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Office of Inspector General
United States Department of State

AUD-MERO-21-38

Office of Audits

July 2021

Audit of Department of State Compliance With Requirements Relating to Undefinitized Contract Actions

MIDDLE EAST REGION OPERATIONS

UNCLASSIFIED



HIGHLIGHTS

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What OIG Audited

An undefinitized contract action (UCA) is an agreement between the Government and the contractor that allows the contractor to begin work and incur costs before the Government and the contractor have reached a final agreement on contract terms, specifications, or price when there is insufficient time to use normal contracting vehicles. According to the Federal Acquisition Regulation (FAR) and Department of State (Department) policy, Contracting Officers must (1) receive preapproval before awarding a UCA, (2) create a negotiated definitization schedule, and (3) complete the definitization process within 180 days or before 40 percent of the work to be performed is completed, whichever is first.

The Office of Inspector General (OIG) conducted this audit to determine whether the Bureau of Administration, Office of the Procurement Executive (OPE), Office of Acquisitions Management (AQM), complied with Federal and Department guidelines in the application and execution of UCAs.

What OIG Recommends

OIG made four recommendations to OPE that are intended to improve the designation, reporting, and execution of UCAs. On the basis of the Bureau of Administration's response to a draft of this report and actions planned, OIG considers all four recommendations resolved, pending further action. A synopsis of management's comments and OIG's reply follow each recommendation in the Audit Results section of this report. The bureau's response to a draft of this report is reprinted in its entirety in Appendix C.

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OFFICE OF AUDITS

MIDDLE EAST REGION OPERATIONS

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What OIG Found

AQM did not fully comply with the FAR in the application and execution of UCAs. Specifically, OIG examined a sample of 48 high-value Department contracts and task orders designated in Federal Procurement Data System – Next Generation (FPDS-NG) as UCAs and found that 36 of 48 (75 percent) had been improperly designated and recorded as UCAs. For example, OIG determined that 25 of 36 (69 percent) were improperly designated UCAs when contracting personnel inadvertently selected the wrong contract designation from a drop-down menu while manually entering data into FPDS-NG. The errors occurred for multiple reasons including (1) the Department's Global Financial Management System does not automatically transfer information for 52 procurement data elements, including UCAs, to FPDS-NG thereby requiring manual input; (2) the menu for manually entering UCA information into FPDS-NG is confusing and prone to error; and (3) the Department has not implemented a process to verify that UCA information entered in FPDS-NG is correct. In addition, OIG determined that 11 of 36 (31 percent) improper designations were due to confusing guidance about what constituted a UCA. Because of these deficiencies, the Department has limited assurance the data entered in FPDS-NG about UCAs and reported to the public are accurate.

With respect to the 12 contracts activities reviewed for this audit that were correctly recorded as UCAs in FPDS-NG, 11 of 12 (92 percent) did not fully comply with Federal and Department guidelines. For example, Contracting Officers did not receive preapproval from the head of the contracting activity before awarding 8 of 12 (67 percent) of the UCAs, nor did they create a definitization schedule for 5 of 12 (42 percent) of the UCAs, as required. These deficiencies occurred, at least in part, because Department guidance governing UCAs is not always clear or followed. In addition, the deficiencies could be attributed to limited Department training on the execution of UCAs. Until these deficiencies are corrected, the Department is at increased risk of paying greater costs for contracted goods and services than necessary.

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OBJECTIVE

The Office of Inspector General (OIG) conducted this audit to determine whether the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), complied with Federal and Department of State (Department) guidelines in the application and execution of undefinitized contract actions (UCAs).

BACKGROUND

Federal and Department Requirements and Guidance for Undefinitized Contract Actions

Department procurement guidance defines UCAs as “actions where the contract terms and conditions, specifications, or prices have not been agreed to prior to commencing performance.”¹ UCAs are used when negotiation of a definitive contract is not possible in sufficient time to meet the Government’s requirements and the Government’s interest demands that the contractor begin work immediately.² Examples of UCAs include “letter contracts, orders under basic ordering agreements for which the price was not agreed upon prior to work commencing and adding tasks to existing contracts or delivery orders immediately with a settlement to be agreed upon later.”³

Federal Acquisition Regulation (FAR) Part 16.603-3, “Limitations,” states that a “letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable.” FAR Part 16.603-2(c), “Application,” states that letter contracts are required to contain a negotiated definitization schedule including, among other requirements, a target date for definitization, which shall be the earliest practicable date. Specifically, FAR 16.603-2(c) requires that the schedule provide for definitization within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. The FAR does not directly address other types of UCAs.

Once a UCA is awarded, the contractor immediately begins working and the Government must reimburse the contractor’s allowable costs during the undefinitized period.⁴ According to the Government Accountability Office, the Government bears most of the cost and risk during the

¹ AQM Memorandum 17-01, “Definitization of Letter Contracts/Undefinitized Contract Actions (UCA)” 1 (September 2019).

² Ibid.

