<sup>30</sup> Specifically, the FAR states that “the purpose of exchanging information is to improve the understanding of government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the government’s requirements, and enhancing the government’s ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.”<sup>31</sup> In accordance with the FAR, advance notices and solicitations should be distributed to reach as many prospective offerors as practicable.<sup>32</sup>

### **Solicitation and Selection Process**

#### ***Omnibus Diplomatic Security and Antiterrorism Act of 1986***

The Foreign Service Buildings Act of 1926, as amended, authorizes the Secretary of State to acquire—by purchase, construction, exchange, or lease—sites and buildings in foreign cities for use by the diplomatic and consular establishments of the United States.<sup>33</sup> The Omnibus Diplomatic Security and Antiterrorism Act of 1986<sup>34</sup> (Omnibus Act) limits certain construction projects abroad to United States persons or qualified United States joint venture persons. Specifically, Section 402(a)(1) of the Omnibus Act states that where adequate competition exists,<sup>35</sup> only United States persons and qualified United States joint venture persons may (1) bid on diplomatic construction or design projects with estimated total project values exceeding \$10 million and (2) bid on diplomatic construction or design projects involving technical security, unless the project involves low-level technology, as determined by the Secretary of State. The Omnibus Act defines the term “qualified United States joint venture person” as a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.<sup>36</sup> According to the Omnibus Act, a “United States person” means an entity which:

- is incorporated or legally organized under the laws of the United States;
- has its principal place of business in the United States;
- has been incorporated or legally organized in the United States (1) for more than 5 years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1); and (2) for more than 2 years before

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<sup>30</sup> FAR 15.201(a), “Exchanges with industry before receipt of proposals.”

<sup>31</sup> FAR 15.201(b).

<sup>32</sup> FAR 36.211, “Distribution of advance notices and solicitations.”

<sup>33</sup> 15 FAM 112.2, “Department of State Authorities.”

<sup>34</sup> Public Law 99-399; 22 U.S.C. § 4852, as amended through Public Law 107-288, enacted September 30, 2002.

<sup>35</sup> The Omnibus Act, § 402 (c)(1), defines adequate competition as the presence of two or more qualified bidders submitting responsive bids for a specific project.

<sup>36</sup> Omnibus Act, § 402 (3).

the issuance date of the invitation for bids or request for proposals with respect to a construction or design project that involves physical or technical security;

- has performed within the United States or at a U.S. diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type, and value to the project being bid;
- has achieved total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the specified date;
- employs U.S. citizens in at least 80 percent of its principal management positions in the United States and in more than half of its permanent, full-time positions in the United States;
- will employ U.S. citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site; and
- has the existing technical and financial resources in the United States to perform the contract.<sup>37</sup>

### ***Two-Phase Solicitation Process***

AQM uses a two-phase solicitation process for awarding NEC and NCC contracts. Phase I of the solicitation is entitled “Pre-Qualification of Offerors.” Phase II of the solicitation is entitled “Requests for Proposals from Pre-Qualified Offerors.”

For Phase I, offerors must submit sufficient documentation to allow the Department to determine eligibility as a “United States person” under the Omnibus Act. The offerors must complete and submit the pamphlet “Certifications Relevant to Public Law 99-399, Statement of Qualifications for Purpose of Section 402(a)(1) of The Omnibus Diplomatic Security and Antiterrorism Act of 1986.” These certifications quote the language in the Omnibus Act that defines the term “United States person” and are used as the evaluation factors for Phase I. This evaluation is pass or fail. Submissions that are missing the required information or otherwise do not comply with the submission requirements are eliminated from consideration.

As part of Phase I, offerors submit the certifications and documentation demonstrating that they meet the legal, technical, and financial eligibility qualifications for each project for which they wish to qualify. The Office of the Legal Advisor, Buildings and Acquisitions, reviews this documentation to certify whether offerors meet the evaluation criteria in Phase I. Once the Office of the Legal Advisor, Buildings and Acquisitions, completes its evaluations, it issues a list of offerors eligible to advance to Phase II. Only offerors that pass Phase I are issued a formal request for proposal (RFP) for the project and are invited to participate in a site visit and submit technical and pricing proposals in Phase II. Offerors provide firm, fixed price proposals for a project; therefore, the winning contractor is responsible for delivering the defined scope of the project for the contract award price.

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<sup>37</sup> Omnibus Act, § 402 (c)(2).

## Small Business Subcontracting Plans

According to an AQM official, the Department includes small business subcontracting plan (SBSP) requirements in all OBO solicitations<sup>38</sup> because the overseas construction program is such a large percentage of the Department's annual acquisition expenditures, and the Department wants to ensure contractors understand the importance of supporting small businesses. RFPs require contractors to submit SBSPs that reflect the program goals, and the Department expects contractors to put forth a good effort to include small business in construction and in materials and equipment acquisition.

The FAR requires that COs review the SBSP before making an award to help ensure that the required information, goals, and assurances—such as a contractor agreeing to submit periodic reports to the government to determine the extent of compliance with the SBSP—are included.<sup>39</sup>

The Office of Small and Disadvantaged Business Utilization (OSDBU)<sup>40</sup> is responsible for reviewing SBSPs to determine if small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns are afforded the maximum practicable opportunity to participate as subcontractors. If an SBSP is found to be deficient, OSDBU is responsible for recommending any needed changes to the CO.<sup>41</sup>

Additionally, the FAR requires COs to provide the Small Business Administration (SBA) Procurement Center Representative (PCR) with an opportunity to review the proposed contract, including the SBSP and supporting documentation.<sup>42</sup> In carrying out their post-award oversight responsibilities, the FAR requires COs to (1) ensure contractors file their subcontracting reports in the Electronic Subcontracting Reporting System (eSRS)<sup>43</sup> within 30 days of the close of each reporting period; (2) review Individual Subcontracting Reports submitted semiannually and Summary Subcontract Reports submitted annually in eSRS within 60 days of the reporting end date; and (3) acknowledge receipt of, accept, or reject the reports in eSRS.<sup>44</sup>

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<sup>38</sup> In accordance with FAR 19.702.(b)(3), an SBSP is not required for contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas. This applies to design-bid-build contracts, where the build contract is performed entirely outside of the United States.

<sup>39</sup> FAR 19.705-4, "Reviewing the subcontracting plan."

<sup>40</sup> OSDBU's function is to oversee and ensure that the Department remains in compliance with federal regulations and related statutes, which constitute the government-wide policy to provide U.S. small businesses with maximum practicable access to participate in performing Department acquisition requirements.

<sup>41</sup> DOSAR 619.705-4, "Reviewing the subcontract plan."

