



Office of Inspector General
United States Department of State

AUD-MERO-22-03

Office of Audits

October 2021

Audit of Noncompetitive Contracts in Support of Overseas Contingency Operations in Afghanistan and Iraq

MIDDLE EAST REGION OPERATIONS



HIGHLIGHTS

Office of Inspector General
United States Department of State

AUD-MERO-22-03

What OIG Audited

Over the past 5 years, the Department of State (Department) contracted for a wide array of services in Afghanistan and Iraq. The Competition in Contracting Act (CICA) requires full and open competition in awarding contracts, but there are certain exceptions under which an agency can award contracts using noncompetitive procedures. Federal Acquisition Regulation (FAR) and Department procedures require Contracting Officers to justify the reason for awarding noncompetitive contracts in writing.

The Office of Inspector General (OIG) conducted this audit to determine whether the Department (1) followed acquisition policy in awarding noncompetitive contracts in support of overseas contingency operations in Afghanistan and Iraq and (2) performed the required steps to ensure that the Department paid fair and reasonable prices for noncompetitively awarded contracts in Afghanistan and Iraq. To perform the audit, OIG reviewed 22 noncompetitive contracts awarded between FY 2016 and FY 2020 with a collective value of \$553 million.

What OIG Recommends

OIG made eight recommendations that are intended to improve the Department's administration of contracts in support of overseas contingency operations. On the basis of the Bureau of Administration's response and planned actions, OIG considers all eight 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. Management's response to a draft of this report is reprinted in its entirety in Appendix B.

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OFFICE OF AUDITS

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Audit of Noncompetitive Contracts in Support of Overseas Contingency Operations in Afghanistan and Iraq

What OIG Found

The Department did not fully follow acquisition policy when awarding noncompetitive contracts in support of contingency operations in Afghanistan and Iraq. Specifically, OIG found that Contracting Officers failed to document award decisions in accordance with acquisition policy for 2 of 22 (9 percent) of the noncompetitive contracts reviewed for this audit and did not publicly disclose the decisions for all 11 noncompetitive contracts requiring public notice because they were over the Simplified Acquisition Threshold (SAT) of \$250,000. The administrative shortfalls occurred, in part, because contracting personnel did not follow the Department's internal control procedures for documenting and publicly posting award decisions, and those controls lacked a compliance mechanism. Until these deficiencies are addressed, the Department will lack assurance that all noncompetitive award decisions have been properly documented to demonstrate the need for exceptions from full and open competition and that interested parties are notified when such decisions are made.

OIG also found that the Department did not fully adhere to required steps intended to ensure that fair and reasonable prices were paid on noncompetitive contract awards. Specifically, 2 of 22 contract files (9 percent) did not contain required fair and reasonable price determination statements to demonstrate that contracting personnel sufficiently considered price factors before making the award. In addition, for 10 of 11 (91 percent) of the contracts above the SAT, Contracting Officers did not adequately document the principal elements of the price negotiation required by the FAR. OIG attributes these lapses, at least in part, to both Contracting Officers' inattention to completing and maintaining required documentation and internal control operating weaknesses. Without sufficiently documenting all elements of the negotiation, Contracting Officers failed to both comply with FAR requirements and preserve key information about the award decision that could be of future value to the Department.

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OBJECTIVE

The Office of Inspector General (OIG) conducted this audit to determine whether the Department of State (Department) (1) followed acquisition policy in awarding noncompetitive contracts in support of overseas contingency operations in Afghanistan and Iraq and (2) performed the required steps to ensure that the Department paid fair and reasonable prices for noncompetitively awarded contracts in Afghanistan and Iraq.

BACKGROUND

Over the past 5 years, the Department contracted for a wide array of services in Afghanistan and Iraq such as life support, security, and programmatic support to strengthen the Afghan government. Between October 1, 2015, and June 30, 2020, the Department awarded 3,385 contracts for performance in Afghanistan and Iraq, valued at \$7.12 billion. Of these contracts, 607 contracts with a value of approximately \$770 million were awarded without competition.

Competition in Contracting Requirements

The Competition in Contracting Act (CICA) encourages competition in the award of all types of Government contracts.¹ CICA requires that Contracting Officers promote and provide for full and open competition in soliciting offers, awarding Government contracts, and using competitive procedures consistent with the need to fulfill the Government's requirements efficiently. Federal Acquisition Regulation (FAR) Part 6, "Competition Requirements," implements CICA by prescribing policies and procedures to promote full and open competition in the Federal acquisition process. CICA and the FAR provide seven exceptions under which an agency can award contracts using noncompetitive procedures:

1. Only one responsible source for goods or services.
2. Unusual or compelling urgency.
3. Maintenance of an industrial base.
4. Required by international agreement.
5. Statutory authorization or acquisition of brand-name items for resale.
6. National security.
7. Necessary in the public interest.

Under CICA, when agency officials award noncompetitive contracts, they must justify their reasons for doing so in writing and receive approval from a progressively higher-ranking series of officials,² with the level of authority of the final approver determined by the contract value at the time of award. CICA also requires that the justification "be made available for inspection by the public."³ In implementing CICA, FAR Part 6 prescribes the required contents and

¹ 41 U.S.C. § 253(1)(A) (2000).

² 41 U.S.C. § 253 (f).

³ Ibid.

approver levels for justifications and requirements for how they must be made available to the public.

CICA also states that “in order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.”⁴ CICA originally designated these special simplified procedures for “small purchases” below \$25,000; however, this limit has since been redefined as amounts not greater than the Simplified Acquisition Threshold (SAT), which is currently \$250,000.⁵ FAR Part 13, “Simplified Acquisition Procedures,” prescribes policies and procedures for acquiring supplies and services valued below the SAT, including sole-source contracts.⁶ For these awards, FAR Part 13 stipulates that Contracting Officers should include statements explaining the absence of competition, rather than a formal justification and approval.⁷

Department Roles and Responsibilities To Promote Competition

The Bureau of Administration, Office of the Procurement Executive (OPE), provides leadership for Department-wide acquisition policies, including developing, issuing, and maintaining acquisition regulations, procedures, and guidance, including those in the Foreign Affairs Handbook. Under the leadership of the Procurement Executive, the Office of Acquisitions Management (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 contract negotiations and cost and price analysis. AQM is responsible for implementing Federal and Department policy regarding noncompetitive contracts. Within AQM, Contracting Officers are the U.S. Government’s authorized agents for working with contractors and have sole authority to solicit proposals and negotiate, award, administer, modify, or terminate contracts as well as make related determinations and findings on behalf of the U.S. Government (i.e., the Department).⁸

Department Process for Allowing the Use of Noncompetitive Contracts

To implement CICA and FAR acquisition requirements for reviewing and approving requests to award contracts noncompetitively, OPE and AQM have written policies and procedures

⁴ 41 U.S.C. § 253 (g).

⁵ FAR 13.003(a), “Policy.” The National Defense Authorization Act of FY2018 increased the SAT from \$150,000 to \$250,000. OPE began implementing this new threshold for contracts beginning May 31, 2018.