³ Ibid. According to FAR 16.603-1, “Description,” a letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. According to FAR 16.703(a), “Basic ordering agreements,” a basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

⁴ FAR 16.603-4(c), “Contract clauses.”

undefinitized period and risks paying increased costs during this period because the contractor has little incentive to control costs, creating a potential for wasted taxpayer dollars.⁵ Furthermore, delayed definitization transfers additional cost and performance risk to the Government because contractors are typically reimbursed for all allowable costs incurred before definitization.⁶

Department Roles and Responsibilities

The Office of the Procurement Executive (OPE) establishes the Department's acquisition and Federal assistance policies, regulations, and procedures. Within OPE, AQM manages, plans, and directs the Department's acquisition programs and conducts contract operations in support of activities worldwide. AQM provides the full range of professional contract management services including acquisition planning, contract negotiations, cost and price analysis, and contract administration. In accordance with 14 Foreign Affairs Manual (FAM) 212(d)(2), "Acquisition Management," OPE has designated a head of the contracting activity for AQM. The head of the contracting activity manages contracting activity and is responsible for many decisions in the acquisition process, as prescribed by the FAR and other guidance.⁷

Federal Procurement Reporting Requirements

When contracting personnel initiate a contracting action, the data are recorded in the Global Financial Management System (GFMS), which is the Department's accounting system of record administered by the Bureau of the Comptroller and Global Financial Services.⁸ Once GFMS is populated, its data are uploaded to the Federal Procurement Data System – Next Generation (FPDS-NG), which is the U.S. Government-wide system of record for procurement.⁹ Contracting personnel amend the data in FPDS-NG with additional information to include whether the contracting action is a UCA. The information from FPDS-NG is then displayed publicly on the website www.USASpending.gov (USASpending), which was established to comply with the Federal Funding Accountability and Transparency Act of 2006¹⁰ and the Digital Accountability and Transparency Act of 2014,¹¹ to give the public access to information on how tax dollars are spent.

⁵ Government Accountability Office, *DEFENSE CONTRACTING: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met* 1 (GAO-07-559, June 2007).

⁶ *Ibid.*, at 4.

⁷ 14 FAM 212(b), "Acquisition Management."

⁸ GFMS was designed to provide for financial accounting, funds control, management accounting, and financial processes.

⁹ FPDS-NG is operated by the General Services Administration. Agencies are required to report all contracts with an estimated value greater than \$10,000—and modifications to those contracts—into FPDS-NG.

¹⁰ Pub. L. No. 109-282, September 26, 2006.

¹¹ Pub. L. No. 113-101, May 9, 2014.

AUDIT RESULTS

Finding A: Contracts and Task Orders Were Improperly Designated and Recorded as Undefined Contract Actions

OIG found that AQM did not fully comply with the FAR in the application and execution of UCAs. Specifically, OIG reviewed a nonstatistical sample of 48 high-value Department contracts and task orders designated and recorded as UCAs in FPDS-NG and found that 36 of 48 (75 percent) had been improperly designated and recorded as UCAs. For example, OIG determined that 25 of 36 (69 percent) were improperly designated UCAs when contracting personnel inadvertently selected the wrong designation from a drop-down menu while manually entering data into FPDS-NG. The errors occurred for multiple reasons including (1) the GFMS does not automatically transfer information for 52 procurement data elements, including UCAs, to FPDS-NG thereby requiring manual input; (2) the menu for manually entering UCA information into FPDS-NG is confusing and prone to error; and (3) the Department has not implemented a process to verify that UCA information entered in FPDS-NG is correct. In addition, OIG determined that 11 of 36 (31 percent) improper designations were due to confusing guidance about what constituted a UCA. Because of these deficiencies, the Department has limited assurance the data entered in FPDS-NG about UCAs and reported to Congress and the public via USASpending are accurate. Furthermore, Department management is disadvantaged by not knowing the true number of UCAs being executed.

According to the FAR, “[FPDS-NG] provides a comprehensive web-based tool for agencies to report contract actions” with the resulting data providing “[a] basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public.”¹² The data that the system contains are a means of measuring and assessing the effect of Federal contracting on the Nation's economy and a means of measuring and assessing the effect of other policy and management initiatives.¹³ Additionally, according to FAR 4.604(b)(1), “Responsibilities,” Contracting Officers are responsible for the accuracy of information that they upload into FPDS-NG.

OIG found that Contracting Officers did not accurately report information in FPDS-NG for UCAs. OIG examined a nonstatistical sample comprised of the 48 highest-value Department contracts and task orders identified in FPDS-NG as having at least one UCA.¹⁴ OIG determined that 36 of 48 (75 percent) contracts and task orders had actions improperly designated as UCAs. OIG determined that 25 of the 36 (69 percent) improper designations were caused by contracting personnel inadvertently selecting the wrong designation from a drop-down menu in FPDS-NG while manually entering data into the system. Unlike data on contract value or the contract performance period, data on UCAs for Department contracts are not transferred automatically from GFMS to FPDS-NG. As a result, Department personnel must subsequently enter the data

¹² FAR 4.602(a), “General.”

¹³ Ibid.

¹⁴ See Appendix A for a detailed discussion of OIG’s sampling methodology. See Appendix B for a complete list of the 48 contracts and task orders included in OIG’s sample.

manually into FPDS-NG by completing a field for “Undefinitized Action,” where a drop-down menu prompts a user to select either “Letter Contract,” “No,” or “Other Undefinitized Action.” Contracting Officers reported that the layout of this menu makes it is easy to mistakenly select the incorrect designation.¹⁵

UCAs are generally uncommon; therefore, the most selected option is “No.” However, that selection is neither first nor last on the drop-down menu, but instead between “Letter Contract” and “Other Undefinitized Action.” Additionally, when submitting an entry, FPDS-NG does not prompt the user to verify that a UCA designation is correct. Furthermore, the Department has no requirement that personnel verify that data entered manually into FPDS-NG are correct and match corresponding entries in GFMS. Figure 1 shows a screenshot of the “Undefinitized Action” drop-down menu in FPDS-NG that a user must complete for each contract and modification.