<sup>42</sup> FAR 19.705-5 (3), "Awards involving subcontracting plans."

<sup>43</sup> The eSRS is the government-wide, electronic, web-based system for small business subcontracting program reporting.

<sup>44</sup> FAR 19.705-6(f)(1), (2), and (3), "Post-award responsibilities of the contracting officer."

## OBO Construction Projects Awarded

AQM, on behalf of OBO, awards firm-fixed-price contracts<sup>45</sup> to complete design-build<sup>46</sup> and design-bid-build<sup>47</sup> NEC and NCC construction projects. According to data provided by OBO and identified within USASpending,<sup>48</sup> AQM awarded 20 NEC and NCC construction contracts from FY 2017 to FY 2021. OIG selected eight of these projects for review. Details on the eight awards reviewed are presented in Table 1.<sup>49</sup>

**Table 1: Selected OBO Construction Projects**

Contract	Contractor	Date Awarded	Purpose of Contract	Contract Amount
19AQMM21C0156 <sup>a</sup>	Pernix	September 2021	NCC Lagos, Nigeria	\$319,027,389
19AQMM21C0155 <sup>a</sup>	American International Contractors, Inc.	September 2021	NEC Doha, Qatar	\$228,539,686
19AQMM19C0141 <sup>a</sup>	B. L. Harbert	September 2019	NEC Podgorica, Montenegro	\$172,578,143
19AQMM19C0026 <sup>a</sup>	Caddell	December 2018	NEC Nassau, Bahamas	\$229,691,066
19AQMM18C0242 <sup>b</sup>	B. L. Harbert	September 2018	NEC New Delhi, India	\$572,731,860
19AQMM18C0223 <sup>b</sup>	B. L. Harbert	September 2018	NEC Tegucigalpa, Honduras	\$252,698,014
SAQMMA17C0287 <sup>b</sup>	Caddell	September 2017	NEC Mexico City, Mexico	\$571,119,838
SAQMMA17C0045 <sup>b</sup>	B. L. Harbert	December 2016	NEC Ankara, Turkey	\$240,215,027
<b>Total</b>				<b>\$2,586,601,023</b>

<sup>a</sup> Design-build delivery method.

<sup>b</sup> Design-bid-build delivery method.

**Source:** OIG-generated based on analysis of contract data provided by AQM and contract data obtained from USASpending.gov.

<sup>45</sup> FAR 16.202-1, "Firm-fixed-price contracts – Description," states that "a firm-fixed price contract provides for a price that is not subject to any adjustment based on the contractor's cost experience in performing the contract."

<sup>46</sup> FAR 36.102, "Definitions," defines design-build as combining design and construction in a single contract with one contractor.

<sup>47</sup> FAR 36.102 defines design-bid-build as the traditional delivery method in which design and construction are sequential and contracted for separately with two contracts and two contractors.

<sup>48</sup> USASpending.gov was established to give the public access to information on how tax dollars are spent.

<sup>49</sup> Appendix A provides details on how the contracts were selected for review.

## AUDIT RESULTS

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### **Finding A: The Department Did Not Fully Adhere to Acquisition Planning and Market Research Requirements**

OIG found that the Department took steps to promote competition related to construction contracts in accordance with federal law and Department policy but did not develop a formal process for its efforts. In addition, the Department complied with requirements of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and generally promoted subcontracting opportunities for small businesses. However, neither OBO nor AQM fully complied with the acquisition planning and market research requirements in the FAR and Department guidance. Specifically, the acquisition planning documentation for the eight selected NEC and NCC projects did not describe how competition would be sought, promoted, and achieved during the acquisition planning process. Nor did the acquisition plans address the extent and results of the market research and indicate its impact on the various elements of the plan in accordance with the FAR. Furthermore, OIG found that the Department did not use “sources sought” notices in advance of prequalification solicitations.

OIG found that the deficiencies identified with acquisition planning and market research occurred, in part, because AQM management did not require compliance the acquisition planning guidance outlined in AQM Memorandum 15-10. In addition, OBO and AQM did not develop and implement a formal process for executing acquisition plans and market research procedures to help ensure consistent application of the competition requirements. As a result of these deficiencies, the Department missed opportunities to expand its pool of potential construction contractors. Between October 1, 2016, and September 30, 2021, 14 (70 percent) of 20 NEC and NCC contracts awarded by AQM on behalf of OBO were awarded to one contractor. Until the deficiencies are addressed, the Department will not be in full compliance with the FAR and Department acquisition policy and will continue to miss opportunities for increased competition and potential cost savings.

#### ***Department Efforts To Enhance Competition for Construction Projects***

OIG found that OBO took some action to promote competition for construction projects. For example, OBO recognized that there had been a reduction in the availability of and participation by qualified contractors for construction projects. Therefore, OBO commissioned a market research study, completed by an external contractor in 2019,<sup>50</sup> to accomplish the following goals:

- Benchmark the status of the existing marketplace and identify the challenges OBO faces within it to better understand the industry’s perception of OBO and its construction program.

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<sup>50</sup> The results of the market research study were provided to OBO in July 2019.

- Evaluate industry conditions and trends that may provide opportunities and challenges for OBO.
- Provide guidance based on data obtained to better position OBO to attract greater participation from the best qualified contractors by taking full advantage of opportunities while addressing the associated challenges.
- Inform the industry about OBO's program and advertise intent for innovations in project delivery and future opportunities.<sup>51</sup>

The study concluded that there are market challenges for construction contractors due to the following elements:

- A large increase of available projects in the U.S. market.
- Inability to find qualified staff locally, which would prove to be more of a challenge with international work.
- Contractors are bidding work which reduces their risk. (it may be perceived that OBO work is more difficult, thereby increasing the risk and the cost due to a significant learning curve).
- Contractors bidding on projects that present greater opportunity to be profitable and easily manage their cash flow.<sup>52</sup>

In addition to the market research study, OBO partners with AQM to conduct contractor "road shows" and engage directly with the contractor community. These efforts focus on broadening the contractor pool, competition, and engagement, while learning how to be more responsive to industry issues, concerns, and questions.