⁶ FAR 2.101, “Definitions,” defines a “sole source acquisition” as a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

⁷ FAR 13.106-3(b)(3)(i), “Award and documentation.” Contracting Officers should include additional statements in file documentation “[e]xplaining the absence of competition...if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold”

⁸ 14 Foreign Affairs Handbook-2 H-141(a), “Responsibilities of the Contracting Officer.”

regulating the process for justifications and approvals.⁹ AQM's November 2017 Quality Assurance Plan describes required justifications and the chain of approval based on contract value.¹⁰ Justifications for noncompetitive contracts above the SAT proceed through a multistep process including submittal, review, clearance, primary approval, and final approval. AQM's Quality Assurance Plan details the transaction dollar thresholds for each level of approval. According to an AQM memorandum on justifications and approvals, these approval levels "must be strictly adhered to."¹¹

Requirements for Ensuring That Noncompetitive Contracts Are Awarded at Fair and Reasonable Prices

The FAR requires Contracting Officers to determine that the anticipated cost of contracts will be fair and reasonable; however, the requirements for the Contracting Officer differ based on contract type and value. For contracts above the SAT awarded through other than full and open competition, justifications must include the Contracting Officer's determination that the anticipated cost to the Government will be fair and reasonable.¹² FAR Part 15 prescribes policies and procedures for negotiating fair and reasonable prices for noncompetitive contracts. FAR Part 15 also stipulates that Contracting Officers must document the principal elements of the negotiation in the contract file by using a price negotiation memorandum.¹³

For contracts awarded below the SAT using simplified acquisition procedures, FAR Part 13 prescribes policies and procedures for determining and documenting fair and reasonable prices. These are less restrictive requirements, with Contracting Officers directed to "keep file documentation to a minimum."¹⁴ However, they must determine that the proposed price is fair and reasonable before awarding a contract.¹⁵

According to AQM guidance, contracting personnel are responsible for including adequate documentation in all contract files. Among other things, this documentation must include a determination that the contract award price is fair and reasonable.¹⁶

⁹ OPE, Justification for Other than Full and Open Competition (JOFOC) Guide (June 2016).

¹⁰ AQM, Quality Assurance Plan 22 (November 2017).

¹¹ AQM Memorandum 16-16, "Justification and Approval for Other Than Full and Open Competition (J&A's)" 1 (July 15, 2016).

¹² FAR 6.303-2(b)(7), "Content."

¹³ FAR 15.406-3(a), "Documenting the negotiation." The FAR prescribes 11 required elements for price negotiation memoranda.

¹⁴ FAR 13.106-3(b).

¹⁵ FAR 13.106(a).

¹⁶ AQM Memorandum 15-09, "Contract File Documentation," 1 and 2 (March 18, 2015).

AUDIT RESULTS

Finding A: The Department Did Not Fully Follow Acquisition Policy in Awarding Noncompetitive Contracts

OIG found that the Department did not fully follow acquisition policy in awarding noncompetitive contracts in Afghanistan and Iraq. Specifically, OIG found that Contracting Officers failed to document award decisions in accordance with acquisition policy for 2 of 22 (9 percent) of the noncompetitive contracts reviewed for this audit. In addition, OIG found no evidence that the Department publicly posted justifications for any of the 11 noncompetitive contracts requiring public notice, which collectively totaled \$552 million. The administrative shortfalls occurred, in part, because contracting personnel did not follow the Department's internal control procedures for documenting and publicly posting award decisions and those controls lacked a compliance mechanism to ensure that the awards were publicly disclosed. Until these deficiencies are addressed, the Department will lack assurance that all noncompetitive award decisions have been properly documented to demonstrate the need for exceptions from full and open competition and that interested parties are notified when such decisions are made.

The Department Did Not Fully Follow Acquisition Policy in Justifying Noncompetitive Contracts and Providing Public Notice of Awards

In making noncompetitive contract awards, the Department must justify their reasons for doing so in writing. CICA also requires that the justification "be made available for inspection by the public."¹⁷ In implementing CICA, FAR Part 6 prescribes the required contents and approver levels for justifications and requirements for how they must be made available to the public.

OIG found that 91 percent of the written justifications it reviewed were completed in accordance with CICA and FAR acquisition requirements; however, written justifications for 2 of 22 contracts (9 percent) tested, totaling approximately \$60 million, were not completed in accordance with the FAR.¹⁸ Specifically, OIG determined that the justification for 1 of 11 contracts above the SAT was not completed in accordance with the FAR, while the other 10 were completed in accordance with the FAR. More specifically, the justification for that contract lacked the estimated value of the supplies or services to meet the agency's needs, which is FAR-required information. For the other contract that was not completed in accordance with the FAR, contracting personnel did not document the absence of competition in compliance with FAR requirements.¹⁹ With respect to the remaining 20 contracts reviewed for this audit, OIG found the Department had prepared justifications or documentation on the absence of competition that satisfied FAR requirements.

¹⁷ 41 U.S.C. § 253(f)(4) (2000).

¹⁸ See Appendix A for sample selection details.

¹⁹ FAR 13.106-3(b)(3)(i).

To satisfy CICA and FAR acquisition requirements, the Contracting Officer is responsible for publicly posting justifications on the Contract Opportunities website,²⁰ and Department guidance requires saving evidence of the posting in the contract file.²¹ However, OIG found no evidence on the Contract Opportunities website that the Department publicly posted justifications for the 11 contracts above the SAT that required posting,²² nor did the Department provide such evidence. These noncompetitive contracts amounted to a collective \$552 million. Because OPE and AQM policy requires Contracting Officers to include evidence of the posting in contract files, which serve as the official repositories for the contract and related documentation, OIG searched the electronic contract files on the Department's Integrated Logistics Management System for documentation of posting and did not find this documentation for any of the contracts that required posting of justifications.

Contracting Personnel Did Not Always Follow Requirements and Can Improve Monitoring of Internal Procedures

The administrative shortfalls of not complying with acquisition policy occurred, in part, because contracting personnel did not follow the Department's internal control procedures for documenting and publicly posting award decisions and those controls lacked a compliance mechanism to ensure that the awards were publicly disclosed. Specifically, as previously discussed, for one contract above the SAT, the Contracting Officer failed to include FAR-required information in the justification, including the estimated value of the supplies or services to meet the agency's needs. According to the Contracting Officer, that information was "accidentally" omitted from the justification; however, AQM's standardized template—an internal control designed and implemented to assist contracting personnel in completing justifications—specifically instructs preparers to "always include the estimated dollar value of the procurement."²³ Although this information was omitted from the justification, higher-level officials still approved the document.

AQM has designed and implemented control activities to ensure that the justifications were completed and approved in accordance with the FAR; however, AQM could improve its monitoring of justifications and approvals. AQM provides standardized templates for written justifications and a transmittal sheet with blank fields for the initials and comments of all potential approvers, and its Quality Assurance Plan describes the various transaction dollar thresholds for certifications and approvals. The approval hierarchy for justifications, beginning with the Contracting Officer and ending with the Procurement Executive for the highest-value contracts, functions as the type of management review control activity described in the U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal*

²⁰ Contract Opportunities for beta.SAM.gov is the current web-based platform for accessing information previously published on FedBizOpps, which formerly served as the Government point of entry. FedBizOpps transitioned to beta.SAM.gov in the first quarter of FY 2020, and beta.SAM.gov now functions as the Government point of entry described at FAR 6.305 (d)(1), "Availability of the justification."

²¹ AQM Memorandum 16-16, at 2.

²² FAR 6.305 (d)(1).

²³ AQM's standardized templates include instructional text to guide preparers as they complete the justification.

Government.²⁴ Despite these controls, shortfalls occurred when contracting personnel and approvers were not fully attentive to Federal regulations and Department procedures. This suggests that AQM monitoring controls for justifications and approvals should be strengthened to ensure that justifications included all required information and that approvers properly identified missing information before approving justifications. According to the *Standards for Internal Control in the Federal Government*, “Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.”²⁵ Effective monitoring allows management to identify internal control issues, determine the effectiveness of the internal control system, and take action to modify controls, if necessary.²⁶

Additionally, OPE and AQM’s current controls regarding posting justifications are ineffective, and OPE, in concert with AQM, must strengthen its controls to ensure that Contracting Officers are both posting justifications and retaining proof of posting in the contract files. Posting award decisions is a long-standing issue. In a March 2014 report, GAO reported that it was unable to confirm that the Department posted justifications for some contracts because no documentation was available. GAO recommended that the Department establish a process for documenting that the justifications were posted in compliance with the requirements in the FAR.