Figure 1: Drop-down menu for populating a UCA in FPDS-NG. (FPDS-NG, March 1, 2021)

In addition, 11 of the 36 (31 percent) improper designations were due to Contracting Officers’ confusion about what constituted a UCA. According to contracting personnel interviewed for this audit, Contracting Officers’ confusion, and limited Department guidance on how to distinguish a UCA from other similar contractual instruments, contributed to the improper designation of UCAs in FPDS-NG. Contracting Officers reported that certain contracting vehicles share similar terminology with UCAs. Specifically, according to the FAR, when compensation for a change order has not yet been agreed upon, the change order is termed “unpriced” and has not been “definitized.”¹⁶ Thus, according to Contracting Officers, they erroneously designated unpriced change orders as “undefinitized” contract actions in FPDS-NG. Moreover, although the Department guidance and the FAR, when read collectively, differentiate UCAs from unpriced change orders by defining UCAs as work that is outside the scope of the contract¹⁷ and by defining change orders as within the scope of the contract,¹⁸ the Department’s guidance is not clear when read on its own.¹⁹

For example, AQM Memorandum 17-01 defines a UCA broadly without mentioning UCA work being outside the original contract scope, stating that UCAs are “actions where the contract

¹⁵ Of the 25 inadvertent designations, contracting personnel selected “Other Undefinitized Action” instead of “No” in 24 instances and selected “Letter Contract” instead of “No” in 1 instance.

¹⁶ FAR 43.204(b)(3), “Administration.”

¹⁷ AQM Memorandum 17-01, at 1.

¹⁸ FAR 43.201(a), “General.”

¹⁹ As a point of comparison, the Department of Defense’s Defense Federal Acquisition Regulation Supplement 217.7401(3), “Definitions,” specifically defines a UCA as not including “change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract.”

terms and conditions, specifications, or prices have not been agreed to prior to commencing performance.”²⁰ The definition of UCA is then narrowed as the Memorandum instructs personnel to “take care not to authorize out of scope work on awarded contracts without getting a [determination and findings] approved by the [head of contracting activity] first.”²¹ Although this statement does not directly state that UCAs are out-of-scope work, the context of these requirements implies that UCAs are out-of-scope work.

The purpose of transferring procurement information from GFMS to FPDS-NG is to ensure transparency of Department spending with outside parties, including Congress, the Office of Management and Budget, and, ultimately, the public. Congress emphasized the importance of accurate data in the Digital Accountability and Transparency Act of 2014, the purpose of which includes “linking Federal contract, loan, and grant spending information to programs of Federal agencies to enable taxpayers and policy makers to track Federal spending more effectively.”²² The current guidance on UCAs and the process for manually entering information into FPDS-NG resulted in the Department sharing inaccurate procurement information. As a result, the Department has limited assurance that the data recorded in FPDS-NG regarding UCAs are accurate, and that information shared with Congress and the public in USASpending is correct. Furthermore, Department management is disadvantaged by not knowing the true number of UCAs being executed if it reviews or analyzes contract data related to UCAs. Until these deficiencies are addressed, the Department will continue to provide inaccurate information to Congress, the Office of Management and Budget, and the public on how tax dollars are spent. Therefore, OIG is offering the following recommendations to address the identified deficiencies.

Recommendation 1: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, in coordination with Bureau of the Comptroller and Global Financial Services and the General Services Administration (a) determine the feasibility and cost-effectiveness of establishing a process to transfer all relevant data, including undefinitized contract actions, directly from Global Financial Management System to the Federal Procurement Data System – Next Generation; and (b) if determined to be feasible and cost-effective, take the necessary actions to establish the process.

Management Response: The Bureau of Administration concurred with the recommendation, stating that OPE will meet with the Bureau of the Comptroller and Global Financial Services “to identify the requirements information necessary to provide cost information and implementation timeframe for a system enhancement to GFMS. Further internal and external meetings will be scheduled to discuss the feasibility and cost effectiveness of establishing a process to transfer all relevant data directly from GFMS to FPDS-NG.”

OIG Reply: On the basis of the Bureau of Administration’s concurrence with the recommendation and planned actions, OIG considers this recommendation resolved,

²⁰ AQM Memorandum 17-01, at 1.

²¹ Ibid., at 1.

²² Pub. L. No. 113-101, May 9, 2014.

pending further action. The recommendation will be closed when OIG receives documentation demonstrating that OPE and the Bureau of the Comptroller and Global Financial Services (a) determined the feasibility and cost-effectiveness of establishing a process to transfer all relevant data, including UCAs, directly from GFMS to FPDS-NG, and (b) if determined to be feasible and cost-effective, has taken the necessary actions to establish the process.

Recommendation 2: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, develop guidance for the manual entry of procurement information into the Federal Procurement Data System – Next Generation to reduce the likelihood that inaccurate information related to undefinitized contract actions is recorded.

Management Response: The Bureau of Administration concurred with the recommendation, stating, “During an interim period while OIG Recommendation 1 is explored, [OPE] will review and revise existing training and guidance materials to specifically address [UCAs].”

OIG Reply: On the basis of the Bureau of Administration’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 OPE developed guidance for the manual entry of procurement information into FPDS-NG.