Furthermore, AQM provides stipends to defray some of the costs incurred by prequalified offerors with responsive project proposals in Phase II that do not receive a contract award, if the offeror meets criteria established by OBO. According to an OBO official, preparing and submitting bids is time consuming and can cost a company as much as \$500,000. Another OBO official stated that stipends were well received by the community. An AQM official noted that stipends are a driving factor for contractors to continue with the process because they know that if their bid is unsuccessful, they still receive funds to offset some expenses. OIG found that AQM offered stipends of between \$100,000 and \$125,000 during Phase II of the RFP solicitation process to offset the cost of site visits and other related costs for unsuccessful offerors for two (25 percent) of eight projects that OIG reviewed. Of the two NEC and NCC awards that offered stipends, all seven offerors that qualified in Phase I submitted proposals for Phase II. Of the six projects that did not offer stipends, only 16 (55 percent) of 29 offerors who qualified for Phase I submitted a proposal for Phase II. Although OIG only reviewed a small sample, these results suggest that financial incentives can be a factor contributing to the level of contractor participation in the NEC and NCC construction program. However, it is also important to note that despite OBO's efforts to increase competition using stipends, for the eight selected

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<sup>51</sup> OIG did not validate the results of the study conducted by OBO.

<sup>52</sup> Ibid.

projects, OIG found that only 23 (64 percent) of 36 prequalified firms submitted bids for Phase II.

### ***The Department Complied With the Omnibus Act***

The Omnibus Act states that “where adequate competition exists,<sup>53</sup> only United States persons and qualified United States joint venture persons may – (1) bid on a diplomatic construction or design project which has an estimated total project value exceeding \$10,000,000;<sup>54</sup> and (2) bid on a diplomatic construction or design project which involves physical or technical security.”<sup>55,56</sup> For the eight selected projects, OIG found that the Department received at least two proposals from qualified bidders, as required by the Omnibus Act. Table 2 shows the number of offerors that submitted Phase I packages, firms passing Phase I, and proposals submitted for Phase II for each selected NEC and NCC project.

**Table 2: Number of Proposals Received for Selected Projects**

<b>Fiscal Year</b>	<b>Contract</b>	<b>Project</b>	<b>Phase I Submissions</b>	<b>Firms Passing Phase I</b>	<b>Phase II Proposals Submitted</b>
2021	19AQMM21C0156	NEC Lagos, Nigeria*	6	3	3
2021	19AQMM21C0155	NEC Doha, Qatar*	4	4	4
2019	19AQMM19C0141	NEC Podgorica, Montenegro	6	5	4
2019	19AQMM19C0026	NEC Nassau, Bahamas	5	5	2
2018	19AQMM18C0242	NEC New Delhi, India	3	3	2
2018	19AQMM18C0223	NEC Tegucigalpa, Honduras	7	4	2
2017	SAQMMA17C0287	NEC Mexico City, Mexico	4	4	2
2017	SAQMMA17C0045	NEC Ankara, Turkey	8	8	4
<b>Total</b>			<b>43</b>	<b>36</b>	<b>23</b>

\* Request for proposal solicitation offered stipends to unsuccessful offerors.

**Source:** OIG-generated using analysis of NEC and NCC acquisition plan documents.

<sup>53</sup> The Omnibus Act, § 402(c)(1), defines adequate competition to be the presence of two or more qualified bidders for a construction contract.

<sup>54</sup> Public Law 107-288, enacted September 30, 2002, amended the Omnibus Act and raised the project value from \$5 million to \$10 million.

<sup>55</sup> Omnibus Act, § 402(a).

<sup>56</sup> The Omnibus Act, § 402(b), allows an exception for projects in a country whose statutes prohibit the use of United States contractors.

Furthermore, according to an AQM official, in accordance with the Omnibus Act, OBO and AQM limit the award of diplomatic construction or design projects with estimated total project values exceeding \$10 million to United States persons and qualified United States joint venture persons.<sup>57</sup> To ensure that offerors complied with the Omnibus Act requirements during Phase I, AQM required prospective offerors to submit sufficient documentation and certifications to allow the Department to determine eligibility as a “United States person.” AQM requested the Office of the Legal Advisor, Buildings and Acquisitions, to review certifications relevant to the Omnibus Act that were submitted by offerors during Phase I. The documentation of analysis provided by the Office of the Legal Advisor, Buildings and Acquisitions, is intended to demonstrate that the Omnibus Act criterion has been considered.

### ***The Department Generally Documented Subcontracting Plan Reviews and Approvals***

The DOSAR<sup>58</sup> requires that the Department provide maximum opportunities for U.S. small businesses to participate in the acquisition process. The Omnibus Act also states that “not less than 10 percent of the amount appropriated . . . for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American small business contractors.”<sup>59</sup> To ensure that offerors are qualified to perform the construction project, offerors are required to submit information on past performance for projects with similar complexity and value.

Because of the significant size of construction projects, it would be difficult for a small business to be selected as a prime contractor. The FAR requires bids on construction contracts that are expected to exceed \$1.5 million to include an SBSP.<sup>60</sup> OIG confirmed that SBSP<sup>61</sup> requirements were outlined in the eight project RFPs reviewed.

The FAR<sup>62</sup> also requires the CO to review the SBSPs for adequacy, ensuring that the required information, goals, and assurances are included, and the DOSAR<sup>63</sup> encourages the CO to consider the adequacy of the subcontracting plans, or past performance in achieving subcontract goals, as part of the overall evaluation of the technical proposals for all bids. In addition, the DOSAR<sup>64</sup> requires OSDBU to review the SBSP of the selected prime contractor to determine whether small business concerns are afforded the maximum practicable opportunity to participate as subcontractors and OSDBU will recommend to the CO changes needed to subcontracting plans found to be deficient. AQM provided documentation to show that COs reviewed the SBSP for the eight selected projects and OSDBU reviewed and approved the SBSP

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<sup>57</sup> Omnibus Act, § 402 (a)(1), as amended through Public Law 107-288, enacted September 30, 2002.

<sup>58</sup> DOSAR 619.000(b), “Scope.”

<sup>59</sup> Omnibus Act, § 402(e).

<sup>60</sup> FAR 19.702.

<sup>61</sup> A subcontracting plan should cover the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract.

<sup>62</sup> FAR 19.705-4, “Reviewing the subcontracting plan.”

<sup>63</sup> DOSAR 619.705-3, “Preparing the solicitation.”

<sup>64</sup> DOSAR 619.705-4, “Reviewing the subcontracting plan.”

for seven of eight projects. For NEC Tegucigalpa, OSDBU and the SBA Procurement Center Representative reviewed the SBSP but did not concur with the plan prior to AQM awarding the contract because the prime contractor was proposing only .02 percent of the total contract value for American small businesses. OSDBU's opinion was that the prime contractor lacked a commitment to promoting opportunities for small businesses.

After contracts are awarded, federal<sup>65</sup> and Department<sup>66</sup> guidance outlines CO responsibilities in monitoring contractor compliance with the SBSP. This includes ensuring that semiannual and annual subcontracting reports are submitted by the contractor in eSRS<sup>67</sup> and reviewing the subcontracting reports to either acknowledge receipt of or reject them. AQM provided documentation to show that COs are monitoring contractors' compliance with SBSPs for the eight projects<sup>68</sup> reviewed.

