



DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**

*Office of Audits and Evaluations*

VETERANS HEALTH ADMINISTRATION

Buy American Act  
Compliance Deficiencies at  
Regional Procurement  
Office Central

AUDIT

REPORT #21-02641-229

SEPTEMBER 28, 2022



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## Executive Summary

The Buy American Act of 1933 was enacted to promote economic and national security, create jobs, strengthen the middle class, and support domestic manufacturing and the defense industrial base.<sup>1</sup> The act requires the federal government to purchase domestic products but allows some exceptions. The act, along with executive orders issued in 2017 and 2021, reinforced the importance of buying products from American businesses to help them compete for government contracts.<sup>2</sup>

VA has one of the largest acquisition functions in the federal government, and, in keeping with the act's purpose, its domestic purchases support the economy and American workers. In fiscal year (FY) 2021, VA ranked fourth in dollars obligated with about \$34.3 billion, and second in number of federal contract actions with about 1.8 million.<sup>3</sup> Within VA, one of the main procurement groups is the Veterans Health Administration (VHA) Procurement and Logistics Office, which has annual expenditures of more than \$15 billion and a staff of over 2,800.<sup>4</sup> Among its components are three regional procurement offices (RPOs), Central, East, and West. RPO Central, the biggest of the RPO contracting centers in terms of federal contracting dollars in FY 2021, had annual obligations of over \$4.3 billion and therefore was selected for review.<sup>5</sup>

The VA Office of Inspector General (OIG) conducted this audit to assess RPO Central's compliance with the Buy American Act and associated laws, regulations, and policies. In its assessment, the audit team reviewed a statistical sample of contracts, the related files, and contract file reviews that are completed by RPO Central officials to ensure compliance with regulations, such as the implementation of domestic preference laws, VA acquisition policies, and the adequacy of the work. The audit team also examined internal reviews of compliance with the act by VA's Risk Management and Compliance Service.<sup>6</sup>

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<sup>1</sup> 41 U.S.C. §§ 8301–8305.

<sup>2</sup> Exec. Order No. 13788, 82 Fed. Reg. 8218837 (April 21, 2017); Exec. Order No. 14005, 86 Fed. Reg. 7475 (January 28, 2021).

<sup>3</sup> The team selected the date range from October 1, 2020, to September 30, 2021, to obtain the federal contract actions and values from the General Services Administration federal government System for Award Management (SAM.gov), accessed November 16, 2021, <https://SAM.gov>. VA reports its purchases in the Federal Procurement Data System–Next Generation (FPDS-NG), allowing Congress, federal agencies, and the public to assess VA's use of taxpayer funds.

<sup>4</sup> "VHA Procurement & Logistics Office (P&LO)," accessed November 16, 2021, <https://www.va.gov/PLO>.

<sup>5</sup> RPOs East and West had annual obligations in FY 2021 of about \$3.7 billion and \$2.7 billion, respectively. SAM.gov, accessed February 10, 2022.

<sup>6</sup> The Risk Management and Compliance Service began internal compliance reviews in response to the June 30, 2017, Office of Management and Budget requirement to assess compliance and had completed five reviews by December 2021. The audit team noted internal reviews covered contracts from across VA, such as those awarded by the Strategic Acquisition Center, National Acquisition Center, and the other RPOs.

## What the Audit Found

The OIG team reviewed a statistical sample of 80 RPO Central contracts and associated files and found that RPO Central contracting officers did not always meet the intent and requirements of the Buy American Act because of insufficient oversight and training. As a result, the OIG estimated that VA obligated about \$280.6 million for items made outside the United States, and \$351 million for items made domestically that were associated with contract files containing compliance deficiencies in the population.<sup>7</sup>

The OIG found compliance varied based on place of manufacture. Between October 1, 2017, and March 31, 2021, RPO Central awarded 181 contracts for products reported as manufactured outside the United States (valued at about \$238.9 million) and 21,652 contracts for products made in the United States (valued at about \$1.3 billion).<sup>8</sup> Of the 80 contracts reviewed by the audit team, contracting officers reported 40 for foreign-made and 40 for domestic-made products. The audit team determined that contracting officers responsible for 37 of the contracts for foreign-made products, compared to 15 contracts for domestic-made products, did not comply with the act. The team noted four types of compliance deficiencies:

- Application of exceptions or waivers was inaccurate, or determination that the product was not available domestically was missing.<sup>9</sup>
- Solicitation and contract clauses were inaccurate or missing.<sup>10</sup>
- Documentation of the product's place of manufacture was missing or unclear.
- Reporting of a waiver, exception, or country of manufacture was erroneous.<sup>11</sup>

The OIG also found that contract file reviews conducted by RPO Central officials were insufficient. Of the 40 files in the audit team's sample for products reported as foreign-made, RPO Central reviewers did not identify deficiencies in 29 and did not complete required reviews

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<sup>7</sup> The estimates are for obligated funds and are approximate. They may differ from actual expenditures. Appendixes A and B detail the team's scope, methodology, and statistical sampling methodology.

<sup>8</sup> One of the contracting officers' errors—reporting country of manufacture—required the audit team to estimate the obligated value and size of the domestic and foreign-made populations' contracts. These adjusted values from an estimated total population of 21,833 were about \$364.4 million for products manufactured outside and \$1.1 billion for products made in the United States. See appendix B, tables B.1 and B.2, for more information.

<sup>9</sup> FAR 25.103. The determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality must be documented.

<sup>10</sup> Solicitations invite vendors to provide quotes or bids on government contracts. Clauses containing contract terms become part of the vendor-government agreement for goods and services.

<sup>11</sup> Place of manufacture for some contracts was inaccurately reported as outside, or in, the United States. The OIG's estimated obligated funds associated with contracts and files containing compliance deficiencies accounted for these errors.

for five, all of which contained at least one error.<sup>12</sup> For products reported as domestically made, eight of the 40 contract files had compliance deficiencies not identified by RPO Central reviewers, and three of five contract files that did not have required reviews were also deficient.<sup>13</sup> When contract file reviewers do not note compliance deficiencies, errors are not corrected, inappropriate acquisitions of foreign-made goods may go unnoticed, inaccurate data are reported in the federal database, and federal executive agencies and the public are unable to assess VA's expenditure of taxpayer funds.