In May 2014, OPE issued Procurement Information Bulletin 2014-11 to provide oversight guidance in response to the GAO report; among other directives, the bulletin states “The Contracting Officer will retain a copy of the FedBizOps [sic] posting of the justification in the contract file to document compliance.”²⁷ In July 2016, AQM issued Memorandum 16-16, which includes guidance for posting justifications and states that “evidence of the justification posting must be included in the contract file.”²⁸ If Contracting Officers did post justifications in accordance with the FAR, preserving evidence of this posting would serve as proof of compliance in the event of a review if the website posting was no longer available. However, as previously stated, the Department did not provide evidence that justifications were posted for any of the 11 contracts above the SAT.

The Control Activities component within the *Standards for Internal Control in the Federal Government* 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 Monitoring component relates to the activities that management establishes to assess the quality of performance over time and to promptly resolve the findings of audits and other reviews. Procurement Information Bulletin 2014-11 and AQM Memorandum 16-16 address maintaining evidence of posting, but neither policy includes a monitoring element to ensure compliance. Although AQM’s Acquisition Policy Division

²⁴ GAO, *Standards for Internal Control in the Federal Government* 46 (GAO-14-704G, September 2014).

²⁵ *Ibid.*, at 65.

²⁶ *Ibid.*, at 66-67.

²⁷ OPE, Procurement Information Bulletin No. 2014-11, “Improving Management of Competition Exceptions Requiring Unusual and Compelling Urgency Justification and Approval (J&A),” 2 (May 12, 2014).

²⁸ AQM Memorandum 16-16, at 2.

conducts annual reviews of randomly selected files, AQM has not designated a position to check that all justifications are being posted in real time. And, as previously discussed, OIG found no evidence of compliance with posting requirements. To be effective, OPE and AQM management must ensure compliance with these policies.

The Department recognizes that its current procedures for justifications and approvals have weaknesses. Specifically, AQM officials told OIG that the current system, which relies heavily on Microsoft Word documents, is not as transparent or systematic as it could be, and gaps exist in ensuring that posting confirmation makes it into contract files. AQM also provided OIG with a draft OPE strategic planning document, which states that “OPE employees and internal customers operate in a fragmented technology ecosystem that is stitched together with many systems, business processes and manual processes.”²⁹ The document further states “Current procurement and logistics systems do not report or easily allow access to data to make decisions, in addition the data is usually flawed or incomplete.”

The Department is in the process of developing stronger internal controls to improve the justification and approval process. Specifically, the Bureau of Administration has developed and is testing an online application that would automate and streamline the process, creating one system of record for justifications and approvals. According to the Bureau of Administration the application’s goals include improving collaboration between AQM and program offices and capturing data to be used for analysis and predictive forecasting. According to information provided by AQM, expected benefits include saving time and lowering costs, improving data and records management, creating searchable data that can be analyzed quickly, and increasing consistency and efficiency.

AQM demonstrated the application for OIG, showing how the application allows users to create draft justifications, which then progress through informal and formal review processes, wherein approvers certify, approve, or reject them. Although OIG did not test or validate the application, AQM showed OIG the built-in controls to automatically halt incomplete justifications from proceeding to the review process until they comply with acquisition policy. The application also appeared to use the correct justification template, based on dollar threshold and type of contracting action being requested. According to AQM, once the process is finished, the Contracting Officer could place the completed justification and approval in the electronic contract file, though AQM would like the application to have the capability to automatically place the completed document in the electronic contract file. AQM officials told OIG that Contracting Officers are not currently required to use the application, and a new policy is needed to make its use mandatory. On the basis of the demonstration provided by AQM, OIG concluded that the application has the potential to significantly strengthen AQM’s internal controls to ensure that justifications and approvals are executed in accordance with Federal and Department policy. OIG agrees that additional functionality to automatically place justifications in electronic contract files would further strengthen AQM’s internal controls.

²⁹ The September 2020 draft strategic planning document addresses several OPE information technology initiatives. It was prepared by the Department and Forrester Researcher, Inc., a research and advisory company.

Although the application does not include a function that will automatically send justifications to be publicly posted in accordance with CICA and the FAR, OIG believes that adding this function would also strengthen AQM's internal controls.

Deficiencies Create Uncertainty That Noncompetitive Awards Comply With Federal Acquisition Requirements

Until these deficiencies with completing and posting justifications are addressed, the Department will lack assurance that all noncompetitive awards for performance in support of overseas contingency operations, such as those in Afghanistan and Iraq, have been properly documented in accordance with acquisition policy to demonstrate the need for exceptions from full and open competition, that interested parties are notified when such decisions are pursued, and that the Department is fully complying with FAR requirements. In light of the deficiencies identified, OIG offers the following recommendations.

Recommendation 1: OIG recommends that the Bureau of Administration develop and implement additional internal control procedures for monitoring to ensure that justifications and approvals for other than full and open competition are completed and approved in accordance with Federal Acquisition Regulation requirements and Office of the Procurement Executive guidance and that reviewing officials verify that the justifications include all required content.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement procedures to ensure that justifications for other than full and open competition include the required FAR elements and information prior to approval.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration has developed and implemented procedures to ensure justifications for other than full and open competition include the required FAR elements and information prior to approval.

Recommendation 2: OIG recommends that the Bureau of Administration develop and implement internal controls to ensure Contracting Officers comply with Federal Acquisition Regulation Subpart 6.305, Office of the Procurement Executive Procurement Implementation Bulletin 2014-11, and Office of Acquisitions Management Memorandum 16-16 regarding providing public notice of noncompetitive contracts and maintaining proof of public notice in contract files.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement requirements and procedures to ensure that approved justifications for other than full and open competition are posted in accordance with the FAR and Department policy and are documented in the Contracting Officer's contract file.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration has developed and implemented internal controls to ensure that Contracting Officers comply with FAR 6.305, OPE Procurement Implementation Bulletin 2014-11, and AQM Memorandum 16-16 regarding providing public notice of noncompetitive contracts and maintaining proof of public notice in contract files.

Recommendation 3: OIG recommends that the Bureau of Administration (a) determine the feasibility, practicality, and cost-effectiveness of adding functions to the new online application being developed for justifications and approvals that will automatically transfer completed justifications to the electronic contract file and also post the justifications publicly in accordance with the Competition in Contracting Act and the Federal Acquisition Regulation and (b) if determined to be feasible, practical, and cost-effective, incorporate such a function in the application.

Management Response: OPE concurred with the recommendation, stating that it will determine the feasibility, practicality, and cost-effectiveness of adding functions to the new online application being developed for justifications and approvals. However, if it determines that it will not be feasible, practical, or cost-effective, it will not incorporate such functions into the application and instead provide OIG with a justification detailing the rationale behind such determination.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration (a) has determined the feasibility, practicality, and cost-effectiveness of adding functions to the new online application, which is being developed for justifications and approvals, and has incorporated recommended functions as appropriate or (b) provides OIG with justification detailing why the recommended functionality is not feasible, practical, or cost-effective.