### ***Insufficient Acquisition Planning***

According to the FAR, the purpose of acquisition planning "is to ensure that the government meets its needs in the most effective, economical, and timely manner."<sup>69</sup> The DOSAR states that "domestic requirements offices must develop a formal, written acquisition plan for all acquisitions exceeding \$5 million."<sup>70</sup> Additionally, the FAR states that acquisition planning "should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary."<sup>71</sup>

Furthermore, the FAR<sup>72</sup> states that agency heads are responsible for prescribing acquisition planning procedures. These include establishing criteria and thresholds at which increasingly greater detail and formality in the planning processes is required as the acquisition becomes more complex and costly. These details should include specifying when a written acquisition plan is required.<sup>73</sup> AQM policy states that for formal plans for \$100–\$250 million procurements, the Head of Contracting Activity has final approval authority; for formal plans for procurements of more than \$250 million, the Senior Procurement Executive has final approval authority.<sup>74</sup> In addition, the FAR<sup>75</sup> requires the planner to follow specific instructions and include specific

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<sup>65</sup> FAR 19.705-6.

<sup>66</sup> DOSAR 619.705-6-70, "Reporting responsibilities," and OPE Procurement Information Bulletin 2019-07, Electronic Subcontracting Reporting System (eSRS), (August 16, 2019).

<sup>67</sup> The eSRS is the government-wide, electronic, web-based system for small business subcontracting program reporting.

<sup>68</sup> Two projects (Lagos, Nigeria, NCC and Doha, Qatar, NEC) were awarded in September 2021; therefore, semiannual and annual subcontracting reports had not been required at the time of the OIG review.

<sup>69</sup> FAR 7.102(b).

<sup>70</sup> DOSAR 607.103(d).

<sup>71</sup> FAR 7.104(a).

<sup>72</sup> FAR 7.103.

<sup>73</sup> FAR 7.103(e).

<sup>74</sup> AQM, Quality Assurance Plan, page 4 (June 2021).

<sup>75</sup> FAR 7.105, "Contents of written acquisition plans."

content in written acquisition plans, along with the agency's implementing procedures.<sup>76</sup> The written acquisition plan must describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. It must also address the extent and results of the market research and indicate its impact on the various elements of the plan.<sup>77</sup>

OIG found that none of the eight NEC and NCC projects reviewed had formal written acquisition plan. Specifically, the documentation provided by the Department did not describe how competition would be sought, promoted, and achieved during the acquisition planning process. According to OBO officials, OBO and AQM used documents that focus on schedules and milestones, procurement reports, and regularly scheduled procurement planning update meetings as their acquisition plan. However, this does not fulfill the FAR requirements of an approved formal written acquisition plan. In addition, one CO stated that they have no involvement in the acquisition plan development and that information is sent to AQM from OBO before AQM issues the solicitation. A different AQM official indicated that the acquisition plan should be prepared jointly between OBO and AQM. Furthermore, one OBO official acknowledged that OBO is not as diligent as it should be in developing acquisition plans.

### ***Market Research Efforts Need Improvement***

According to the FAH,<sup>78</sup> market research is the process used for collecting and analyzing information about capabilities within the market to satisfy agency needs and is required to promote full and open competition and ensure that the government satisfies its needs in a cost-effective manner. In addition, the FAH states that market research must be conducted in two separate stages:

- By the program office before new requirements documents are developed.
- By the contracting office before offers are solicited.<sup>79</sup>

The CO may use market research conducted within 18 months before the award if the information is still current, accurate, and relevant. Furthermore, the FAR requires that the written acquisition plans address the extent and results of the market research and indicate its impact on the various elements of the plan.<sup>80</sup> The program office must be specific in its requirements to ensure that AQM has all the necessary information to obtain quotes from qualified sources.<sup>81</sup>

OBO and AQM officials stated that they performed market research for construction contracts. Specifically, OBO and AQM officials stated that they attended internally planned events and

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<sup>76</sup> FAR 7.105.

<sup>77</sup> FAR 7.105(b)(2) and FAR 7.105(b)(1)(v).

<sup>78</sup> 14 FAH-2 H-324, "Market Research."

<sup>79</sup> 14 FAH-2 H-324(c)(1)(2).

<sup>80</sup> FAR 7.105(b)(1)(v), "Contents of written acquisition plan."

<sup>81</sup> AQM, Customer Guide for Contracting, page 28 (updated March 2021).

meetings, such as Capabilities Conversations,<sup>82</sup> OBO Industry Days,<sup>83</sup> and OBO Industry Roadshows,<sup>84</sup> in addition to attending Associated General Contractors of America and Society of American Military Engineers conferences for market research initiatives. Although attending these meetings is useful for gaining an understanding of vendor capabilities, the acquisition plans did not address the extent and results of project-specific market research and did not indicate the impact of the research on the various elements of the acquisition plan in accordance with the FAR.<sup>85</sup>

***Notice of Solicitation of Submissions for Contractor Prequalification Incorrectly Used as Sources Sought Notice***

The FAR encourages exchanges of information among all interested parties from the earliest identification of a requirement through receipt of proposals.<sup>86</sup> According to the FAH,<sup>87</sup> one potential source of market information is SAM.gov “sources sought” notices. A “sources sought” notice is a synopsis posted online by an agency that states that the agency is seeking possible sources (contractors) for a project. The purpose of the notice is to allow an agency to collect and analyze information about contractors’ interest and capabilities within the market that could satisfy agency needs. A “sources sought” notice is not a solicitation, nor is it an RFP. As part of market research, businesses responding to the “sources sought” notice usually describe their capabilities and similar projects that they have conducted.

The FAR<sup>88</sup> states that COs must publicize contract actions to:

- increase competition;
- broaden industry participation in meeting government requirements; and
- assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

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<sup>82</sup> OBO’s Capabilities Conversations events allow firms to learn more about OBO’s priorities, upcoming work, and opportunities for future collaboration. The events also allow firms to share their own experience, product, or capabilities.

<sup>83</sup> OBO invites parties who are interested in prequalifying, to attend Industry days, which is an informational meeting and discussion about the Overseas Diplomatic Construction Program for specific New Embassy and Consulate Complexes projects.

<sup>84</sup> Roadshows, hosted by OBO and OPE, offer an opportunity for the Department to engage directly with the contractor community to continue its effort to be a leader in government construction and contracting. The discussions touch on OBO’s portfolio, procurement process, partners, and goals. The efforts are focused on broadening and expanding the contractor pool, competition, and engagement while trying to understand how to be more responsive to the issues, concerns, and questions of the industry.