In January 2019, RPO Central's management implemented one of many recommendations—training—made in September 2017 by VA's Risk Management and Compliance Service in its first review.<sup>14</sup> The training was implemented after the Government Accountability Office (GAO) found that agencies, including VA, faced challenges in applying exceptions and waivers and in reporting accuracy, specifically noting that VA contracting staff had indicated a need for increased training.<sup>15</sup> Most contracting officers associated with the OIG's sampled contracts completed the required training; however, internal reviews dated September and October 2020 and December 2021 again recommended training to improve compliance with the act.<sup>16</sup>

The number of contract files with compliance deficiencies indicates training was not sufficient. Contracting officers indicated there was a lack of sufficient training to comprehend the complexities of the act. The Risk Management and Compliance Service's senior procurement analyst mentioned taking the class multiple times to understand the requirements. Without sufficient training, RPO Central's compliance with the act could continue to be a challenge.

RPO Central's executive director did not implement other VA Risk Management and Compliance Service internal review recommendations, such as making sure that correct contract clauses are used and that nonavailability determinations are documented in the contract file. The RPO Central executive director explained that action plans in response to internal review recommendations are not required, and purchases that may qualify under the Buy American Act for exceptions and waivers represent a small portion of overall contracting actions. Regardless of the volume of purchases of foreign-made products as noted above, RPO Central's lack of

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<sup>12</sup> For the remaining six files, three underwent the required reviews and were in compliance; three did not meet the dollar threshold for a review.

<sup>13</sup> Compliance deficiencies were not found in the remaining 14 contract files with required reviews, and 13 acquisitions did not meet the dollar threshold for a review.

<sup>14</sup> Other recommendations included ensuring that consideration of the act and vendor's certifications, such as the product's place of manufacture, are documented in the contract file. After the audit began, the Risk Management and Compliance Service provided a presentation on the Buy American Act to RPO Central staff; however, attendance was not mandatory.

<sup>15</sup> GAO, *Buy American Act Actions Needed to Improve Exception and Waiver Reporting and Selected Agency Guidance*, GAO-19-17, December 2018.

<sup>16</sup> The reviews dated September and October 2020 evaluated samples of contracts awarded in FY 2019 and FY 2020, respectively.

sufficient response to internal review recommendations means missed opportunities to strengthen compliance and ensure taxpayer dollars are spent in accordance with the Buy American Act.

Based on the results of this audit, VA's own internal reviews, and GAO's 2018 findings, taxpayers' interests would be better served if VA took steps toward ensuring its contracting offices are fully complying with the law's requirements.

## **What the OIG Recommended**

The OIG recommended the VA Office of Acquisition and Logistics' executive director evaluate policies and procedures to make certain they require heads of contracting offices to assess compliance weaknesses identified by internal reviews, implement corrective actions, and require refresher training for contracting officers responsible for the deficiencies identified by internal reviews. The OIG also recommended the VHA procurement executive director evaluate contract file review procedures to strengthen oversight of compliance with the act.

## **VA Comments and OIG Response**

The VA Office of Acquisitions and Logistics executive director concurred with the findings and recommendations 1 and 2 and submitted action plans. The acting executive director of VHA procurement concurred in principle with the findings but did not concur with recommendation 3; however, VHA did submit an action plan for the recommendation. Appendixes C and D provide the full text of their comments.

Overall, the proposed corrective measures in VA and VHA's action plans are responsive to the recommendations. The OIG will follow up on the implementation of the planned actions and will close the recommendations when documentation has been provided illustrating corrective actions have been implemented.

In response to the Office of Acquisition and Logistics executive director's three technical comments, the OIG added text or footnotes to the report as appropriate when additional support was provided. The OIG incorporated clarifying information in footnotes of the report where appropriate based on the VHA procurement acting executive director's comments. Appendixes C and D contain VA and VHA's technical comments.



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## Abbreviations

eCMS	Electronic Contract Management System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
FY	fiscal year
GAO	Government Accountability Office
OIG	Office of Inspector General
RPO	regional procurement office
VHA	Veterans Health Administration



## Introduction

The Office of Inspector General (OIG) performed this audit to assess Regional Procurement Office (RPO) Central’s compliance with the Buy American Act and associated laws, regulations, and policies. The Buy American Act of 1933 is the earliest and perhaps the best-known statute promoting the procurement of American-made products.<sup>17</sup> The act, along with executive orders issued in 2017 and 2021, recognized the importance of using taxpayer dollars to support domestic businesses and the defense industrial base, to foster economic and national security, create jobs, and strengthen the middle class.<sup>18</sup>

VA has one of the largest acquisition functions in the federal government. For example, in fiscal year (FY) 2021, VA ranked fourth in dollars obligated by an agency with about \$34.3 billion and ranked second in the number of federal contract actions with about 1.8 million.<sup>19</sup> VA is instrumental in supporting the economy, American workers, and businesses through these expenditures. Accurate reporting of compliance with the act allows Congress, federal agencies, and the public to understand and assess VA’s use of taxpayer funds.

The Veterans Health Administration’s (VHA) Procurement and Logistics Office is one of the principal procurement groups in VA, with annual expenditures of more than \$15 billion and a staff of over 2,800.<sup>20</sup> Among its organizational components are three RPOs; Central, East, and West. The largest of the RPOs in federal contracting dollars in FY 2021, RPO Central, had annual obligations of over \$4.3 billion and therefore was selected for the compliance review. RPO East and West had annual obligations in FY 2021 of about \$3.7 billion and \$2.7 billion, respectively.<sup>21</sup>

## How the Buy American Act Works

The act limits the purchase of foreign products by requiring that domestic vendors receive a price preference. Specifically, if a domestic offer is not the lowest and the act applies, the contracting officer must add a percentage to the lowest foreign offer based on the domestic business’s size.<sup>22</sup>

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<sup>17</sup> Congressional Research Service, *The Buy American Act—Preferences for “Domestic” Supplies: In Brief*, Congressional Research Service Report No. R43140 by Kate M. Manuel, April 2016.

<sup>18</sup> 41 U.S.C. §§ 8301-8305; Exec. Order No. 13788, 82 Fed. Reg. 18837 (April 21, 2017); Exec. Order No. 14005, 86 Fed. Reg. 7475 (January 28, 2021).

<sup>19</sup> The team selected the date range of October 1, 2020, to September 30, 2021, to obtain the federal contract actions and values from the General Services Administration federal government System for Award Management (SAM.gov), accessed November 16, 2021, <https://SAM.gov>.

<sup>20</sup> “VHA Procurement & Logistics Office (P&LO),” accessed November 16, 2021, <https://www.va.gov/PLO>.

<sup>21</sup> SAM.gov, accessed February 10, 2022.