Finding B: Federal Department Guidelines Were Not Always Followed When Executing Undefinitized Contract Actions

From the nonstatistical sample of 48 high-value Department contracts and task orders that OIG reviewed for this audit, OIG confirmed that 12 contract activities were correctly recorded as UCAs, specifically as letter contracts, in FPDS-NG. However, OIG also found that 11 of 12 (92 percent) of the letter contracts did not fully comply with Federal and Department guidelines. Specifically, Contracting Officers did not receive preapproval from the head of the contracting activity before awarding 8 of 12 (67 percent) of the letter contracts, nor did they create a definitization schedule for 5 of 12 (42 percent) of the letter contracts, as required. Finally, 3 of 12 (25 percent) of the letter contracts exceeded the 180-day limit for definitization by an average of 143 days. These deficiencies occurred, at least in part, because Department guidance governing UCAs is not always clear or followed. In addition, the deficiencies could be attributed to limited Department training on the execution of UCAs. Until these deficiencies are corrected, the Department is at increased risk of paying greater costs for contracted goods and services than necessary. Moreover, during the undefinitized period, the contractor has little incentive to control costs thereby creating a potential for wasted taxpayer dollars.

OIG requested documentation demonstrating preapproval of UCAs from the head of the contracting activity and found that the assigned Contracting Officers did not receive preapproval before awarding 8 of the 12 (67 percent) letter contracts. OIG also found that documentation for five of these eight letter contracts did not satisfy the FAR requirements

because it either lacked signatures from the head of the contracting activity, did not specifically address the undefinitized nature of the contract or task order, or both.²³ For the remaining three letter contracts, AQM did not provide any head of the contracting activity approval documentation.

According to the FAR, a “letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable.”²⁴ The FAR also states each letter contract shall contain a negotiated definitization schedule that includes (1) the dates for submission of the contractor's price proposal, required certified cost or pricing data and data other than certified cost or pricing data; and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization.²⁵ The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first.²⁶

OIG found that the Contracting Officer did not create the required negotiated definitization schedule before awarding 5 of the 12 (42 percent) letter contracts. For the seven definitization schedules that were created, three fully complied with the FAR — i.e., each contained a date for submission of the contractor’s price proposal, a date for the start of negotiations, and a target date for definitization. However, four of the seven schedules did not contain either dates for submission of the contractor’s price proposal or a date for the start of negotiations, as the FAR requires.²⁷

In addition, for 3 of the 12 (25 percent) letter contracts, OIG found that contracting personnel had not complied with FAR²⁸ and Department requirements²⁹ to definitize contracts within 180 days or prior to the contractor completing 40 percent of the work.³⁰ These definitization delays ranged from 55 days to 296 days in excess of the allowed time. Table 1 shows whether each contract or task order met Federal and Department guidelines, received preapproval, had a definitization schedule established, and was definitized within 180 days.

²³ For the five letter contracts that did not satisfy FAR requirements, OIG received: one determination and findings memorandum for the use of a letter contract that was unsigned; one determination and findings memorandum that approved compelling urgency exceeding 1 year, but not for the use of a letter contract; one justification and approval memorandum for other than full and open competition, but not for the use of a letter contract; and one determination and findings memorandum for a base letter contract that was both unsigned by the head of contract activity and that did not mention the two letter task orders in the OIG sample.

²⁴ FAR 16.603-3, “Limitations.”

²⁵ FAR 16.603-2(c), “Application.”

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ AQM Memorandum 17-01, at 1.

³⁰ OIG previously reported on untimely definitization of contracts (see Appendix A, “Prior Oversight Reports” section, for details).

Table 1: Compliance With Federal and Department Guidelines for Selected Contracts and Task Orders With Undefined Contract Actions

Contract	Undefined* Contract Actions	Complied With All Guidelines	Received Preapproval	Definitization Schedule Established	180-Day Limit Met
SAQMMA15F0684	0, P25	No	No	No	Yes
SAQMMA15F1245	0, M04, M05, M10, M11	No	Yes	Yes	No
SAQMMA16F5713	0, M01, M02, M03, M04	No	No	Yes	Yes
SAQMMA17C0051	0, M01, M02, M03, M04, M06, M07, M08	No	Yes	Yes	No
SAQMMA17C0072	0	Yes	Yes	Yes	Yes
SAQMMA17F0703	0	No	No	Yes	Yes
SAQMMA17F0746	0	No	Yes	Yes	No
SAQMMA17C0286	0	No	No	Yes	Yes
SAQMMA17F4567	0	No	No	No	Yes
SAQMMA17F4568	0	No	No	No	Yes
19AQMM18F0318	0	No	No	No	Yes
19AQMM19C0059	0	No	No	No	Yes

* Initial awards are indicated by "0." "M" or "P" indicates a modification to an existing award.

Source: OIG generated based on analysis of Department contract award and modification documentation and FPDS-NG contract action reports between October 2016 and May 2020.

Similar to the confusion regarding the designation of UCAs within FPDS-NG, contracting personnel did not always understand and follow UCA requirements. Some Contracting Officers reported that they did not know that the head of the contracting activity must approve a UCA. Instead, these Contracting Officers stated they believed that it was necessary to obtain only their immediate supervisor's approval. One Contracting Officer did not know whether undefinitized task orders under an undefinitized contract needed their own approvals and definitization schedules, or if the approval and definitization schedule for the base contract applied to the task orders.