<sup>85</sup> FAR 7.105(b)(1)(v) and FAR 10.002, “Procedures.”

<sup>86</sup> FAR 15.201(a).

<sup>87</sup> 14 FAH-2 H-324.1(b)(5), “Collecting Information.”

<sup>88</sup> FAR 5.002, “Policy”.

Furthermore, the FAR<sup>89</sup> requires the CO to provide access to presolicitation notices through the government-wide point of entry (GPE)<sup>90</sup> (accessed at <https://www.sam.gov>) and to synopsise a proposed contract action before issuing any resulting solicitation. Additionally, the FAR<sup>91</sup> requires the CO to issue presolicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold (as of May 2022, the threshold was \$250,000)<sup>92</sup> unless the requirement is waived by the head of the contracting activity.

OIG found that for the eight construction projects reviewed, the first time that AQM publicized a contract opportunity on the GPE was when AQM published the Notice of Solicitation of Submissions for Contractors Prequalification. When asked if a “sources sought” notice was publicized on the GPE before the Notice of Solicitation of Submissions for Contractor Prequalification, an AQM official stated that the advertisement is the “sources sought” notice. Another AQM official stated that the market research for these projects is the Notice of Solicitation of Submissions for Contractor Prequalification.

OIG considers this approach used by the Department to be contrary to the Department’s vendor management plan<sup>93</sup> guidance, which states that “early, frequent, and constructive engagement with industry is a fundamental practice when planning Department acquisitions. Vendor communications are critical at each stage of the Industry Engagement Process—basic market awareness, pre-award market research, solicitation and award for a specific contract.” Although AQM considers the Notice of Solicitation of Submissions for Contractor Prequalification to be the “sources sought” notice and to fulfill the requirement for project-specific market research, these notices do not meet the intent of a “sources sought” document, as stated in the FAR.<sup>94</sup> Specifically, the notices issued by the Department are announcements for companies to submit required data for consideration and evaluation for a project, which is more comprehensive than a “sources sought” notice or special notice. The information submitted by offerors is evaluated based on the evaluation criteria in the solicitation. In addition, only vendors that fulfilled the requirements included in the notice are allowed to submit a proposal for the project. Specifically, the Phase I – Prequalification of Offerors in the Notice of Solicitation of Submissions for Contractor Prequalification states:

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<sup>89</sup> FAR 5.204, “Presolicitation notices.”

<sup>90</sup> FAR 2.101, “Definitions,” states GPE is the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public.

<sup>91</sup> FAR 36.213-2, “Presolicitation notices.”

<sup>92</sup> FAR 2.101, “Definitions.”

<sup>93</sup> The Department’s Vendor Management Plan, Category Management, June 2020, page 1, established basic operating principles that apply across the Department.

<sup>94</sup> FAR 5.201(c). “Synopses of Proposed Contract Actions,” states the primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

Those Offerors determined to be pre-qualified in accordance with this notice will be issued a formal RFP for the project and invited to participate in a site visit and submit technical and pricing proposals in Phase II.

Table 3 shows the number of days between the published date and due date of the Notice of Solicitation of Submissions for Contractor Pre-Qualification for each NEC and NCC project reviewed.

**Table 3: Number of Days Between Published Dates and Due Dates for Notice of Solicitation of Submissions for Selected Projects**

Project	Industry Day <sup>a</sup>	Published Date	Due Date	Total Days <sup>b</sup>
NCC Lagos, Nigeria	None	October 10, 2019	November 6, 2019	28
NEC Doha, Qatar	None	December 16, 2019	January 8, 2020	24
NEC Podgorica, Montenegro	None	January 8, 2019	February 20, 2019	44
NEC Nassau, Bahamas	November 13, 2017	October 23, 2017	December 7, 2017	46
NEC New Delhi	November 13, 2017	December 15, 2017	February 6, 2018	54
NEC Tegucigalpa, Honduras	November 13, 2017	October 23, 2017	December 7, 2017	46
NEC Mexico City, Mexico	March 3, 2016	March 6, 2017	April 11, 2017	37
NEC Ankara, Turkey	March 3, 2016	February 17, 2016	March 23, 2016	36

<sup>a</sup> Introductory and informational meetings with industry for a construction contract solicitations project.

<sup>b</sup> Includes published date and due date.

**Source:** OIG-generated using analysis of NEC and NCC acquisition plan documents.

OIG believes potential contractors are not able to accurately forecast and plan for NEC and NCC construction projects when the first publicized contract action to the GPE is Phase I of the solicitation. The established timeframe between published dates and due dates of the Notice of Solicitation of Submissions for Contractor Prequalification limits the ability for potential contractors to assess and compile the required documents to prequalify in the timeframe allotted. For example, phase I requires the offeror to complete and submit as part of its prequalification package the pamphlet "Certifications Relevant to Public Law 99-399, Statement of Qualifications for Purpose of Section 402 of The Omnibus Diplomatic Security and Antiterrorism Act of 1986." These certifications include prior experience and technical and financial resources that demonstrate the capability of the prospective offeror to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. In addition, organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related firms, must do so by way of a joint venture. By not

issuing a presolicitation or “sources sought” notice well in advance of the solicitation, OBO and AQM will continue to miss opportunities to exchange information to improve the understanding of government requirements and industry capabilities in accordance with the FAR.<sup>95</sup>

### ***U.S. Army Corps of Engineers Practices To Foster and Encourage Competition***

OIG met with U.S. Army Corps of Engineers<sup>96</sup> (USACE) officials to obtain information on their strategies and actions to foster competition. According to the officials, to enhance competition for large construction projects, USACE typically issues “sources sought” notices nearly a year before Phase I solicitation is begun. USACE uses the information obtained from the “sources sought” to help with acquisition planning and developing evaluation criteria. Posting the “sources sought” notices early in the process allows USACE enough time to use information obtained in developing the source selection plan and incorporate the information into RFPs. The USACE official also stated that USACE teams have one-on-one meetings with the firms that submit inquiries to the “sources sought” notice to gain further insight into the project’s constraints and ways that USACE could be clearer in their requirements.

The USACE official stated that market research and conducting meetings with firms is important for USACE to understand how some of their selection criteria is restricting competition. For example, for two acquisitions, USACE lowered the dollar amount and added a square footage amount for the past performance experience criterion to address issues identified during the pre-solicitation effort. USACE determined that inflation may distort a dollar-value past performance evaluation factor. The USACE official also stated that USACE arranges industry days to engage with the industry as soon as a need is identified. The sooner the government and the firms have dialogue, the more time the government has to leverage the feedback received from the industry.