<sup>22</sup> FAR 25.105(b). The contracting officer adds either 20 percent or 30 percent to the lowest bid depending on whether the lowest domestic offer is from a large or a small business. The price of the domestic offer is reasonable if it does not exceed the price of the low offer with the appropriate percentage added.

The act applies to all US federal government agency purchases of goods valued over the micropurchase threshold.<sup>23</sup>

## Exceptions and Waivers to the Buy American Act

The law requires that all goods for public use be produced in the United States, and manufactured items must be manufactured domestically from US materials. However, the law allows the purchase of foreign goods through established exceptions, such as when products are not available in sufficient quality or quantity from domestic manufacturers.<sup>24</sup> The restriction on foreign goods may also be waived under international trade agreements that place designated countries' goods on an equal footing with domestic products.<sup>25</sup> The Federal Acquisition Regulation (FAR) lists five exceptions to the restriction:<sup>26</sup>

1. **Nonavailability.** The articles, materials, and supplies are not mined, produced, or manufactured in the United States in sufficient, reasonably available commercial quantities or of a satisfactory quality.
2. **Public interest.** Domestic preference is inconsistent with the public interest.
3. **Resale.** Foreign products may be purchased for commissary resale. Commissaries are stores typically located at military installations.
4. **Unreasonable cost.** Purchasing the material domestically would burden the government with an unreasonable cost.
5. **Commercial information technology.** The restriction on foreign-made products does not apply to information technology acquisitions that are commercial items, such as computers and electronic storage devices necessary for security and surveillance.

## Solicitation and Contract Clauses

The FAR also lists required clauses that apply to the acquisition of supplies and services involving the furnishing of supplies.<sup>27</sup> Examples include:

1. **Buy American-Supplies, clause 52.225-1** is to be inserted in solicitations and contracts with a value exceeding the micropurchase threshold but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the trade agreement clauses apply, unless an exception applies, such as nonavailability.

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<sup>23</sup> 41 U.S.C. § 1902. The micropurchase threshold was \$3,500 in FY 2018 and increased to \$10,000 in August 2020.

<sup>24</sup> 41 U.S.C. §§ 8302.

<sup>25</sup> Federal Acquisition Regulation (FAR) 25.402.

<sup>26</sup> FAR 25.103.

<sup>27</sup> FAR 25.1101.

2. **Buy American-Free Trade Agreements-Israeli Trade Act, clause 52.225-3** is to be used in solicitations and contracts if the acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$182,000, unless an exception applies, such as a small business set-aside.<sup>28</sup>
3. **Trade Agreements, clause 52.225-5** is to be included in solicitations and contracts valued at \$182,000 or more if the acquisition is covered by the World Trade Organization Government Procurement Agreement.<sup>29</sup>

## Vendor Certification of Products' Country of Origin

Vendors bidding on government contracts must certify compliance with certain requirements—for example, that their entity is a small or veteran-owned business, that they have provided their taxpayer identification number, and that the entity has not been determined ineligible for government awards. Beyond that, in keeping with the contract clause—FAR 52.225-2, Buy American Certificate—they must certify that each product is a domestic end product, as defined below, or list any foreign end product and its country of origin.

The FAR defines a domestic end product as (1) an unmanufactured end product mined or produced in the United States or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components.<sup>30</sup> Therefore, a domestic acquisition may include foreign components that make up as much as 45 percent of the overall cost and still be considered a domestic purchase.

Certifications regarding the place of manufacture can be provided annually in the System for Award Management, the federal government's vendor registry, or with the vendor's bid in response to acquisition offers.<sup>31</sup> In this system, the vendor can specify the country of origin for a broad category of products, such as medical equipment and supplies.<sup>32</sup>

## Buy American Monitoring and Oversight

Monitoring and oversight of the Buy American Act entails monitoring of all federal government agencies by the Office of Management and Budget, VA's internal compliance reviews

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<sup>28</sup> Examples of Free Trade Agreement countries are Australia, Canada, Columbia, Guatemala, Mexico, and Peru. Effective August 2022, the value changed to \$183,000.

<sup>29</sup> Examples of World Trade Organization Government Procurement Agreement countries are Belgium, Canada, France, Germany, Iceland, Japan, and the United Kingdom. Effective August 2022, the amount changed to \$183,000.

<sup>30</sup> FAR 52.225-1.

<sup>31</sup> FAR 4.12 and 52.204-8.

<sup>32</sup> FAR 25.501(b). The contracting officer may rely on the bidder's certification of end-product origin.

addressing the act, and VHA contracting officials' file reviews.

## **Federal Monitoring**

Executive Order 13788 in 2017 required ongoing monitoring of each federal agency's ability to maximize the use of goods and materials produced in the United States.<sup>33</sup> It was replaced by Executive Order 14005, which expanded the requirement and established the Made in America Office in the Office of Management and Budget (OMB).<sup>34</sup> Executive Order 14005 also requires federal agencies, including VA, to submit to the Made in America Office a semiannual report on

- (a) the department's ongoing implementation of, and compliance with, the Buy American Act;
- (b) an analysis of goods, products, and materials not subject to the act or where requirements of the act have been waived; and
- (c) an analysis of spending as a result of waivers issued pursuant to trade agreements.

The Made in America Office reviews each agency's proposed waivers to the act, determines the waivers' compliance with law, and notifies the agency of its determination.<sup>35</sup> Any disagreements with the determination are to be resolved through set procedures.<sup>36</sup> Proposed and approved waivers are published on the [madeinamerica.gov](http://madeinamerica.gov) website to maximize opportunities for US vendors to supply goods to the government. The website transparency enables interested sellers to better understand where agencies are having trouble finding domestic-made products.

Government agency and department leaders are accountable for each spending decision they make, and that information must be made available to the public.<sup>37</sup> Spending is reported in Federal Procurement Data System-Next Generation (FPDS-NG), a government-wide database for contract awards and obligations.<sup>38</sup> Agency chief acquisition officers must certify each year that their agencies' previous fiscal year FPDS-NG records, including Buy American Act data,

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<sup>33</sup> Exec. Order No. 13788.

<sup>34</sup> Exec. Order No. 14005.

<sup>35</sup> 44 U.S.C §§ 3502(1). "Agency" means any department established in the executive branch of the government, such as VA. Executive Order 14005 defines "waiver" as an exception from, or waiver of, "made in America" laws.

<sup>36</sup> Disagreements are to be submitted in writing by the head of the agency to the Made in America Office director. In accordance with Executive Order No. 12866, 58 Fed. Reg. 51735 (October 4, 1993), the OMB Director, the head of the issuing agency, or the head of any agency with significant interest in the issue may request presidential review of conflicts or disagreements that cannot be resolved by the Office of Information and Regulatory Affairs. Recommendations by the President or the Vice President acting at the request of the President must be concluded within 60 days after the review request.