Moreover, Contracting Officers reported they received little training on the topic of UCAs. Some Contracting Officers said the topic was covered very briefly in their Federal Acquisition Certification in Contracting Level 1 training; others did not remember the topic being covered at all.³¹ Senior AQM officials reported that the Department does not offer training specific to UCAs and their requirements or on other similar contract vehicles like unpriced change orders.

³¹ The Federal Acquisition Certification in Contracting Program is for contracting professionals in the Federal Government performing contracting and procurement activities and functions. The training applies to all executive agencies, except the Department of Defense. The Federal Acquisition Certification in Contracting Program contains three levels of certification that provide the required education, training, and experience for contracting professionals.

Nevertheless, failure to properly implement UCAs can lead to higher costs and wasteful spending. In 2007, the Government Accountability Office reported that the Government bears the risk of paying higher costs during an undefinitized period because contractors have little incentive to control costs, creating a potential for wasted taxpayer dollars.³² Furthermore, delayed definitization transfers additional cost and performance risk to the Government because contractors are typically reimbursed for all allowable costs incurred before definitization.³³ OIG has also determined that UCAs can lead to increased costs.

Specifically, in July 2015, OIG reported that the failure to definitize contract actions in a timely and accurate manner for an aviation support services contract affected the funding bureau's budgetary planning with funding levels left unapproved and costs allowed to increase.³⁴ The report also noted that a failure to definitize contract actions in a timely and accurate manner could lead to unanticipated costs with the contractor reimbursed for items that were later not reimbursed for in the definitized contract. OIG also reported in July 2015 and August 2018 that the respective contracts reviewed for those audits had undefinitized periods that exceeded the 180-day requirement.³⁵ As such, the deficiencies noted with executing UCAs have been a long-standing challenge for Department Contracting Officers.

OIG concludes that the deficiencies identified in this report occurred, at least in part, because Department guidance governing UCAs is not always understood or followed. In addition, the deficiencies could be attributed to limited Department training on the execution of UCAs. Until these deficiencies are corrected, the Department is at increased risk of paying greater costs for contracted goods and services than necessary. Moreover, during the undefinitized period, the contractor has little incentive to control costs thereby creating a potential for wasted taxpayer dollars. OIG is therefore offering the following recommendations.

Recommendation 3: OIG recommends that the Bureau of Administration, Office of the Procurement Executive revise and reissue Office of Acquisition Management, "Definitization of Letter Contracts/Undefined Contract Actions (UCA)," AQM Memorandum 17-01, September 2019, to (a) clarify the definition of what constitutes an undefinitized contract action and distinguishes it from similar contracting instruments, to include unpriced change orders and (b) emphasize, at a minimum, that UCAs must be approved by the head of contracting activity and are required to contain a negotiated definitization schedule including, among other requirements, a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.

³² GAO-07-559, June 2007, at 1.

³³ *Ibid.*, at 4.

³⁴ OIG, *Audit of the Bureau of International Narcotics and Law Enforcement Affairs Aviation Support Services Contract in Iraq* 20 (AUD-MERO-15-35, July 2015).

³⁵ *Ibid.*, at 17; OIG, *Audit of Cost Controls Within the Baghdad Life Support Services Contract Food Services Task Order SAQMMA14F0721 8* (AUD-MERO-18-55, August 2018).

Management Response: The Bureau of Administration concurred with the recommendation, stating that OPE “will revise current Acquisition Memorandum 17-01 and issue a Procurement Information Bulletin with updated policy guidance. The guidance will (a) clarify the definition of undefinitized contract action (UCA) to distinguish it from similar contract instruments, to include unpriced change orders and (b) reiterate that all UCAs must be approved by the Head of Contracting Activity (HCA) and are required to contain a negotiated definitization schedule including a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.”

OIG Reply: On the basis of the Bureau of Administration’s concurrence with the recommendation and planned actions, OIG considers this recommendation resolved, pending further action. The recommendation will be closed when OIG receives the revised Acquisition Memorandum 17-01 and a Procurement Information Bulletin that (a) clarifies the definition of UCAs and (b) reiterates that all UCAs must be approved by the head of contracting activity and are required to contain a negotiated definitization schedule, including a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.

Recommendation 4: OIG recommends that that the Bureau of Administration, Office of the Procurement Executive, develop and execute training on undefinitized contract actions to ensure that contracting personnel understand their issuing requirement, as well as the distinction between undefinitized contract actions and similar contracting instruments, such as unpriced change orders.

Management Response: The Bureau of Administration concurred with the recommendation, stating that “[a]n in-house training course will be developed and training provided on [UCAs] to ensure that contracting personnel understand their issuing requirement, as well as the distinction between [UCAs] and similar contracting instruments, such as unpriced change orders.”

OIG Reply: On the basis of the Bureau of Administration’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 OPE has developed and executed training on UCA-issuing requirements, as well as the distinction between UCAs and similar contracting instruments.

RECOMMENDATIONS

Recommendation 1: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, in coordination with Bureau of the Comptroller and Global Financial Services and the General Services Administration (a) determine the feasibility and cost-effectiveness of establishing a process to transfer all relevant data, including undefinitized contract actions, directly from Global Financial Management System to the Federal Procurement Data System – Next Generation; and (b) if determined to be feasible and cost-effective, take the necessary actions to establish the process.

Recommendation 2: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, develop guidance for the manual entry of procurement information into the Federal Procurement Data System – Next Generation to reduce the likelihood that inaccurate information related to undefinitized contract actions is recorded.