Recommendation 4: OIG recommends that the Bureau of Administration issue guidance requiring that all contracting personnel use the newly created online application for justifications and approvals once the application has been tested and determined to meet the goals established by the Bureau of Administration.

Management Response: OPE concurred with the recommendation. However, OPE stated that if it determines that Recommendation 3 is not feasible, practical, or cost-effective, it will not issue guidance to contracting personnel.

OIG Reply: On the basis of the OPE's concurrence with the recommendation, OIG considers the recommendation resolved, pending further action. Although OPE stated that it will not issue guidance to contracting personnel should Recommendation 3 be deemed not feasible, practical, or cost-effective, it is important to note that the purpose of this recommendation

(Recommendation 4) is to ensure that the Bureau of Administration issues guidance. The guidance should require all contracting personnel to use the newly created online application for justifications and approvals once the application has been tested, and the tests confirm that the application meets the goals established by the bureau. Therefore, actions to address this recommendation are independent from the actions described in Recommendation 3. As a result, this recommendation will be closed when OIG receives documentation demonstrating that the Office of the Procurement Executive has issued guidance requiring all contracting personnel to use the newly created online application for justifications and approvals once tested and approved or provides OIG an explanation as to why the online application does meet the goals of the bureau.

Finding B: The Department Did Not Fully Adhere to Required Steps Intended To Ensure That Fair and Reasonable Prices Were Paid on Noncompetitive Contract Awards

OIG found that the Department did not fully adhere to required steps intended to ensure that fair and reasonable prices were paid on noncompetitive contract awards. Specifically, 2 of 22 contracts files (9 percent) did not contain required fair and reasonable price determination statements to demonstrate that contracting personnel sufficiently considered price factors before making the award. In addition, Contracting Officers for 10 of 11 (91 percent) of the contracts above the SAT did not adequately document the principal elements of the price negotiation, as required by the FAR. OIG attributes these lapses, at least in part, to both Contracting Officers' inattention to completing and maintaining required documentation and internal control operating weaknesses. Without sufficiently documenting all elements of the negotiation, Contracting Officers failed to both comply with FAR requirements and preserve key information about the award decision that could be of future value to the Department. Despite failures to fully document contract negotiations, OIG noted that, when negotiations occurred, they often resulted in a lower cost to the Government.

Documentation Supporting Fair and Reasonable Price Determinations Was Prepared for Most Noncompetitive Contract Awards

OIG reviewed documentation for the 22 contracts in its sample that required either justifications, or other documentation on the absence of competition, to determine if Contracting Officers included fair and reasonable price determination statements, as required by the FAR. OIG found that documentation for 2 of 22 contracts (9 percent), which totaled approximately \$299,000, did not contain fair and reasonable price determination statements. Specifically, the exceptions involved two contracts that did not contain fair and reasonable price determination statements and were valued below the SAT. Neither contract file contained a statement of price reasonableness in accordance with FAR Part 13. Specifically, for one contract, the Contracting Officer did not fill out the price reasonableness determination section of the required form, although they did complete other relevant areas of the form. For the other contract, the form's price reasonableness determination section was left blank, and AQM could not locate and provide fair and reasonable price documentation prepared in awarding the contract.

For the contracts in its sample above the SAT, OIG also reviewed whether fair and reasonable price determinations were supported by key documents required by the FAR. AQM provided evidence that it obtained certified cost or pricing data for all eight contracts above the SAT that required such data.³⁰ Specifically, the Department provided the executed Certificates of Current Cost or Pricing Data for these contracts, as required by the FAR.³¹

Three contracts above the SAT in OIG's sample did not require certified cost or pricing data. Two of the contracts, awarded for approximately \$232,000 and \$490,000, respectively, were below the threshold described in the FAR.³² For the third contract, the Contracting Officer was prohibited from obtaining certified cost or pricing data because the FAR states that the Contracting Officer "shall not require certified cost or pricing data to support any action" when the prices agreed upon are based on adequate price competition, which is an exception permitted under FAR Part 15.³³ For this contract, the Contracting Officer determined that the proposed price was reasonable in comparison with current or recent prices for the same or similar items.

Regarding price negotiation memoranda, OIG found that contracting personnel did not prepare required price negotiation memoranda for 2 of 11 contracts (18 percent) above the SAT, which totaled approximately \$722,000. Table 1 shows the contract number for the 11 contracts above the SAT that were reviewed for this audit, whether the Contracting Officer obtained a Certificate of Current Cost or Pricing Data from the contractor, and if a price negotiation memorandum was prepared.

³⁰ Certified cost or pricing data is cost or pricing data that contractors are required to certify as accurate, complete, and current before submitting to the Contracting Officer in accordance with the FAR. FAR 15.403-4(a), "Requiring certified cost or pricing data." Unless an exception exists, Contracting Officers must obtain certified cost or pricing data for contracts above \$750,000 awarded before July 1, 2018, and above \$2 million for those awarded on or after that date.

³¹ FAR 15.406-2(a), "Certificate of Current Cost or Pricing Data."

³² FAR 15.403-4(a).

³³ FAR 15.403-1(b), "Prohibition on obtaining certified cost or pricing data," describes the exceptions, including adequate price competition, when prices are set by law, when a waiver is granted, or when a commercial item is acquired.

Table 1: Required Documentation for Awards Above the SAT

Contract Number	Certificate of Current Cost or Pricing Data	Price Negotiation Memorandum
SAQMMA17C0047	✓	✓
SAQMMA17C0267	✓	✓
19AQMM19C0068	✓	✓
19AQMM18C0208	✓	✓
SAQMMA16C0063	✓	✓
19AQMM20C0052	✓	✓
SAQMMA17C0180	Not required	✓
SAQMMA16C0027	✓	✓
SAQMMA16C0061	✓	✓
SAF20016C0001	Not required	X
SGE50016M0239	Not required	X

Source: OIG generated based on analysis of contract and pricing data provided by the Department.

OIG identified additional concerns with respect to required price negotiation memoranda. For one contract, contracting personnel failed to create a price negotiation memorandum in accordance with the FAR. For another contract, the Department did not locate the physical contract file, and the documents it did provide to OIG did not include a price negotiation memorandum. Moreover, of the nine price negotiation memoranda reviewed, OIG found that only one complied with all 11 elements required by the FAR. For example, only one of nine memoranda contained a complete registry of “the name, position, and organization of each person representing the contractor and the Government in the negotiation.”³⁴ Three memoranda failed to provide “a description of the acquisition, including all appropriate identifying numbers.”³⁵ Furthermore, for two of eight contracts that required certified cost or pricing data, Contracting Officers failed to explain the extent to which they relied on the certified data in the price negotiation memoranda, as required by the FAR.³⁶ Table 2 shows the contract number, number of FAR elements included in the respective price negotiation memorandum, percentage of compliance with FAR elements, and FAR elements missing from the memorandum.

³⁴ FAR 15.406-3(a)(3).

³⁵ FAR 15.406-3(a)(2).

³⁶ FAR 15.406-3(a)(6)(i).

Table 2: Price Negotiation Memoranda Compliance With FAR Elements

Contract Number	Number of FAR Elements Included (11 Required)	Percentage of Compliance With FAR Elements	Missing FAR Elements
SAQMMA17C0047	11	100	Not Applicable
SAQMMA16C0063	10	91	15.406-3(a)(3)
19AQMM20C0052	10	91	15.406-3(a)(3)
SAQMMA16C0061	10	91	15.406-3(a)(3)
19AQMM19C0068	9	82	15.406-3(a)(3) and (6)
19AQMM18C0208	9	82	15.406-3(a)(3) and (6)
SAQMMA16C0027	9	82	15.406-3(a)(2) and (3)
SAQMMA17C0180	8	73	15.406-3(a)(2), (3), and (4)
SAQMMA17C0267	6	55	15.406-3(a)(2), (3), (8), (10), and (11)
SAF20016C0001	Not Provided for Review		
SGE50016M0239	Not Provided for Review		

Source: OIG generated based on analysis of price negotiation memoranda data provided by the Department.