### ***Industry Opinions on Factors That Limit or Enhance Competition***

OIG spoke with a construction industry representative to identify factors that, in their professional judgment, limit or enhance competition for large-scale construction projects. The industry representative discussed factors their company uses when determining whether to bid on a large, international project. According to the representative, risk is the main factor when determining whether to bid on a project. Risk factors could include conflict in the country, the availability of reliable resources and workforce, and the stability of the currency. Allocation of risk is also a factor, such as ensuring risk is placed on the entity that is best able to manage it as

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<sup>95</sup> FAR 15.201(b) states that the purpose of exchanging information is to improve the understanding of government requirements and industry capabilities. This allows potential offerors to judge whether or how they can satisfy the government’s requirements. It also enhances the government’s ability to obtain quality supplies and services, including construction, at reasonable prices and to increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

<sup>96</sup> The United States Army Corps of Engineers is an engineer formation of the United States Army that has three primary mission areas: Engineer Regiment, military construction, and civil works.

opposed to placing all risk on the prime contractor. Prime contractors may have little-to-no control over certain things, particularly when working in a different country.

The industry representative stated that advance planning and forecasting would have advantages for the industry. The construction industry understands that federal agencies' project plans change, but informing the industry as far in advance as possible is helpful for industry long-term planning.

***Department Officials Did Not Ensure Adherence to Federal Regulations and Department Policies***

OIG found that the deficiencies identified with acquisition planning and market research occurred, in part, because AQM management did not require compliance with acquisition planning guidance outlined in AQM Memorandum 15-10. In addition, OBO did not develop and implement a formal process for executing acquisition plans and market research procedures to help ensure consistent application of the competition requirements. According to *Standards for Internal Control in the Federal Government*,<sup>97</sup> "management should implement control activities through policies." The policies should document "control activity design, implementation, and operating effectiveness." In addition, organizations can "further define policies through day-to-day procedures." To sustain internal controls, OBO and AQM management must monitor their internal control systems consistently by assessing the control's effectiveness and whether personnel adhere to it.<sup>98</sup>

One example of AQM not requiring strict compliance with offered guidance relates to use of the Department's acquisition plan template, provided in AQM Memorandum 15-10. AQM Memorandum 15-10 states that the purpose of the acquisition plan template, which includes a section to document market research efforts conducted or to be conducted, is to provide a guide for completion of acquisition planning documents;<sup>99</sup> however, it does not explicitly require that Department officials use the template. AQM Memorandum 15-10 also states, "the intent is not to replace contracting personnel's innovation and originality, but to provide a starting point and framework for preparing this required information." Because of the discretionary guidance, OIG found that OBO and AQM did not use the acquisition plan template for the selected projects. OIG concludes that the consistent use of the acquisition plan template would enable management to more readily ascertain whether minimum acquisition planning requirements are being performed in accordance with federal regulations and Department policy.

***Improvements Could Enhance Competition***

As a result of these deficiencies, the Department missed opportunities to expand its pool of potential construction contractors. Between October 1, 2016, and September 30, 2021, 14

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<sup>97</sup> GAO-14-704G, September 2014.

<sup>98</sup> GAO-14-704G, September 2014, at 65-66.

<sup>99</sup> AQM Memorandum 15-10.

(70 percent) of 20 NEC and NCC contracts awarded by AQM on behalf of OBO were awarded to one contractor, with a total value of about \$5.5 billion. Until the deficiencies are addressed, the Department will not be in full compliance with the FAR and Department acquisition policy and will continue to miss opportunities to increase competition and thereby enhance the Department's ability to obtain quality construction services at reasonable prices. OIG is therefore offering the following recommendations:

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, develop and implement processes to ensure acquisition planning, including the development and submission of written acquisition plans, is performed in accordance with federal regulations and Department of State policy for construction projects.

**Management Response:** OBO concurred with the intent of this recommendation, stating that "OBO shares responsibility for acquisition planning activities with [AQM] therefore, OBO requests that [the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM)] be added as a coordinating bureau." OBO also stated that "OBO will collaborate with AQM to develop written acquisition plans describing how competition would be sought, promoted, and achieved during the acquisition planning process for future construction projects."

**OIG Reply:** As requested by OBO, OIG added the Bureau of Administration as a coordinating bureau to Recommendation 1. On the basis of OBO's concurrence with the recommendation and planned actions, OIG considers this recommendation resolved, pending further action. The recommendation will be closed when OIG receives documentation demonstrating that OBO has collaborated with AQM to develop and implement processes to ensure acquisition planning, including the development and submission of written acquisition plans, is performed in accordance with federal regulations and Department policy.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, implement the use of "sources sought" notices for construction contracts approximately 9–12 months in advance of issuing the Phase I Notice of Solicitation of Submissions for Contractor Prequalification to ensure the Department of State is initiating dialogue with industry stakeholders early in the acquisition process.

**Management Response:** OBO concurred with the intent of the recommendation, stating that it will integrate the acquisition planning step into the Integrated Master Schedule. OBO further stated it will provide specific project information to the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), to draft and post the sources sought announcement to SAM.gov in advance of posting the Prequalification/Market Research announcement. OBO and AQM will track what is received and report it to OIG for its review and analysis.

**OIG Reply:** On the basis of OBO's concurrence with the recommendation and planned actions, OIG considers this recommendation resolved, pending further action. The recommendation will be closed when OIG receives documentation demonstrating that OBO has implemented the use of "sources sought" notices for construction contracts approximately 9–12 months in advance of issuing the Phase I Notice of Solicitation of Submissions for Contractor Prequalification.

**Recommendation 3:** OIG recommends that the Bureau of Administration develop and implement a mechanism to require the use of the acquisition plan template attached to AQM Memorandum 15-10.

**Management Response:** The Bureau of Administration, Office of the Procurement Executive (OPE), concurred with the intent of the recommendation, stating that it "identified an alternative course of action to address the recommendation including rescinding AQM Memorandum 15-10 along with the development and implementation of a new policy in acquisition planning and the release of an Acquisition Plan template(s) for mandatory use."

**OIG Reply:** On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers this recommendation resolved, pending further action. The recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration, Office of the Procurement Executive, has implemented a policy that requires the use of an acquisition plan template to help ensure acquisition planning is performed in accordance with federal regulations and Department of State policy.

## RECOMMENDATIONS

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**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, develop and implement processes to ensure acquisition planning, including the development and submission of written acquisition plans, is performed in accordance with federal regulations and Department of State policy for construction projects.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, implement the use of “sources sought” notices for construction contracts approximately 9–12 months in advance of issuing the Phase I Notice of Solicitation of Submissions for Contractor Prequalification to ensure the Department of State is initiating dialogue with industry stakeholders early in the acquisition process.