<sup>37</sup> Federal Funding Accountability and Transparency Act, Pub. L. No. 109-282 (2006).

<sup>38</sup> FAR 4.602. FPDS-NG provides a comprehensive web-based tool for agencies to report contract actions.

are complete and accurate.<sup>39</sup> The FPDS-NG contract data are transmitted to the USAspending.gov website in accordance with the Federal Funding Accountability and Transparency Act.<sup>40</sup>

For VA, reporting contract actions in FPDS-NG is done through the Electronic Contract Management System (eCMS), VA's official record of contract documents.<sup>41</sup> Contracting officials create the contract award documents in eCMS and populate data fields such as the vendor information, obligation amount, and product's place of manufacture. Contracting officers must then report procurement actions in FPDS-NG before they can complete the awards in eCMS. This is accomplished by accessing a module in eCMS that links to FPDS-NG. The interface between FPDS-NG and eCMS is two-way—data stored in eCMS are sent to FPDS-NG, and data entered in FPDS-NG are returned to eCMS.

## **VA Internal Reviews**

VA's Office of Procurement Policy, Systems and Oversight, in the Office of Acquisition and Logistics, manages and oversees VA's acquisition system, procurement policy, the issuance of guidance, and the training of the acquisition workforce. The Risk Management and Compliance Service in VA's Office of Procurement Policy, Systems and Oversight provides acquisition oversight and risk assessment to VA's acquisition community. The service began internal reviews of compliance in September 2017 in response to Executive Order 13788.<sup>42</sup> These reviews specifically address Buy American Act and Trade Agreement Act compliance and VA's use of waivers and exceptions by assessing whether contract files followed the procedures in the FAR.

## **RPO Central Oversight: Contract File Reviews**

VHA requires the head of contracting activities to develop and implement a technical review process, which includes contract file reviews that ensure compliance with regulations that implement laws, such as the Buy American Act, and VA acquisition policies. Reviews are required based on the type of contracting action being awarded (such as single-year or multiyear award) and monetary threshold. The type and threshold also determine who does the file review: a contracting officer as a peer review, individuals one to two levels above the contracting officer,

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<sup>39</sup> Office of Management and Budget memorandum, "Improving Federal Procurement Data Quality—Guidance for Annual Verification and Validation," May 31, 2011.

<sup>40</sup> Federal Funding Accountability and Transparency Act. USAspending.gov is the official open data source for federal spending information.

<sup>41</sup> VA Acquisition Manual, part M804, subparts M804.602, "General," and M804.802-70, "Contract files and eCMS," accessed June 21, 2021, <https://www.va.gov/OAL/library/vaam/index.asp>.

<sup>42</sup> Exec. Order No. 13788.

or a higher-level review such as the director of contracting.<sup>43</sup> In some cases, legal reviews are also required based on the monetary threshold or sensitivity of the acquisition.

File reviewers are required to complete a contract review form, which includes a link to the Definitions of Comment Categories, a document that lists issue areas such as contract clauses, reporting elements, and the vendor's responsibility determination.<sup>44</sup> The reviewer communicates results of the review by entering comments on the form. The contract review form, or alternate form that contains the same information, must be added to the eCMS contract file.<sup>45</sup>

## VHA Contracting Entities

VHA's healthcare facilities make up the largest integrated healthcare delivery system in the United States. According to its website, VHA's Procurement and Logistics Office supports VHA in purchasing high-quality, cost-effective healthcare products and services. The office works to standardize healthcare supplies, equipment, and services through contracting and by monitoring logistics data. The office oversees purchasing and distribution of pharmaceuticals, medical and operational supplies, prosthetics, high-tech medical equipment, and other critical patient care items. The office also provides services through its major organizational components, including the three RPOs.

The RPOs—Central, East, and West—are divided into network contracting offices. Each RPO executive director reports to the VHA procurement executive director. The network contracting offices have a standard organizational structure as illustrated in figure 1.<sup>46</sup>

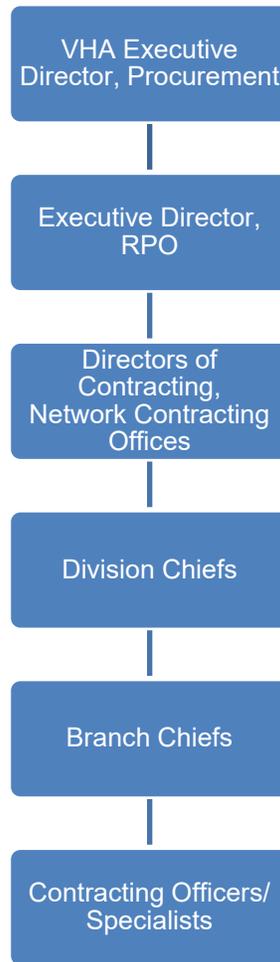
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<sup>43</sup> VA Acquisition Regulation 801.602-70, March 16, 2020; VHA Procurement Manual, part 801.602-70.

<sup>44</sup> Contracting officers must determine whether a prospective vendor demonstrates adequate responsibility for a contract award. The determination includes verifying that the prospective vendor is registered in the System for Award Management, the registration is accurate and complete, and the vendor's representations and certifications are present. Vendors who fail to furnish certifications as requested by the contracting officer may not be considered responsible.

<sup>45</sup> RPO executive directors who have an automated system to capture the reviews may use an alternate form.

<sup>46</sup> VHA Procurement Manual, part 801.304-2, "Ideal Organization SOP," February 17, 2015.



**Figure 1.** Network contracting hierarchy.

Source: RPO Central organizational chart and VHA Procurement Guide.

VHA RPO Central’s executive director serves as the head of the contract activity. This is a delegated senior-level position responsible for managing the procurement program at an assigned office, which includes the responsibility to contract for authorized goods and services along with managing the contracting activity.<sup>47</sup> RPO Central is composed of the Program Contracting Activity Central office and seven network contracting offices that serve all or portions of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming.

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<sup>47</sup> VA Acquisition Regulation, part 801-695-3, March 16, 2020. All delegations of head of contracting activity must be in writing and identify the specific limitations of the designee’s authority.