Despite failures to fully document contract negotiations, OIG noted that, when negotiations occurred, they often resulted in a lower cost to the Government. For example, six of nine price negotiation memoranda OIG reviewed showed that the Contracting Officer successfully negotiated a lower price than the contractor's initial offer. Cumulatively, price negotiations for the six contracts resulted in more than \$22 million in savings for the Department, which was 9 percent less than the total original proposed contracts' value.

Internal Controls Failed To Ensure Complete Documentation of Fair and Reasonable Price Determinations

OIG attributes the lapses in complying with Federal and Department policy with respect to fair and reasonable price determinations, at least in part, to inattention to completing and maintaining required documentation and internal control operating weaknesses. According to the *Standards for Internal Control in the Federal Government*, "Management should design control activities to achieve objectives and respond to risks."³⁷ Examples of control activities include "accurate and timely reporting of transactions" and "appropriate documentation of transactions."³⁸ OIG found that although the Department has designed and implemented some internal controls related to fair and reasonable pricing in accordance with these standards, those controls did not operate effectively to ensure consistent reporting and documentation of its transactions.

Specifically, two internal controls relate to price negotiation memoranda: a sample price negotiation memorandum and a structure for supervisory approvals. The sample price negotiation memorandum developed by AQM outlines the sections that the memoranda should contain, including administrative information, a summary of the negotiation, relevant

³⁷ GAO-14-704G, September 2014, at 45.

³⁸ Ibid., at 46.

clearances and approvals, and whether certain exemptions apply. The sample contains all 11 elements required by the FAR and clearly demonstrates how a memorandum should be structured. However, as noted previously, the majority of price negotiation memoranda reviewed by OIG did not fulfill all FAR requirements. AQM's Quality Assurance Plan outlines monetary thresholds for approving price negotiation memoranda (i.e., a structure for supervisory approvals), with increasingly senior officials serving as final approver as contract value increases.³⁹ Approval lines are included at the end of price negotiation memoranda to demonstrate the completion of supervisory review. However, documents provided to OIG were often unsigned; thus, OIG was unable to confirm whether supervisory approval functions as an internal control mechanism for price negotiation memoranda.

Although OPE has established these two internal controls, OIG previously noted that only one of nine price negotiation memoranda it reviewed complied with all 11 FAR requirements. Due to these shortcomings, OPE must ensure that its internal controls are operating effectively and, if necessary, strengthen them to ensure that Contracting Officers comply with FAR requirements in documenting contract negotiations. As previously discussed, the Control Activities component within the *Standards for Internal Control in the Federal Government* includes the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system. The Monitoring component relates to the activities that management establishes to assess the quality of performance over time and to promptly resolve the findings of audits and other reviews. Although OIG found that the Department had designed and implemented control activities relating to preparing price negotiation memoranda, the only control it found involving the monitoring of compliance was the supervisory approval process. This process, as previously noted, was not effectively ensuring that the preparation of price negotiation memoranda was in compliance with all FAR requirements.

In addition to identifying issues with price negotiation memoranda, OIG previously reported on weaknesses in the Department's internal controls for managing contract file documentation, including issuing a Management Alert in March 2014. The alert stated that "OIG audits, investigations, and inspections, as well as audits of Department contract management conducted by other oversight organizations, have found repeated examples of poor contract file administration."⁴⁰ It concluded that "the Department should take additional action to correct its inadequate enforcement of the FAR's provisions, and its own procedures, that govern the maintenance of contract files." It further concluded that "the failure to enforce those requirements exposes the Department to significant financial risk and makes OIG oversight more difficult."⁴¹

The Management Alert offered three recommendations to improve internal controls for contract file administration. The Department concurred with all three recommendations and subsequently took action to implement them. In March 2015, AQM issued a memorandum

³⁹ AQM, Quality Assurance Plan, at 14.

⁴⁰ OIG, *Management Alert: Contract File Management Deficiencies 2* (MA-A-0002, March 2014).

⁴¹ *Ibid.*, at 4.

reminding contracting personnel that they are responsible for including adequate documentation in all contract files and describing the minimum required documentation that must be included.⁴² In June 2015, OPE issued a Procurement Information Bulletin that, among other things, described contracting personnel responsibilities and reiterated that maintaining records is a basic responsibility.⁴³ Notwithstanding these efforts, OIG found incomplete contract file documentation during this audit.

Documentation Issues Hinder the Department's Ability To Demonstrate That Contracting Personnel Complied With Fair and Reasonable Price Determination Requirements

Despite the Department's efforts to improve internal controls, OIG continues to find inconsistent adherence to FAR and Department requirements regarding determining and documenting fair and reasonable price determinations and maintaining complete contract files for noncompetitive awards for performance in support of overseas contingency operations, such as those in Afghanistan and Iraq. In conducting this work, OIG identified numerous examples of missing or incomplete documentation for contracts in its sample. Moreover, without sufficiently documenting all elements of the negotiation, Contracting Officers failed to both comply with FAR requirements and preserve key information about the award decision that could be of future value to the Department. In light of the deficiencies, OIG offers the following recommendations.

Recommendation 5: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Quality Assurance Plan to expand the steps necessary to ensure compliance with Federal Acquisition Regulation provisions regarding preparing fair and reasonable price determinations for noncompetitive awards. The steps should include requiring that Contracting Officers use the sample template for price negotiation memoranda and retain evidence of the analysis conducted in support of such determinations in the contract files.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement guidance to ensure that price negotiation memoranda contain the necessary elements to comply with the FAR and Department policy, including the need to maintain copies of approved documents in the contract file.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. OPE's guidance should include an updated Quality Assurance Plan expanding the steps necessary to ensure compliance with the FAR provisions regarding the preparation of fair and reasonable price determinations for noncompetitive awards. This recommendation will be closed when OIG receives documentation demonstrating that OPE has developed and implemented guidance that includes an updated Quality Assurance Plan expanding the steps necessary to ensure compliance with applicable FAR provisions.

⁴² AQM Memorandum 15-09.

⁴³ OPE, Procurement Information Bulletin 2014-10, "Contract Files and COR Checklist" (June 4, 2015).

Recommendation 6: OIG recommends that the Bureau of Administration develop and implement guidance directing all price negotiation memoranda-approving officials certify that price negotiation memoranda address all required elements in compliance with Federal Acquisition Regulation Subpart 15.406-3 before approving them.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement guidance to ensure that price negotiation memoranda contain the necessary elements to comply with the FAR and Department policy.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration has developed and implemented guidance directing that all price negotiation memoranda-approving officials certify that price negotiation memoranda have addressed all required elements in accordance with FAR 15.406-3 prior to approval.

Recommendation 7: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Memorandum 15-09, "Contract File Documentation," regarding price negotiation memoranda. The updated memorandum should include instructions for Contracting Officers to verify that all price negotiation memoranda packages are properly approved and placed in the contract file.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement guidance to ensure price negotiation memoranda contain the necessary elements to comply with the FAR and Department policy, including the need to maintain copies of approved documents in the contract file.

OIG Reply: On the basis of the OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration has issued a directive to AQM to update Memorandum 15-09, "Contract File Documentation." The updated memorandum should include instructions for Contracting Officers to verify that all price negotiation memoranda packages are properly approved and placed in the contract file.