Recommendation 3: OIG recommends that the Bureau of Administration, Office of the Procurement Executive revise and reissue Office of Acquisition Management, “Definitization of Letter Contracts/Undefined Contract Actions (UCA),” AQM Memorandum 17-01, September 2019, to (a) clarify the definition of what constitutes an undefinitized contract action and distinguishes it from similar contracting instruments, to include unpriced change orders and (b) emphasize, at a minimum, that UCAs must be approved by the head of contracting activity and are required to contain a negotiated definitization schedule including, among other requirements, a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.

Recommendation 4: OIG recommends that that the Bureau of Administration, Office of the Procurement Executive, develop and execute training on undefinitized contract actions to ensure that contracting personnel understand their issuing requirement, as well as the distinction between undefinitized contract actions and similar contracting instruments, such as unpriced change orders.

APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

The Office of Audits within the Office of Inspector General (OIG) for the Department of State (Department) conducted this audit to determine whether the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), complied with Federal and Department guidelines in the application and execution of undefinitized contract actions (UCAs).

OIG conducted this performance audit from October 2020 to May 2021 in Washington, DC, in accordance with generally accepted government auditing standards. Those standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. OIG faced challenges in completing this work because of the COVID-19 pandemic. These challenges included limitations on in-person meetings, difficulty accessing information, and related difficulties within the Department that affected its ability to respond to OIG requests for information in a timely manner. Despite the challenges, OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives. This report relates to Overseas Contingency Operations Freedom's Sentinel and Inherent Resolve because the sample of contracts reviewed for the audit included contracts and task orders performed in Afghanistan and Iraq and was completed in accordance with OIG's oversight responsibilities described in Section 8L of the Inspector General Act of 1978, as amended.

To obtain background information for this audit, OIG researched and reviewed Federal laws and regulations, as well as internal Department policies and procedures and other guidance. Specifically, OIG reviewed the Federal Acquisition Regulation; the Foreign Affairs Manual; Department of State acquisition regulations; and AQM memoranda and procurement information bulletins providing guidance on acquisition management.

To determine whether AQM was administering and overseeing the definitization of contracts and subsequent modifications in accordance with acquisition regulations and Department requirements, OIG analyzed data recorded on the website www.USASpending.gov (USASpending) and Federal Procurement Data System – Next Generation (FPDS-NG). OIG selected a nonstatistical sample of 48 contracts, task orders, and associated modifications to determine if a contract or a modification was properly designated within FPDS-NG as a "UCA." OIG additionally analyzed contract documentation, including contract awards and modifications, determination and findings memoranda, definitization schedules, and approvals. OIG coordinated with or interviewed officials from the Bureau of Administration, Office of Procurement Executive, and Contracting Officers and supervisors for the selected undefinitized contracts.

Data Reliability

OIG used computer-processed data to support findings and conclusions presented in this report. Specifically, OIG selected award data from the USASpending website, which is

maintained by the Department of the Treasury. Previous audits showed that the USASpending website was a reliable means of selecting award data.¹ The reported reliability of data extended to the basic award data, including places and periods of performance and funds obligated. Separately, OIG obtained contract-related documentation from FPDS-NG, Department's Global Financial Management System, and Department personnel for a sample of 48 contracts and task orders.² This documentation included the contract action reports, contract awards and modifications. OIG determined that the documentation provided by the Department was sufficiently reliable to support the findings and recommendations contained in this report. However, information gathered during this audit specifically showed that the UCA information within FPDS-NG was not accurate because of the manual nature of that entry, as reported in the Audit Results section of this report.

Work Related to Internal Control

During the audit, OIG considered the components of internal control included in the *Standards for Internal Control in the Federal Government*³ to identify internal controls and underlying principles that were significant to the audit objectives.

For this audit, OIG concluded that three of five internal control components were significant: (1) Control Activities, which includes the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, to include the entity's information system; (2) Information and Communication, which includes activities to ensure management uses quality information to achieve the entity's objectives; and (3) Monitoring, which relates to activities that 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 principles related to the selected components were significant to the audit objective, as described in Table A.1.

¹ OIG, *Audit of the Bureau of Near Eastern Affairs Financial Management of Grants and Cooperative Agreements Supporting the Middle East Partnership Initiative* (AUD-MERO-16-42, July 2016); OIG, *Audit of the Bureau of Near Eastern Affairs Middle East Partnership Initiative* (AUD-MERO-17-08, November 2016); and OIG, *Audit of the Department of State Implementation of Policies Intended to Counter Violent Extremism* (AUD-MERO-19-27, June 2019).

² See Appendix B for a complete list of the 48 contracts and task orders included in OIG's sample.

³ 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

Components	Principles
Control Activities	<ul style="list-style-type: none"> • Management should design control activities to achieve objectives and respond to risks. • Management should implement control activities through policies.
Information and Communication	<ul style="list-style-type: none"> • Management should use quality information to achieve the entity's objectives. • Management should internally/externally communicate the necessary quality information to achieve the entity's objectives.
Monitoring	<ul style="list-style-type: none"> • Management should establish and operate monitoring activities of the internal control system and evaluate the results. • Management should remediate identified internal control deficiencies on a timely basis.

Source: OIG generated based on principles from GAO-14-704G.

OIG performed procedures to test the design and implementation of those internal controls. Specifically, OIG reviewed contract documentation to determine whether AQM, in accordance with FAR and Department requirements, generated justifications and definitization schedules for UCAs and definitized contracts within a compliant timeframe. OIG also reviewed contract action entries in FPDS-NG and interviewed Department officials to determine the accuracy and consistency of the UCA information within FPDS-NG.