## Contracting Process

The federal government begins the contracting process with identification of a need.<sup>48</sup> The contracting officer, sometimes assisted by contract specialists, then performs market research to determine whether existing contracts can meet the need, sources capable of meeting the requirements exist, and commercial products are available, among other things.<sup>49</sup> If appropriate, the contracting officer prepares a solicitation to invite vendors to provide quotes or bids on government contracts.<sup>50</sup> Prior to issuing the solicitation, a contract file reviewer evaluates the solicitation contracting action if required. The contracting officer evaluates the bids, prepares the contract, obtains any required reviews, and makes the award.<sup>51</sup> The contracting process is illustrated in figure 2.



**Figure 2.** Contracting process.

Source: VA OIG staff analysis.

## Contract File Documentation

The head of each contracting office must establish files for all contract records. Documentation maintained in the file must be sufficient to constitute a complete history of the transaction and support actions taken, as well as provide information for reviews.<sup>52</sup> The FAR specifies that files normally contain contract documents such as the following:

1. Market research
2. Copy of the solicitation
3. Vendor's representations and certifications
4. Contracting officer's determination of the contractor's responsibility
5. Approvals or disapprovals of requests for waivers
6. Review documents

<sup>48</sup> FAR 7.104(a).

<sup>49</sup> FAR 7.102(a)(4); FAR 10.001(a)(3)(i) and (ii).

<sup>50</sup> FAR 2.101; FAR 7.105(b)(21).

<sup>51</sup> FAR 7.105(b)(21).

<sup>52</sup> FAR 4.801.

7. Original signed contract or award
8. Any other documents of actions by the contracting officer pertinent to the contract<sup>53</sup>

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<sup>53</sup> FAR 4.803.

## Results and Recommendations

### **Finding: Lack of Adequate Oversight and Training Affected VHA Regional Procurement Office Central's Compliance with the Buy American Act**

RPO Central contracting officers did not always meet the requirements of the Buy American Act to support American businesses because of insufficient oversight and training. The OIG found that for 52 of 80 statistically sampled RPO Central contracts, the contracting officers had incorrectly applied the requirements of the act.<sup>54</sup> Based on errors in the sample reviewed, the OIG estimated that VA obligated about \$280.6 million for items made outside the United States, and \$351 million for items made domestically that were associated with contract files containing compliance deficiencies.<sup>55</sup>

RPO Central management did not effectively implement contract file reviews, a quality control designed to detect, correct, and prevent noncompliance. Of the 80 contract files associated with the sample, the OIG found

- 54 included a required review but 37 of the reviews had deficiencies,
- 10 did not include a required review, and
- 16 did not meet the threshold for a review.

Another quality control, VA's Risk Management Compliance Service's internal reviews, noted deficiencies, but RPO Central's executive director did not sufficiently respond to the recommendations, such as documenting the product's country of manufacture in the contract file. Although the OIG found the executive director had implemented a training recommendation in 2019, training was again recommended in 2020 and 2021. The consistent training recommendations for RPO Central contracting officers indicate some may need more training.

In FY 2021, VHA took steps to strengthen compliance. For example, checklists for various types of acquisitions, such as for prosthetics or supplies, were revised to incorporate the Buy American Act. While these checklists are available for acquisition staff, policies require neither their use nor their inclusion in the contract files. Until RPO Central's executive director does more to strengthen contract file review procedures to ensure compliance with the act and VA acquisition policies, data reported to federal executive agencies and the public may remain inaccurate and prevent a true assessment of VA's use of taxpayer funds.

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<sup>54</sup> Appendixes A and B detail the team's scope, methodology, and sampling methodology.

<sup>55</sup> The estimates are for obligated funds and are approximate. They may differ from actual expenditures.

The finding builds on the following OIG determinations:

- VHA’s RPO Central contracting officers inconsistently complied with Buy American Act requirements.
- RPO Central contracting officials’ oversight of Buy American Act compliance was insufficient.
- RPO Central did not take sufficient action on internal review recommendations.

## What the OIG Did

The team reviewed two statistical samples of 40 contracts each for purchases of products reported as manufactured outside or in the United States that were awarded by RPO Central from October 2017 through March 2021. The team excluded non-VA awards and orders and modifications for the same contract.<sup>56</sup> The samples were selected from two populations: 181 contracts valued in total at about \$238.9 million for products reported as manufactured outside the United States, and 21,652 contracts with a value in total of about \$1.3 billion for products reported as manufactured in the United States.<sup>57</sup> The team compared sample data from eCMS with act requirements and associated laws, regulations, and VA acquisition policies.

In its assessment, the audit team analyzed contract files and reviews completed by RPO Central officials for the sampled contracts. The team also examined all internal reviews of compliance done by VA’s Risk Management and Compliance Service.<sup>58</sup> The team interviewed and corresponded with officials from VA’s Risk Management and Compliance Service and with VHA RPO Central’s management and contracting officials. See appendix A for more information about the scope and methodology and appendix B for information on the statistical sampling done and adjustments made to the populations.

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<sup>56</sup> Determination of whether the Buy American Act applies takes place before contract award. Therefore, contracts not awarded by VA, such as Federal Supply Schedule contracts, were excluded from the sample.

<sup>57</sup> One of the contracting officer’s errors—reporting country of manufacture—required the audit team to estimate the value and size of the domestic and foreign-made populations’ contracts. These adjusted values from an estimated total population of 21,833 were about \$364.4 million for products manufactured outside and \$1.1 billion for products made in the United States. See appendix B, tables B.1 and B.2, for more information.

<sup>58</sup> The Risk Management Compliance Service began internal compliance reviews in response to the June 30, 2017, Office of Management and Budget requirement to assess compliance and had completed five reviews by December 2021.

## VHA's Regional Procurement Office Central Contracting Officers Inconsistently Complied with Buy American Act Requirements

Contracting officers did not consistently comply with the Buy American Act requirements. The OIG found 52 of 80 statistically sampled contracts and associated files had at least one compliance deficiency as illustrated in table 1.

**Table 1. RPO Central Sampled Contracts and Files**

Manufacture location	Number of contracts and files	Number of contracts and files with compliance deficiencies
Outside the United States	40	37*
In the United States	40	15†
<b>Total</b>	<b>80</b>	<b>52</b>

Source: OIG analysis of RPO Central sampled contracts and related files.

\*Twenty-five of 37 contracts or contract files contained multiple compliance deficiencies.

†Two of 15 contracts or contract files contained multiple compliance deficiencies.

Deficiencies fell into the following categories:

1. Application of exception or waiver was inaccurate, or determination that the product was not available domestically was missing.
2. Solicitation and contract clauses were inaccurate or missing.
3. Documentation of the product's place of manufacture was missing or unclear.
4. Reporting of waiver, exception, or country of manufacture was erroneous.