Recommendation 8: OIG recommends that the Bureau of Administration develop and implement additional internal control procedures for monitoring compliance with Federal Acquisition Regulation requirements and Department policy regarding determining and documenting fair and reasonable price determinations and maintaining complete contract files.

Management Response: OPE concurred with the recommendation, stating that it will develop and implement guidance to ensure that price negotiation memoranda contain the

necessary elements to comply with the FAR and Department policy, including the need to maintain copies of approved documents in the contract file.

OIG Reply: On the basis of OPE's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that the Bureau of Administration has developed and implemented guidance, including additional internal control procedures for monitoring compliance. The guidance should ensure that price negotiation memoranda contain the necessary elements to comply with the FAR and Department policy, including the need to maintain copies of approved documents in the contract file.

RECOMMENDATIONS

Recommendation 1: OIG recommends that the Bureau of Administration develop and implement additional internal control procedures for monitoring to ensure that justifications and approvals for other than full and open competition are completed and approved in accordance with Federal Acquisition Regulation requirements and Office of the Procurement Executive guidance and that reviewing officials verify that the justifications include all required content.

Recommendation 2: OIG recommends that the Bureau of Administration develop and implement internal controls to ensure Contracting Officers comply with Federal Acquisition Regulation Subpart 6.305, Office of the Procurement Executive Procurement Implementation Bulletin 2014-11, and Office of Acquisitions Management Memorandum 16-16 regarding providing public notice of noncompetitive contracts and maintaining proof of public notice in contract files.

Recommendation 3: OIG recommends that the Bureau of Administration (a) determine the feasibility, practicality, and cost-effectiveness of adding functions to the new online application being developed for justifications and approvals that will automatically transfer completed justifications to the electronic contract file and also post the justifications publicly in accordance with the Competition in Contracting Act and the Federal Acquisition Regulation and (b) if determined to be feasible, practical, and cost-effective, incorporate such a function in the application.

Recommendation 4: OIG recommends that the Bureau of Administration issue guidance requiring that all contracting personnel use the newly created online application for justifications and approvals once the application has been tested and determined to meet the goals established by the Bureau of Administration.

Recommendation 5: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Quality Assurance Plan to expand the steps necessary to ensure compliance with Federal Acquisition Regulation provisions regarding preparing fair and reasonable price determinations for noncompetitive awards. The steps should include requiring that Contracting Officers use the sample template for price negotiation memoranda and retain evidence of the analysis conducted in support of such determinations in the contract files.

Recommendation 6: OIG recommends that the Bureau of Administration develop and implement guidance directing all price negotiation memoranda-approving officials certify that price negotiation memoranda address all required elements in compliance with Federal Acquisition Regulation Subpart 15.406-3 before approving them.

Recommendation 7: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Memorandum 15-09, "Contract File Documentation," regarding price negotiation memoranda. The updated memorandum should

include instructions for Contracting Officers to verify that all price negotiation memoranda packages are properly approved and placed in the contract file.

Recommendation 8: OIG recommends that the Bureau of Administration develop and implement additional internal control procedures for monitoring compliance with Federal Acquisition Regulation requirements and Department policy regarding determining and documenting fair and reasonable price determinations and maintaining complete contract files.

APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

The Office of Inspector General (OIG) conducted this audit to determine whether the Department of State (Department) (1) followed acquisition policy in awarding noncompetitive contracts in support of overseas contingency operations in Afghanistan and Iraq and (2) performed the required steps to ensure that the Department paid fair and reasonable prices for noncompetitively awarded contracts in Afghanistan and Iraq.

OIG conducted this audit from October 2020 to June 2021 in the Washington, DC, metropolitan area. 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. 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 presented in this report. In addition, this report relates to Overseas Contingency Operations Inherent Resolve and Freedom's Sentinel and was completed in accordance with OIG's oversight responsibilities described in Section 8L of the Inspector General Act of 1978, as amended.¹

To obtain background information, including criteria, OIG researched and reviewed Federal laws and Department policies pertaining to competition in contracting. Specifically, OIG reviewed the Competition in Contracting Act (CICA); the Federal Acquisition Regulation (FAR); and Bureau of Administration, Office of the Procurement Executive (OPE), written policies and procedures. OIG conducted interviews and exchanged email communications with Department officials from OPE; the Bureau of Administration, Office of Acquisitions Management (AQM); the Bureau of International Narcotics and Law Enforcement Affairs; the Office of Small and Disadvantaged Business Utilization; and U.S. Embassy Kabul, Afghanistan.

OIG obtained and reviewed Department policies, processes, and guidance for awarding noncompetitive contracts and ensuring that those noncompetitive contracts are awarded at fair and reasonable prices. OIG initially selected 35 contracts awarded between FY 2016 and the third quarter of FY 2020 to answer the audit objectives and subsequently refined its sample to 22 noncompetitive contracts that required justifications (see the Sampling Methodology section). To assess whether contracting personnel complied with Federal regulations and Department policy, OIG reviewed documentation provided by OPE, AQM, and overseas posts,

¹ The Operation Inherent Resolve mission is to defeat Islamic State of Iraq and Syria in Iraq and Syria while setting conditions for follow-on activities to improve regional stability. The Operation Freedom's Sentinel mission is counterterrorism against al-Qaeda, the Islamic State of Iraq and Syria-Khorasan, and their affiliates in Afghanistan and participation in the NATO-led Resolute Support mission to develop the capacity of Afghan security ministries and to train, advise, and assist the Afghan National Defense and Security Forces. This audit focuses on the Department's contract management in Afghanistan and Iraq, which is subject to Section 8L oversight.

and obtained from electronic contract files stored on the Department's Integrated Logistics Management System. In addition, OIG interviewed officials from OPE and AQM.

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. More specifically, OIG used USASpending.gov to identify Department contracts awarded using less than full and open competition with a place of performance in Afghanistan or Iraq from October 1, 2015, to June 30, 2020. Separately, OIG obtained contract-related documentation from the Federal Procurement Data System-Next Generation, the Department's Integrated Logistics Management System, and Department personnel to assess the integrity and accuracy of the data set. 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.

Sampling Methodology

The original data set that OIG analyzed of contract awards for performance in Afghanistan and Iraq was obtained from USASpending.gov. OIG used the following parameters to obtain the data: (1) date range: October 1, 2015, to June 30, 2020; (2) award type (includes contracts and contract identification number); (3) awarding agency: Department of State; and (4) extent competed.²

OIG identified 607 contracts valued at approximately \$770 million that were awarded noncompetitively for performance in Afghanistan and Iraq between FY 2016 and the third quarter of FY 2020. From a target universe of 607 contracts, OIG removed all 323 contracts valued at \$30,000 or less. This decision was based on the rationale that \$30,000 is the micro-purchase threshold for contracts in Afghanistan and Iraq that are not required to be competed. From the remaining 284 contracts, OIG initially selected a total of 35 contracts to review; 15 contracts were selected using a dollar-value criterion, and 20 contracts were selected using a nonstatistical random sampling design. The 15 selected contracts using a dollar-value criterion were all contracts valued at over \$10 million. From the remaining 269 contracts valued at less than \$10 million, a non-projectable, random sample of 20 was selected using a random number generator. Table A.1 shows the numeric details of the contracts initially selected.

² Extent Competed categories are: (1) Competed Under Simplified Acquisition Procedures, (2) Full and Open Competition, (3) Full and Open After Exclusion of Sources, (4) Not Available for Competition, (5) Not Competed, and (6) Not Competed Under Simplified Acquisition Procedures.