Internal control deficiencies that were identified during the audit were: populating inaccurate information on UCAs into FPDS-NG; not receiving appropriate approvals for UCAs; not definitizing contracts within the appropriate timeframe; and not creating definitization schedules for UCAs. Details of the deficiencies are presented in the Audit Results section of this report.

Sampling Methodology

OIG examined documentation for a judgmental sample of 48 contracts containing 71 UCAs to determine whether the documentation included justifications and whether they were subsequently definitized in accordance with the FAR and Department guidance. To select this sample, OIG searched USASpending for contracts awarded from October 2016 to May 2020 and found a total population of 243,191 contract action reports. From this total, OIG excluded blanket purchase agreements and purchase orders, resulting in 109,832 contract action reports, with a total 2,547 contract action reports recorded as UCAs that were collectively valued at \$366 million. From this subpopulation, OIG selected the 48 highest-value contracts, which had 927 contract action reports valued at \$2,250 million including 82 undefinitized contract action reports valued at \$259 million. The 48 contracts represented 5 percent of the total number of contracts identified as having at least 1 UCA. Table A.2 summarizes the number and value of contract action reports and UCAs from October 2016 to May 2020.

Table A.2: Contract Action Reports and Undefined Contract Actions from USASpending (Awarded From October 2016 to May 2020) in OIG Sample

Description	Contract Action Reports	Value (in Millions)
All Contracts, October 2016 to May 2020	243,191	\$33,964
Contracts Without Blanket Purchase Agreements and Purchase Orders	109,832	\$32,970
Undefined Contract Actions in Subpopulation*	2,547	\$366
Contract Action Reports in OIG Sample	927	\$2,250
Undefined Contract Actions in OIG Sample	82	\$259

* Subpopulation is contracts without blanket purchase agreements and purchase orders.

Source: OIG generated based on analysis of USASpending data involving UCAs awarded by the Department from October 2016 to May 2020.

Prior Office of Inspector General Reports

In the *Audit of Task Order for the Union III Compound Awarded Under the Operations and Maintenance Support Services Contract* (AUD-MERO-16-41, July 2016), OIG evaluated whether the Department paid the contractor for the U.S. Embassy Baghdad, Iraq, operations and maintenance contract in accordance with authoritative guidance and the contract terms and conditions. OIG reported that the Office of Acquisitions Management within the Office of Logistics Management did not comply with negotiated schedules to definitize the task orders to comply with statutory and Department requirements. The Union III Compound is the main headquarters of the coalition and Iraqi forces in their campaign against the Islamic State. The statutory and Department requirements mandate that task orders must be definitized within 180 days or prior to the contractor completing 40 percent of the work to be performed.

In the *Audit of the Bureau of International Narcotics and Law Enforcement Affairs Aviation Support Services Contract in Iraq* (AUD-MERO-15-35, July 2015) and *Audit of Cost Controls Within the Baghdad Life Support Services Contract Food Services Task Order SAQMMA14F0721* (AUD-MERO-18-55, August 2018), OIG reported that the respective contracts reviewed had undefinitized periods that exceeded the 180-day requirement.

APPENDIX B: CONTRACTS AND TASK ORDERS SAMPLED

Table B.1: Contract Action Reports and Undefined Contract Actions Included in Audit Sample (Awarded From October 2017 to June 2020)

Award Number	Value* (\$ in Millions)	Total Contract Action Reports	Reported Undefined Contract Action Reports	Confirmed Undefined Contract Action Reports
19AQMM18C0003	35.5	13	1	
19AQMM18C0052	10.6	27	1	
19AQMM18C0060	7.2	5	1	
19AQMM18C0208	61.8	9	2	
19AQMM18F0016	25.4	14	5	
19AQMM18F0318	17.2	9	1	1
19AQMM18F0695	14.9	11	1	
19AQMM18F0845	220.3	32	7	
19AQMM18F3536	19.5	11	2	
19AQMM18F3648	6.7	12	1	
19AQMM19C0059	7.3	10	1	1
19AQMM19C0144	3.0	4	1	
19AQMM19F0936	2.4	2	1	
19AQMM19F2812	17.7	4	1	
19AQMM20C0052	21.0	2	1	
19NP4018F0307	2.6	2	2	
SAQMMA10C0284	19.3	19	1	
SAQMMA11C0018	87.9	24	1	
SAQMMA12C0204	131.6	35	1	
SAQMMA13C0044	98.2	44	1	
SAQMMA14F0436	27.8	30	1	
SAQMMA14F0721	302.0	19	3	
SAQMMA14F0756	31.4	26	1	
SAQMMA14F0886	13.9	13	1	
SAQMMA14F1020	62.8	23	2	
SAQMMA14F1182	2.5	15	1	
SAQMMA14F1811	353.9	60	1	
SAQMMA15C0197	17.9	31	1	
SAQMMA15F0684	4.9	16	1	2
SAQMMA15F1245	255.5	25	1	5
SAQMMA16C0128	7.8	71	1	
SAQMMA16F5575	5.0	28	1	
SAQMMA16F5713	51.6	19	4	5
SAQMMA17C0051	7.1	31	8	7
SAQMMA17C0072	9.8	12	1	1

Award Number	Value* (\$ in Millions)	Total Contract Action Reports	Reported Unfinalized Contract Action Reports	Confirmed Unfinalized Contract Action Reports
SAQMMA17C0186	4.3	14	1	
SAQMMA17C0285	7.4	28	2	
SAQMMA17C0286	10.1	13	1	1
SAQMMA17F0154	9.2	15	1	
SAQMMA17F0342	3.0	28	1	
SAQMMA17F0703	5.5	6	1	1
SAQMMA17F0746	50.7	31	1	1
SAQMMA17F0792	26.9	23	2	
SAQMMA17F2407	11.3	20	1	
SAQMMA17F3775	139.1	21	4	
SAQMMA17F4567	7.0	8	1	1
SAQMMA17F4568	4.7	7	1	1
SSA70015C0003	7.2	5	4	
Total	2,250.4	927	82	27

* The value of the awards is the sum of the base and exercised options value for the scope period from Federal Procurement Data System – Next Generation.