### Application of Exception or Waiver Was Inaccurate, or Product Nonavailability Determination Was Missing

For products reported as manufactured outside the United States, some contracting officers incorrectly applied an act exception or waiver or omitted the nonavailability determination. For 12 of 40 sampled contracts, contracting officers incorrectly applied an exception or waiver. For seven of the 40 acquisitions, contracting officers reported a nonavailability exception without including the nonavailability determination in the contract file.

Exceptions and waivers to the act, such as domestic nonavailability or trade agreements, are determined before the contract is awarded. RPO Central's executive director may determine that an article, material, or supply is not mined, produced, or manufactured in the United States in

sufficient and reasonably available commercial quantities of a satisfactory quality.<sup>59</sup> The written nonavailability determination must be included in the file unless the acquisition was conducted through full and open competition, was summarized according to FAR requirements, and garnered no domestic offers.<sup>60</sup> Errors noted by the audit team included the following:

- **Incorrect exception or waiver applied.** Contracting officers should have used a nonavailability determination but incorrectly selected other exceptions for four acquisitions. For example, one contracting officer used the public interest, and another used the resale exception, and both agreed with the audit team that the nonavailability exception applied. They also awarded sole-source acquisitions for eight contracts for products reported as made outside the United States and incorrectly used a trade agreement waiver. Trade agreement waivers do not apply to sole-source acquisitions greater than the simplified acquisition threshold when using the simplified acquisition procedures.<sup>61</sup> Therefore, a nonavailability determination was required for these contracts.
- **Missing nonavailability determination.** Seven contract files for products reported as made outside the United States were missing the required nonavailability determination signed by RPO Central’s executive director.

Selecting incorrect exceptions or waivers means VA officials may have neglected additional required steps, such as determining whether the product was available domestically or obtaining a higher-level review. VA’s July 2021 report to the Office of Management and Budget’s Made in America Office to comply with Executive Order 14005 acknowledged that the number of exceptions and waivers along with the associated dollar values might be inaccurate because of errors in selecting the correct exception or waiver in FPDS-NG. The lack of nonavailability determinations indicates RPO Central contracting officers might have bypassed VA’s oversight requirements and improperly purchased foreign-made products.

## **Solicitation and Contract Clauses Were Inaccurate or Missing**

Contracting officers must ensure correct clauses are included in solicitations and contracts. When creating the solicitations and contracts, contracting officers determine and select which terms or conditions are included as clauses. Inclusion of the Buy American or trade agreements clause in solicitations and contracts for supplies depends on the dollar value of the acquisition as

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<sup>59</sup> FAR 25.103(b)(2)(i); VA Acquisition Manual, part M825.103, “Exceptions,” accessed June 6, 2021, <https://www.va.gov/OAL/library/vaam/index.asp>.

<sup>60</sup> FAR 25.103(b)(3). In December 2021, after the scope of the audit, VA issued a deviation from the FAR requirements—specifically, that proposed waivers to the act are to be submitted to the Made in America Office for review unless the acquisition is urgent or determined to be unavailable on a class basis and are listed in FAR 25.104.

<sup>61</sup> FAR 25.401(a)(5).

previously mentioned.<sup>62</sup> Clauses included in contracts become part of the vendor-government agreement for goods and services.

However, for the products reported as manufactured outside the United States, 32 of 40 contract files contained solicitations or contracts that did not include the correct clauses or were missing clauses.<sup>63</sup> For products reported as manufactured in the United States, five of 40 sampled contracts were missing applicable clauses.

The types of errors noted are illustrated below:

- **Inaccurate solicitation clause.** In five solicitations for products reported as made outside the United States, contracting officers incorrectly included a Buy American instead of a trade agreement clause, indicating the acquisition was limited to domestic manufactured products. Two other solicitations were missing the trade agreement clause and one included the incorrect trade agreement clause.
- **Inaccurate contract clause.** Contracting officers incorrectly included a Buy American or trade agreement clause in 27 contracts for products reported as made outside the United States. Neither clause should have been included because an exception—nonavailability—applied.<sup>64</sup> Additionally, in one contract, a contracting officer incorrectly included a Buy American instead of a trade agreement clause, and in another the wrong trade agreement clause was applied. When interviewed, contracting officers for 11 contracts agreed with the audit team.
- **Missing contract clause.** For sampled contracts of products reported as made in the United States, five contracts were missing a Buy American clause.

Solicitations and contracts that lack the correct clauses reduce VA's ability to ensure compliance with the Buy American Act. The team noted that errors may occur because as some contracting officers explained, they rely on eCMS to populate and accurately transfer solicitation clauses into the contract. Excluding the clauses may incorrectly indicate that the acquisition is not subject to act requirements, and vendors could provide foreign goods instead of American-made products as required. Omission of required clauses also removes safeguards designed to ensure transparency and accountability in the procurement process. For instance, VA cannot hold noncompliant contractors accountable if contracts do not contain the appropriate clauses.

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<sup>62</sup> FAR 25.1101. Acquisitions valued above the micropurchase threshold but not exceeding \$25,000 require the act clause unless an exception applies, such as nonavailability. The Buy American–Free Trade Agreements–Israeli Trade Act clause is required for supply acquisitions valued at \$25,000 or more but less than \$182,000 unless an exception applies, such as a small business set-aside. A trade agreement clause should be used in acquisitions valued at \$182,000 or more. Effective August 2022, the value changed to \$183,000.

<sup>63</sup> Five contract files had clause errors in both the solicitation and the contract.

<sup>64</sup> FAR 25.1101(a)(1)(ii).

When contracting officers determine that contracts are eligible for an exception or waiver and include unrelated and therefore unnecessary clauses, VA's administrative burden, the vendor's administrative costs, and thus the overall cost of VA's acquisitions may increase. For instance, one contracting officer noted vendors may request a contract modification to remove inapplicable clauses, two others told the audit team that vendor agreement is required for changes. Thus, removal requires additional administrative time by both VA and the vendors.