Table A.1: Initial Audit Sample

Methodology Used	Criteria	Total Contracts	Selected Contracts	Total Dollar Value of the Selection (in millions)
100-percent Review	>\$10 Million	15	15	\$617.9
Nonstatistical Random Sample	≤ \$10 Million	269	20	\$12.4
Total		284	35	\$630.3

Source: OIG generated from data from USASpending.gov as of August 12, 2020.

OIG refined its sample to focus on 22 of the 35 noncompetitive contracts in the initial sample. Specifically, OIG learned during the audit that 13 noncompetitive contracts selected for review were not applicable to the audit because they did not require a justification for the use of other than full and open competition. More specifically, nine of the contracts selected were task or delivery orders issued in association with indefinite-delivery, indefinite-quantity contracts³ and did not require justifications and approvals,⁴ while four were awarded to participants in small business programs that did not require justifications and approvals because of statutory language included in the FAR. That is, three were sole-source contracts awarded for less than \$22 million to participants in the 8(a) Business Development Program,⁵ commonly known as the 8(a) program, and the fourth was a sole-source contract awarded to a participant in the Historically Underutilized Business Zone (HUBZone) Program.⁶

The 22 remaining noncompetitive contracts either required justifications in accordance with FAR Subpart 6.303-1, “Requirements,” or, if they were below the simplified acquisition threshold (SAT), documentation of the absence of competition in accordance with FAR Subpart 13.106-3(b), “File Documentation and Retention.” These were composed of two types of contracts: (1) contracts valued above the SAT requiring formal justifications and approvals, of which there were 11;⁷ and (2) contracts valued below the SAT, which required documentation on the absence of competition, of which there were also 11. These 22 contracts collectively totaled approximately \$553 million or 72 percent of the value of all noncompetitive awards in Afghanistan and Iraq awarded between FY 2016 and the third quarter of FY 2020. Table A.2 shows the contracts included in OIG’s sample.

³ Indefinite-delivery, indefinite-quantity contracts allow the Government to acquire an indefinite quantity of supplies or services, within stated limits, during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor.

⁴ FAR 6.001(e)(2), “Applicability.”

⁵ FAR 6.302-5(c)(2)(iii), “Authorized or required by statute.” Specifically, this refers to small businesses owned by disadvantaged groups that are participants in the 8(a) Business Development Program, commonly known as the 8(a) Program, which was established in the Small Business Act. This program was originally established to help disadvantaged individuals and was subsequently expanded to help disadvantaged groups as well.

⁶ FAR 19.1306, “HUBZone sole source awards.” The HUBZone Program helps small businesses in specially designated communities gain preferential access to Federal procurement opportunities.

⁷ One of the 11 contracts above the SAT that required justifications and approvals was a sole-source contract awarded to an 8(a) participant for more than \$22 million.

Table A.2: Contracts Included in Sample

	Contract Number	Award Date	Value of Contract
Contracts Above the SAT			
1	SAQMMA17C0047	1/19/2017	\$193,356,637
2	SAQMMA17C0267	9/12/2017	\$59,950,673
3	19AQMM19C0068	8/16/2019	\$49,648,704
4	19AQMM18C0208	9/18/2018	\$46,974,458
5	SAQMMA16C0063	2/29/2016	\$41,857,306
6	19AQMM20C0052	3/17/2020	\$39,266,186
7	SAQMMA17C0180	6/8/2017	\$35,752,167
8	SAQMMA16C0027	2/26/2016	\$29,065,772
9	SAF20016C0001	1/11/2016	\$232,088
10	SGE50016M0239	9/6/2016	\$490,000
11	SAQMMA16C0061	3/19/2016	\$55,278,747
Above the SAT Total			\$551,872,738
Contracts Below the SAT			
12	SAF20016M0549	2/20/2016	\$62,462
13	SIZ25017M0002	10/19/2016	\$118,675
14	19AF2019P0404	3/13/2016	\$36,888
15	SAF20016M1673	9/30/2016	\$80,300
16	SAF20016M0054	10/31/2015	\$35,623
17	19AQMM18P2341	9/22/2018	\$180,000
18	SAF20016M0418	1/24/2016	\$36,520
19	SIZ12017M0009	1/31/2017	\$128,220
20	SAF20016M1319	7/19/2016	\$49,005
21	191Z2518P0351	6/13/2018	\$111,643
22	191Z1020P0003	10/23/2019	\$149,968
Below the SAT Total			\$989,304

Source: OIG generated based on contract data obtained from USASpending.gov on August 12, 2020, which was used to select the noncompetitive contracts reviewed for this audit.

OIG developed a data collection instrument and extracted data from the award packages for each of the contracts in the sample to ascertain whether contract files contained proper justifications or documentation on the absence of competition in accordance with Federal and Department requirements.

Work Related to Internal Control

During the audit, OIG assessed the subject matter of the engagement 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*⁸ to identify internal controls that were significant to the audit objectives. 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, OIG concluded that two of five internal control components from the *Standards for Internal Control in the Federal Government*, Control Activities 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 Monitoring component relates to the activities that management establishes to assess the quality of performance over time and to promptly resolve the findings of audits and other reviews. OIG also concluded that three principles related to the selected components were significant to the audit objective, as described in Table A.3.

Table A.3: Internal Control Components and Principles Identified as Significant

Component	Principles
Control Activities	Principle 10 – Management should design control activities to achieve objectives and respond to risks. Principle 12 – Management should implement control activities through policies.
Monitoring	Principle 16 – Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

Source: OIG generated based on 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 OPE officials and reviewed internal Department procedures to determine the extent to which the Control Activities and Monitoring internal control components were in place. OIG assessed whether OPE designed and communicated policies and procedures to ensure compliance with CICA and FAR competition requirements by examining CICA, FAR, and OPE guidance. OIG performed procedures to assess the design, implementation, and operating effectiveness of key internal controls. Specifically, OIG:

- Reviewed relevant policies and procedures related to acquisition planning.
- Conducted interviews with OPE officials to inquire about the internal control processes regarding exceptions to the use of full and open competition.
- Reviewed OPE's internal and external correspondence concerning acquisition planning.
- Inspected contract documents and records pertaining to acquisition planning.
- Reviewed relevant policies and procedures related to contract cost analysis and negotiation.
- Conducted interviews to inquire about the internal control processes for authorizing noncompetitive contract actions.

⁸ Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014).

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

Prior Office of Inspector General Reports

In its September 2021 report *Audit of Acquisition Planning and Cost Controls While Transitioning Support Service Contracts in Iraq* (AUD-MERO-21-43), OIG reported that the Department did not fully comply with Federal and Department requirements for acquisition planning while preparing for the transition of services to the Diplomatic Platform Support Services Contract. OIG also reported that the Department did not fully control costs for two noncompetitive contract awards in accordance with Federal and Department requirements. OIG offered eight recommendations to improve acquisition planning for high-dollar complex contracts and to strengthen cost-control measures when using noncompetitive contract actions to continue services. As of October 2021, all eight recommendations remain resolved, pending further action.

In its July 2021 *Management Assistance Report: Improved Guidance and Acquisition Planning is Needed to Reduce the Use of Bridge Contracts in Afghanistan and Iraq* (AUD-MERO-21-37), OIG reported that short-term contracts awarded on a sole-source basis as “bridge contracts” were frequently used in Afghanistan and Iraq over multiple years to noncompetitively extend contract services beyond the expiration of an original contract. OIG determined that a primary reason the Department had used sole-source bridge contracts, in lieu of full and open competition, is because there is no Federal or Department guidance that establishes parameters on the use, duration, or number of times a sole-source bridge contract can be awarded to an incumbent contractor. In addition, the use of bridge contracts can be attributed, at least in part, to the absence of effective acquisition planning and the timely award of follow-on contracts. OIG offered three recommendations to address the use of sole-source bridge contracts and to promote full and open competition to the extent practicable. As of October 2021, all three recommendations remain resolved, pending further action.