Source: Office of Inspector General generated based on analysis of www.USASpending.gov data involving unfinalized contract actions awarded by the Department of State from October 2017 to June 2020.

APPENDIX C: BUREAU OF ADMINISTRATION RESPONSE



United States Department of State

Washington, D.C. 20520

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July 16, 2021

MEMORANDUM

TO: OIG/AUD – David G. Bernet

FROM: A/OPE/AQM – Vince Chaverin *VJC*

SUBJECT: OPE Management Response to the Audit of Department of State Compliance With Requirements Relating to Undefined Contract Actions (AUD-MERO-21-XX)

Thank you for the opportunity to provide a response to the subject report. The point of contact for this report is the A/OPE Front Office (A-OPEFrontOfficeAssistants@state.gov).

Recommendation 1: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, in coordination with Bureau of the Comptroller and Global Financial Services and the General Services Administration (a) determine the feasibility and cost-effectiveness of establishing a process to transfer all relevant data, including undefinitized contract actions, directly from Global Financial Management System to the Federal Procurement Data System – Next Generation; and (b) if determined to be feasible and cost-effective, take the necessary actions to establish the process.

Management Response to Draft Report (07/16/21): The Bureau of Administration, Office of the Procurement Executive (A/OPE) concurs with the OIG recommendation to determine the feasibility and cost-effectiveness of establishing a process to transfer all relevant data, including undefinitized contract actions, directly from Global Financial Management System (GFMS) to the Federal Procurement Data System – Next Generation (FPDS-NG). A coordination meeting between A/OPE and the Bureau of the Comptroller and Global Financial Services (CGFS) will be scheduled to identify the requirements information necessary to provide cost information and implementation timeframe for a system enhancement to GFMS. Further internal and external meetings will be scheduled to discuss the feasibility and cost effectiveness of establishing a process to transfer all relevant data directly from GFMS to FPDS-NG. Upon conclusion of those meetings and further analysis, next steps will be determined.

Recommendation 2: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, develop guidance for the manual entry of procurement information into the Federal Procurement Data System – Next Generation to reduce the likelihood that inaccurate information related to undefinitized contract actions is recorded.

Management Response to Draft Report (07/16/21): The Bureau of Administration, Office of the Procurement Executive (A/OPE) concurs with the OIG recommendation that guidance for the manual entry of procurement information be developed. During an interim period while OIG

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Recommendation 1 is explored, A/OPE will review and revise existing training and guidance materials to specifically address undefinitized contract actions.

Recommendation 3: OIG recommends that the Bureau of Administration, Office of the Procurement Executive revise and reissue Office of Acquisition Management, "Definitization of Letter Contracts/Undefined Contract Actions (UCA)," AQM Memorandum 17-01, September 2019, to (a) clarify the definition of what constitutes an undefinitized contract action and distinguishes it from similar contracting instruments, to include unpriced change orders and (b) emphasize, at a minimum, that UCAs must be approved by the head of contracting agency and are required to contain a negotiated definitization schedule including, among other requirements, a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.

Management Response to Draft Report (07/16/21): The Bureau of Administration, Office of the Procurement Executive concurs with the OIG recommendation and will revise current Acquisition Memorandum 17-01 and issue a Procurement Information Bulletin with updated policy guidance. The guidance will (a) clarify the definition of undefinitized contract action (UCA) to distinguish it from similar contract instruments, to include unpriced change orders and (b) reiterate that all UCAs must be approved by the Head of Contracting Activity (HCA) and are required to contain a negotiated definitization schedule including a target date for definitization, which shall be the earliest practicable date, but at least within 180 days after the date of the UCA or before completion of 40 percent of the work to be performed, whichever occurs first.

Recommendation 4: OIG recommends that the Bureau of Administration, Office of the Procurement Executive, develop and execute training on undefinitized contract actions to ensure that contracting personnel understand their issuing requirement, as well as the distinction between undefinitized contract actions and similar contracting instruments, such as unpriced change orders.

Management Response to Draft Report (07/16/21): The Bureau of Administration, Office of the Procurement Executive (A/OPE) concurs with the OIG recommendation. An in-house training course will be developed and training provided on undefinitized contract actions to ensure that contracting personnel understand their issuing requirement, as well as the distinction between undefinitized contract actions and similar contracting instruments, such as unpriced change orders. A/OPE will work to develop and deliver training in the second quarter of fiscal year 2022.

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Approved: A/OPE/AQM – Vince Chaverini VC

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ABBREVIATIONS

AQM	Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
GFMS	Global Financial Management System
OIG	Office of Inspector General
OPE	Bureau of Administration, Office of the Procurement Executive
UCA	Undefinitized Contract Action

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