## **Documentation of the Product's Place of Manufacture Was Missing or Unclear**

Contracting officers use product origin information to evaluate offers and determine whether an act exception or trade agreement waiver applies. Such information is normally included in contract files with vendor certifications.<sup>65</sup>

- **Place of manufacture missing.** The team found no evidence of place of manufacture in nine of 40 contract files for products reported as made outside the United States, and in five of 40 contract files for products reported as manufactured in the United States. Contracting officers provided various reasons for the lack of documentation. For example, one noted reliance on the vendor's address and said that place of manufacture was hard to find, and another was unsure how the place of manufacture is determined. Three additional contracting officers agreed that documentation was missing and could not provide a reason.
- **Place of manufacture unclear.** Contracting officers did not clearly identify the place of manufacture in four files containing sampled contracts. For example, one contracting officer reported Japan as the place of manufacture; however, contract documentation noted multiple countries of origin—namely Japan, Great Britain, Taiwan, and the United States. In three other contract files for products reported as manufactured in the United States, the United States and a foreign country were included in documentation.

Without documentation or clarity regarding place of manufacture, RPO Central contracting officers cannot be certain of the product's origin and therefore cannot ensure act compliance.

## **Reporting of Waiver, Exception, or Country of Manufacture Was Erroneous**

Contract award data reported in FPDS-NG are used to create recurring and special reports to the President, Congress, federal executive agencies, and the public, conveying information such as

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<sup>65</sup> FAR 4.803(a)(11); FAR 52.225-2.

the extent to which each agency complies with the act.<sup>66</sup> Contracting officers are responsible for reviewing and submitting accurate and complete FPDS-NG information.<sup>67</sup>

However, contracting officers did not consistently report the waiver, exception, or country of manufacture correctly. They made errors in 25 of 40 contract files for products reported as made outside the United States.<sup>68</sup> For products reported as made in the United States, they misreported the country of manufacture in four of 40 contract files. Reporting mistakes noted in the contract files for sampled contracts included the following:

- **Waiver and exception reporting errors.** Contracting officers incorrectly reported that 13 contracts were awarded using a trade agreement waiver for products made outside the United States when they should have reported a domestic nonavailability exception based on documentation in the file. For eight other sampled contracts, contracting officers reported the incorrect exception, such as public interest or resale instead of nonavailability. Accurate waiver and exception reporting aids in identifying and filling gaps in the domestic supply chain.
- **Country of manufacture reporting errors.** Contracting officers for three contracts misreported the foreign country for products reported as made outside the United States. For example, one contractor reported the place of manufacture as Taiwan; however, contract documentation noted the product was made in China. When interviewed, the contracting officer told the team that since the product was foreign-made, the country reported did not matter. Another contract file for products reported as foreign-made included evidence the products were made in the United States. Documentation for four contracts for products reported as made in the United States identified foreign countries of manufacture. When interviewed, all four contracting officers agreed that the purchases were inaccurately reported as domestic products. Inaccurate reporting of waiver and exceptions impact reports by VA on the agency's compliance with the act, analysis of products not subject to the act, and assessment of spending as a result of waivers issued in accordance with trade agreements.

VA's first report to the Office of Management and Budget's Made in America Office in July 2021, required by Executive Order 14005, noted the number of waivers and exceptions and the associated dollar values might be inaccurate. This acknowledgment cited the internal compliance review dated September 2020 that found contracting officers did not always report

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<sup>66</sup> Executive Order No. 13788 required a report be submitted to the Office of Management and Budget by September 2017. Executive Order No. 14005 requires semiannual reporting. Other typical reports include the biweekly COVID-19, the annual Small Business, and the annual Top 100 Contractor reports.

<sup>67</sup> VA Acquisition Manual, part M804, subpart M804.606, "Reporting data," accessed June 21, 2021, <https://www.va.gov/OAL/library/vaam/index.asp>.

<sup>68</sup> The contracting officer inaccurately reported both the exception and country of manufacture for one contract.

the correct waiver or exception in the database. Without accurate reporting, Congress, federal agencies, and taxpayers are unable to rely on the data reported by RPO Central to assess the extent of VA's domestic purchases and its compliance with the Buy American Act.

## RPO Central Contracting Official's Oversight of Buy American Act Compliance Was Insufficient

Contract file reviews follow a VHA-established procedure to make sure purchases meet the requirements of the act and VA acquisition policies. Reviews are not required for all acquisitions, such as purchases below the simplified acquisition threshold.<sup>69</sup> If required, a review must be completed prior to solicitation and contract award and be documented in eCMS.

The OIG found that RPO Central's contract file reviewers did not identify all instances of noncompliance with the Buy American Act and VA acquisition policies. The audit team analyzed documentation and noted contract file reviews in 54 of 80 files associated with sampled contracts.<sup>70</sup> Of the remaining 26 files, 10 did not contain required reviews and 16 did not require reviews.<sup>71</sup> The audit team observed compliance deficiencies for sampled contract acquisitions as detailed in table 2.

**Table 2. Contract File Review Results**

Reported place of manufacture	Contract files containing a file review		Contract files missing a required file review	
	Number of contract files	Number of files with compliance deficiencies	Number of contract files	Number of files with compliance deficiencies
Outside the United States	32	29	5	5
In the United States	22	8	5	3
<b>Total</b>	<b>54</b>	<b>37</b>	<b>10</b>	<b>8</b>

*Source: VA OIG analysis of statistically sampled contracts.*

Contract file reviewers complete a review form to document in eCMS comments about the findings and corrective actions made before soliciting and awarding a contract. A link in the

<sup>69</sup> The simplified acquisition threshold increased from \$150,000 to \$250,000 effective August 31, 2020.

<sup>70</sup> Of the 54 contract files with reviews, 17 did not have compliance deficiencies; three were outside and 14 were in the United States.

<sup>71</sup> Of the 16 contract files that did not require a review, three were outside and 13 were in the United States; the audit team noted nine files had compliance deficiencies.

form takes the reviewer to the Definitions of Comment Categories document, which identifies the top issue areas for reviewers, such as the following:

- Procurement documents contain the appropriate and required contract clauses.
- The FPDS-NG reported elements are complete or appropriate.
- Waivers, such as the head of contracting activity's product nonavailability determination, were obtained from the appropriate authority if applicable.
- The vendor's responsibility determination and related documents, such as certifications in the System for Award Management, are appropriate.
- The documents in the contract file comply with acquisition policy requirements, including market research documentation.

VHA's Procurement Manual provides presolicitation and preaward checklists for different types of procurements, such as supplies and prosthetics, to assist in the review process. Several contract file reviewers interviewed reported using the checklists or relied on experience to perform reviews. The checklists are provided as a tool to assist in the review process but are not mandatory and are not used to document review findings nor are a substitute for the review form that primarily contains the reviewer's comments. Additionally, the audit team noted these checklists did not include items related to the Buy American Act until January 2021. Contract file reviewers' use of the tools available, such as the Definition of Comment Categories and checklists, and documentation of that use, could prevent overlooking noncompliance with laws, including the Buy American Act.