In its September 2019 report *Audit of the Execution of Security-Related Construction Projects at U.S. Embassy Kabul, Afghanistan* (AUD-MERO-19-40), OIG reported that the Department uses a variety of contracting mechanisms to address physical security projects and upgrades, including using a justification when a project with an urgent or compelling need existed. OIG noted that a blanket justification citing national security concerns was prepared by Embassy Kabul to cover post-initiated construction projects in 2016 but found that the justification was renewed in subsequent years without consulting the Procurement Executive. This occurred, in part, because procurement staff in Kabul incorrectly believed that the justification could be unilaterally renewed if national security continued to be at risk. OIG offered 13 recommendations in its report. As of October 2021, ten recommendations have been implemented and closed, while three remain resolved, pending further action.

In its April 2019 *Management Assistance Report: Noncompliance with Federal and Department Procurement Policy at U.S. Embassy Kabul, Afghanistan, Needs Attention* (AUD-MERO-19-25),

OIG reported that Embassy Kabul used a justification for other than full and open competition to limit competition of all construction contracts to a pool of 15 local Afghan contractors. In addition, OIG identified shortcomings with the preparation of the initial justification. Specifically, although OPE authorized a one-time waiver to the Department's requirements, Embassy Kabul improperly renewed the justification two more times without consulting OPE, thus excluding new contractors from submitting proposals for any construction projects at the embassy. OIG offered seven recommendations in its report, all of which have been implemented and closed.

In its December 2018 *Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements* (AUD-SI-19-11), OIG reported that the Bureau of Medical Services awarded a sole-source contract in April 2016 on the basis that the contractor had a unique capability to conduct aeromedical biocontainment evacuations. However, the contract was never used to conduct an aeromedical biocontainment evacuation. Instead, the bureau used the contract for other purposes such as aeromedical evacuations and for the deployment of hurricane response teams. Moreover, on September 1, 2017, the Contracting Officer modified the contract to allow an aeromedical aircraft located in Africa to be used to transport Department employees between Kenya and Somalia. OIG reported that this modification was inconsistent with the justification used for awarding the sole-source contract. OIG offered seven recommendations in its report. As of October 2021, all seven recommendations had been closed.

APPENDIX B: BUREAU OF ADMINISTRATION RESPONSE



United States Department of State

Washington, D.C. 20520

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October 12, 2021

MEMORANDUM

TO: OIG/AUD – Bernard Vennemann

FROM: A/OPE/AP – John C. Dockery *JD*

SUBJECT: A/OPE Management Response to the Draft Report Audit of Noncompetitive Contracts in Support of Overseas Contingency Operations in Afghanistan and Iraq (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 develop and implement additional internal control procedures for monitoring to ensure that justifications and approvals for other than full and open competition are completed and approved in accordance with Federal Acquisition Regulation requirements and Office of the Procurement Executive guidance and that reviewing officials verify that the justifications include all required content.

Management Response to Draft Report (10/12/21): The Office of the Procurement Executive (A/OPE) concurs with the recommendation. The Office of Acquisitions Policy, Strategic Policy and Communication Division (A/OPE/AP/SCPD) will develop and implement procedures to ensure Justifications for Other than Full and Open Competition include the required Federal Acquisition Regulation (FAR) elements and information prior to reviewing officials' approvals.

Recommendation 2: OIG recommends that the Bureau of Administration develop and implement internal controls to ensure Contracting Officers comply with Federal Acquisition Regulation Subpart 6.305, Office of the Procurement Executive Procurement Implementation Bulletin 2014-11, and Office of Acquisitions Management Memorandum 16-16 regarding providing public notice of noncompetitive contracts and maintaining proof of public notice in contract files.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. A/OPE/SP/SCPD will develop and implement requirements and procedures to ensure approved Justifications for Other than Full and Open Competition are posted in accordance with the FAR and Departmental policy and documented in the contracting officer's contract file.

Recommendation 3: OIG recommends that the Bureau of Administration (a) determine the feasibility, practicality, and cost-effectiveness of adding functions to the new online application being developed for justifications and approvals that will automatically transfer completed justifications to the electronic contract file and also post the justifications publicly in accordance with the Competition in Contracting Act and the Federal Acquisition Regulation, and (b) if

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determined to be feasible, practical, and cost-effective, incorporate such a function in the application.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation and will determine the feasibility, practicality, and cost-effectiveness of adding functions to the new online application being developed for justifications and approvals. However, if A/OPE determines that it will not be feasible, practical, or cost-effective A/OPE will not incorporate such functions into the application and instead provide the OIG with a justification detailing the rationale behind such determination.

Recommendation 4: OIG recommends that the Bureau of Administration issue guidance requiring that all contracting personnel use the newly created online application for justifications and approvals once the application has been tested and determined to meet the goals established by the Bureau of Administration.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. However, if A/OPE determines that recommendation 3 will not be feasible, practical, or cost-effective A/OPE will not issue guidance to contracting personnel.

Recommendation 5: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Quality Assurance Plan to expand the steps necessary to ensure compliance with Federal Acquisition Regulation provisions regarding preparing fair and reasonable price determinations for noncompetitive awards. The steps should include requiring that Contracting Officers use the sample template for price negotiation memoranda and retain evidence of the analysis conducted in support of such determinations in the contract files.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. A/OPE/AP/SCPD will develop and implement guidance to ensure cost/price negotiation memorandums contain the necessary elements to comply with the FAR and Departmental policy, including the need to maintain copies of approved documents in the contract file.

Recommendation 6: OIG recommends that the Bureau of Administration develop and implement guidance directing all price negotiation memoranda-approving officials certify that price negotiation memoranda address all required elements in compliance with Federal Acquisition Regulation Subpart 15.406-3 before approving them.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. A/OPE/AP/SCPD will develop and implement guidance to ensure cost/price negotiation memorandums contain the necessary elements to comply with the FAR and Departmental policy, including the need to maintain copies of approved documents in the contract file.

Recommendation 7: OIG recommends that the Bureau of Administration issue a directive to the Office of Acquisitions Management to update its Memorandum 15-09 Contract File Documentation regarding price negotiation memoranda. The updated memorandum should

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include instructions for Contracting Officers to verify that all price negotiation memoranda packages are properly approved and placed in the contract file.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. A/OPE/AP/SCPD will develop and implement guidance to ensure cost/price negotiation memorandums contain the necessary elements to comply with the FAR and Departmental policy, including the need to maintain copies of approved documents in the contract file.

Recommendation 8: OIG recommends that the Bureau of Administration develop and implement additional internal control procedures for monitoring compliance with Federal Acquisition Regulation requirements and Department policy regarding determining and documenting fair and reasonable price determinations and maintaining complete contract files.

Management Response to Draft Report (10/12/21): A/OPE concurs with the recommendation. A/OPE/AP/SCPD will develop and implement guidance to ensure cost/price negotiation memorandums contain the necessary elements to comply with the FAR and Departmental policy, including the need to maintain copies of approved documents in the contract file.

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ABBREVIATIONS

AQM	Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management
CICA	Competition in Contracting Act
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
OIG	Office of Inspector General
OPE	Bureau of Administration, Office of the Procurement Executive
SAT	Simplified Acquisition Threshold

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