**Recommendation 3:** OIG recommends that the Bureau of Administration develop and implement a mechanism to require the use of the acquisition plan template attached to AQM Memorandum 15-10.

## APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

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The Office of Inspector General (OIG) conducted this audit to determine whether the Department of State (Department) developed and implemented a process to promote competition related to construction contracts, including promoting maximum opportunities for small businesses, in accordance with federal law, Department policy, and other requirements.

OIG conducted this audit from October 2021 to April 2022 in the Washington, DC, metropolitan area. The scope of this audit was New Embassy Compound (NEC) and New Consulate Compound (NCC) construction projects awarded between October 1, 2016, and September 30, 2021. OIG conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objective. OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objective.

To obtain background information, including criteria for this audit, OIG researched and reviewed federal laws and regulations (e.g., the United States Code, the Competition in Contracting Act of 1984, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986), Executive orders, and the Federal Acquisition Regulation (FAR). OIG also researched and reviewed Department guidance including the Foreign Affairs Handbook, Department of State Acquisition Regulation, and internal Department memoranda and other guidance related to acquisitions.

To determine whether the Department developed and implemented a process to promote competition related to construction contracts in accordance with the FAR and Department guidance, OIG interviewed the following subjects:

- Bureau of Overseas Buildings Operations (OBO) officials.
- Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM) officials.
- Project Managers.
- Contracting Officers.
- Office of Small and Disadvantaged Business Utilization Procurement Analysts.
- United States Army Corps of Engineers representatives.
- Clark Construction representatives.

Additionally, OIG reviewed and analyzed applicable contract documentation related to the solicitation, prequalification, and award phases of selected NEC and NCC construction contracts.

### **Data Reliability**

OIG used data obtained from non-automated sources provided by OBO to identify the universe of NEC and NCC construction contracts awarded between October 1, 2016, and September 30,

2021. To assess the completeness and accuracy of the universe of NEC and NCC contracts, OIG used computer-processed data from USASpending.gov and compared that data with the data provided by OBO. As a result, OIG did not find any material discrepancies and concluded that the data were sufficiently reliable for selection of the awards to review.

## **Work Related to Internal Control**

During the audit, OIG considered a number of factors, including the subject matter of the project, to determine whether internal control was significant to the audit objective. Based on its consideration, OIG determined that internal control was significant to this audit. OIG then considered the components of internal control and the underlying principles included in the *Standards for Internal Control in the Federal Government*<sup>1</sup> to identify internal controls that were significant to the audit objective. Considering internal control in the context of a comprehensive internal control framework can help auditors determine whether underlying internal control deficiencies exist.

For this audit, the audit team concluded that three of the five internal control components from the *Standards for Internal Control in the Federal Government*, Control Activities, Information and Communication, and Monitoring, were significant to the audit objective. The Control Activities component includes the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system. The Information and Communication component relates to the quality information that management and personnel communicate and use to support the internal control system. The Monitoring component relates to activities management establishes and operates to assess the quality of performance over time and promptly resolve the findings of audits and other reviews. OIG also concluded that five of the principles related to the selected components were significant to the audit objective as described in Table A.1.

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<sup>1</sup> Government Accountability Office, *Standards for Internal Control in the Federal Government*, (GAO-14-704G, September 2014).

**Table A.1: Internal Control Components and Principles Identified as Significant**

<b>Components</b>	<b>Principles</b>
Control Activities	Management should design control activities to achieve objectives and respond to risks. Management should implement control activities through policies.
Information and Communication	Management should use quality information to achieve the entity's objectives. Management should externally communicate the necessary quality information to achieve the entity's objectives.
Monitoring	Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

**Source:** OIG-generated from an analysis of internal control components and principles from the Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014).

OIG then interviewed Department officials and reviewed Department procedures, NEC and NCC Phase I and II documents, and the Department's contracting processes to obtain an understanding of the internal controls related to the components and principles identified as significant for this audit. OIG performed procedures to assess the design, implementation, and operating effectiveness of key internal controls. Specifically, OIG

- Analyzed AQM contract documents to assess compliance with laws.
- Reviewed NEC and NCC Phase I and II contract documents to determine evidence of compliance with competition requirements.
- Reviewed subcontracting plan documents to determine whether AQM complied with oversight requirements to promote opportunities for small businesses.

Internal control deficiencies identified during the audit that are significant within the context of the audit objective are presented in the Audit Results section of this report.

## Sampling Methodology

To determine the extent to which the Department has developed and implemented a process to promote competition related to construction contracts in accordance with the FAR and Department regulations and guidance, OIG selected eight NEC and NCC construction contracts for review. The goal of the selection process was to judgmentally select a sample that was representative of the universe of 20 NEC and NCC contracts awarded between October 1, 2016, and September 30, 2021.<sup>2</sup> Within the universe, B. L. Harbert was awarded 14 contracts, Caddell was awarded four contracts, Pernix was awarded one contract, and American International Contractors, Inc., was awarded one contract.

<sup>2</sup> OBO did not issue any contract in FY 2020.

Out of a universe of 20 contract awards totaling \$5,552,402,159, OIG employed risk-based selection criteria<sup>3</sup> and nonstatistical random sampling<sup>4</sup> to select 8 contract awards totaling \$2,578,277,128. Table A.2 provides detailed information on the eight selected awards.

**Table A.2: Selected OBO Construction Projects**

<b>Contract</b>	<b>Contractor</b>	<b>Date Awarded</b>	<b>Purpose of Contract</b>	<b>Contract Amount</b>
19AQMM21C0156	Pernix	September 2021	NCC Lagos, Nigeria	\$319,027,389
19AQMM21C0155	American International Contractors, Inc.	September 2021	NEC Doha, Qatar	\$228,539,686
19AQMM19C0141	B. L. Harbert	September 2019	NEC Podgorica, Montenegro	\$172,578,143
19AQMM19C0026	Caddell	December 2018	NEC Nassau, Bahamas	\$229,691,066
19AQMM18C0242	B. L. Harbert	September 2018	NEC New Delhi, India	\$572,731,860
19AQMM18C0223	B. L. Harbert	September 2018	NEC Tegucigalpa, Honduras	\$252,698,014
SAQMMA17C0287	Caddell	September 2017	NEC Mexico City, Mexico	\$571,119,838
SAQMMA17C0045	B. L. Harbert	December 2016	NEC Ankara, Turkey	\$240,215,027
<b>Total</b>				<b>\$2,586,601,023</b>

**Source:** OIG-generated based on analysis of contract data provided by AQM and collaborated with contract data obtained from USASpending.gov.

<sup>3</sup> When a representative sample is not needed, a targeted selection may be effective if the auditors have isolated risk factors or other criteria to target the selection.

<sup>4</sup> Nonstatistical sampling draws on the auditor's experience and professional judgment in selecting units for evidence from the sampling frame.

## APPENDIX B: BUREAU OF OVERSEAS BUILDINGS OPERATIONS RESPONSE

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United States Department of State

Washington, D.C. 20520

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August 10, 2022

### INFO MEMO FOR NORMAN BROWN – OIG/AUD

FROM: OBO/COMP–Elizabeth A.S. Slaughter, Acting ELIZABETH SLAUGHTER  
SUBJECT: OBO Response to Draft Report of OIG *Audit of Department of State Efforts to Promote Competition for Overseas Construction Projects*, AUD-CGI-22-XX

Doc. fully signed by  
E. ZABETH SLAUGHTER  
Date: 2022.08.10 16:27:39  
+0400'

OBO thanks the OIG for its careful review of the Department’s efforts to promote competition related to construction contracts. Please see the following responses to the two recommendations for which OBO is the action office.

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations develop and implement processes to ensure acquisition planning, including the development of written acquisition plans, is performed in accordance with federal regulations and Department of State policy for construction projects.

**OBO Response:** OBO concurs with the intent of this recommendation. OBO shares responsibility for acquisition planning activities with the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (A/OPE/AQM); therefore, OBO requests that A/OPE/AQM (AQM) be added as a coordinating bureau. OBO and AQM have developed and implemented the Procurement Report Listing, accompanying procedures and systems, and conduct regular procurement planning meetings to review the status of all projects in acquisition. Nevertheless, OBO acknowledges the value of developing and implementing a formal process for executing acquisition plans. OBO will collaborate with AQM to develop written acquisition plans describing how competition would be sought, promoted, and achieved during the acquisition planning process for future construction projects.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations, in coordination with the Bureau of Administration, implement the use of “sources sought” notices for construction contracts approximately 9-12 months in advance of issuing the Phase I notice of Solicitation of Submissions for

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-2-

Contractor Prequalification to ensure the Department of State is initiating dialogue with industry stakeholders early in the acquisition process.

**OBO Response:** OBO concurs with the intent of the recommendation to implement the use of “sources sought” notices as an additional tool for early engagement with industry on construction projects. OBO remains committed to promote competition through its robust industry outreach program and through the collaboration and engagement with professional associations such as the Design-Build Institute of America (DBIA), Associated General Contractors of America (AGC), Construction Industry Institute (CII) as well as other methods of vendor and stakeholder outreach and education. As a result of the collaboration, OBO and AQM staggered dates for release of Requests for Proposals, explored the use of stipends to qualified offerors for travel to pre-bid conferences, and improved contract language. The results of these efforts were visible by increased contractor participation in bidding beginning with FY 2019 awards.

Although OBO agrees with the intent of the recommendation and will takes steps to address and implement, current market conditions and risk to tolerances, such as dynamic conditions in commodity pricing, years with high inflation, labor and supply chain constraints, combined with fixed price international contracts, may continue to impact contract competition.

OBO will integrate the acquisition planning step in the Integrated Master Schedule and provide specific project information to AQM to draft and post the sources sought announcement to SAM.gov in advance of posting the Prequalification/Market Research announcement. OBO and AQM will track what is received and report it to the OIG for their review and analysis. OBO may need to vary the 9-12 month timeframe pending project specific requirements.

OBO, working with AQM, will complete market research in accordance with FAR Part 10 and will use the many market research tools available including the publication of sources sought notices which will signal to industry intentions to initiate an acquisition which, in turn, may facilitate potential new contractor participation. Additionally, subcontractors may seek to join the teams of possible prime contractors. This could benefit project competition if prime contractors select subcontractors that may otherwise not attempt to seek Departmental construction work. This would also expand the available pool of qualified and capable firms to perform on current work as well as create a more robust, diverse population of firms who can facilitate achievement of subcontracting goals by our

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-3-

prime contractors and grow firms capable of taking on various, more focused efforts themselves in the future.

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## APPENDIX C: BUREAU OF ADMINISTRATION, OFFICE OF THE PROCUREMENT EXECUTIVE, RESPONSE

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**United States Department of State**

**Washington, D.C. 20520**

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August 10, 2022

### MEMORANDUM

TO: OIG/AUD – Norman P. Brown

FROM: A/OPE/AP – Sharon James, Acting SHARON D. JAMES EMM Professional Management

SUBJECT: Draft Report - Audit of Department of State Efforts to Promote Competition for Overseas Construction Projects

Thank you for the opportunity to provide an update to the subject report. The point of contact for this report is the A/OPE Front Office ([A-OPEFrontOfficeAssistants@state.gov](mailto:A-OPEFrontOfficeAssistants@state.gov)).

**Recommendation 3:** OIG recommends that the Bureau of Administration develop and implement a mechanism to require the use of the acquisition plan template attached to AQM Memorandum 15-10.

**Management Response to Draft Report:** The Office of the Procurement Executive (A/OPE) concurs with the intent of the OIG's recommendation. A/OPE has identified an alternative course of action to address the recommendation including rescinding AQM Memorandum 15-10 along with the development and implementation of a new policy in acquisition planning and the release of an Acquisition Plan template(s) for mandatory use.

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## ABBREVIATIONS

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AQM	Office of Acquisitions Management
CICA	Competition in Contracting Act of 1984
CO	Contracting Officer
DOSAR	Department of State Acquisition Regulation
eSRS	Electronic Subcontracting Reporting System
FAH	Foreign Affairs Handbook
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
GPE	government-wide point of entry
NCC	New Consulate Compound
NEC	New Embassy Compound
OBO	Bureau of Overseas Buildings Operations
OIG	Office of Inspector General
OPE	Bureau of Administration, Office of the Procurement Executive
OSDBU	Office of Small and Disadvantaged Business Utilization
PCR	Procurement Center Representative
RFP	Request for Proposal
SBA	Small Business Administration
SBSP	Small Business Subcontracting Plan
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers

## OIG AUDIT TEAM MEMBERS

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Denise Colchin, Division Director  
Contracts, Grants, and Infrastructure Division  
Office of Audits

Melissa Bauer, Audit Manager  
Contracts, Grants, and Infrastructure Division  
Office of Audits

Eric Covington, Senior Management Analyst  
Contracts, Grants, and Infrastructure Division  
Office of Audit

Brian Jones, Senior Auditor  
Contracts, Grants, and Infrastructure Division  
Office of Audits

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