Compliance deficiencies in the contract files, and the lack of contract file review comments to correct the issues, demonstrate a weakness in RPO Central's oversight. The Government Accountability Office (GAO) identified incomplete contract file documentation and limited contract oversight in 2019, and subsequently, added VA's acquisition management to the GAO high-risk list that year; a progress review in 2021 noted VA still needed to address areas of concern.<sup>72</sup>

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<sup>72</sup> GAO, *Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, GAO-19-157SP, March 2019; GAO, *Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, GAO-21-119SP, March 2021. The high-risk list focuses attention on government operations that need to address economy, efficiency, or effectiveness challenges.

## RPO Central Did Not Take Sufficient Action on Internal Review Recommendations

The VA Office of Procurement Policy, Systems and Oversight’s Risk Management and Compliance Service issued five reports between 2017 and 2021 as required by VA policy.<sup>73</sup> The reviews are listed in table 3.

**Table 3. Risk Management and Compliance Service Reviews**

Date of review	Sampled contracts reviewed awarded in fiscal year(s)
September 2017	2015, 2016
June 2019	2018
September 2020	2019
October 2020	2020
December 2021	2021

*Source: VA Office of Procurement Policy, Systems and Oversight’s Risk Management and Compliance Service.*

RPO Central did not take adequate steps to address recurring recommendations included in the service’s internal compliance reviews. Despite repeated recommendations that included documenting consideration of the act, verifying vendor certifications are in the contract file, and training, VHA has not implemented a policy to ensure responses or actions are imposed to correct deficiencies.

### Recurring Training Recommendation Was Implemented Yet Errors Persisted

RPO Central’s executive director implemented one of the Buy American Act recurring internal compliance review recommendations—training—in January 2019.<sup>74</sup> All RPO Central contracting staff were required to complete the Federal Acquisition Institute one-hour training course, “Buy American Statute.” The audit team noted most RPO Central contracting officers associated with the sampled contracts took the training, as detailed below:

<sup>73</sup> VA Procurement Policy Memorandum (PPM) 2017-12, rev. September 22, 2017, and April 9, 2019. The memo, which required the service to perform periodic reviews, was subsequently revised to require annual reviews.

<sup>74</sup> After the audit began, the Risk Management and Compliance Service provided a presentation on the Buy American Act to RPO Central staff; however, attendance was not mandatory.

- All 21 contracting officers associated with the sample of procurements for products reported as made outside the United States completed the training.
- Of the 24 contracting officers associated with the sample of purchases of products reported as made in the United States, 17 completed the training during the scope period.<sup>75</sup>

Four of the 21 contracting officers associated with the sample of acquisitions reported as made outside the United States said compliance training was not required annually, and nine indicated the training was not enough to fully understand the complexities of the act and the associated laws. The Risk Management and Compliance Service’s senior procurement analyst acknowledged taking the class multiple times to understand the requirements of the act.

In addition to the training, VA’s Office of Acquisition and Logistics issued guidance to contracting staff in 2017 and 2019. Acquisition Policy Flashes in FYs 2017, 2019, and 2021 also emphasized the act.<sup>76</sup> Furthermore, VHA issued a series of annual reminders to contracting staff from FY 2017 through FY 2021 in the form of electronic Procurement Policy Office Pointers. The pointers provide a synopsis of acquisition policy flashes, changes to the VHA Procurement Manual, and useful links, among other acquisition information. After the audit began, VA also updated the VA Acquisition Manual to encourage contracting officers to use the Implementing Buy American Job Aid and take courses that cover implementation of the act.<sup>77</sup>

Even so, contracting officers’ lack of understanding of the act requirements was demonstrated during audit team interviews with the 21 contracting officers who issued contracts for products reported as made outside the United States. For example, two contracting officers told the audit team they did not know sole-source acquisitions meant trade agreements did not apply despite FAR 25.401 stating that trade agreements do not apply to certain acquisitions using sole-source justifications. One contracting officer said the place of manufacture did not matter because the purchase was for research and was exempt since research was not for public use—which is not correct—according to the act, purchases for use by the federal government are public use and the federal government must purchase American materials.<sup>78</sup> Another contracting officer said the

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<sup>75</sup> Seven contracting officers are no longer with VA; however, RPO Central officials provided training certificates for two of them.

<sup>76</sup> Office of Acquisition and Logistics, Procurement Policy Memorandum 2017-12, “Department of Veterans Affairs’ (VA) Implementation of the Buy American Laws to Maximize the Use of Goods, Products and Materials Produced in the United States,” September 2017, revised April 2019 (subsequently rescinded and incorporated into VA Acquisition Manual, part 825 January 2021); Acquisition Policy Flashes 17-32, 19-17, and 21-14. Flashes communicate and disseminate guidance and policy changes that are emailed to acquisition staff and are available on the Office of Acquisition and Logistics website.

<sup>77</sup> VA Acquisition Manual, part 825, February 2022. The job aid attached to the acquisition manual helps the acquisition staff determine the applicability of the act and trade agreements.

<sup>78</sup> Buy American Act §§ 8301 and 8302(a)(1).

exception reported was public interest because VA needed the product however, FAR 25.103 requires a determination from the head of the agency to apply that exception. Resale was reported as the exception for an acquisition because the contracting officer thought resale meant the product was a commercial off-the-shelf item and could be purchased by anyone. The item, however, was not for commissary resale as defined by FAR.

Given the errors the team noted in the contract files and interviews, the OIG determined some contracting officers did not obtain sufficient knowledge to adequately implement the act. GAO identified inadequate acquisition training as a challenge in 2019, and subsequently added VA's acquisition management to its high-risk list.<sup>79</sup> Until contracting officers have sufficient knowledge of the act requirements, deficiencies in compliance and reporting may continue.

### **Other Internal Review Recommendations Were Not Addressed**

RPO Central's executive director did not take corrective actions to address other recommendations related to act compliance. These included recommendations that contracting officials (1) verify and document consideration of the act in planning and preaward documents; (2) require reviews for solicitations and awards when products are manufactured outside the United States; (3) conduct and document in the contract file nonavailability determinations; (4) implement a review process to ensure the appropriate clauses are used; and (5) ensure the country of manufacture certifications are included in the contract file.

Evidence that corrective actions were not taken on recommendations comes from several sources. According to the VHA Procurement and Logistics Office's Procurement Audit Office director, RPO Central officials were unable to identify or provide evidence of actions taken in response to the first three compliance reviews issued September 2017 through September 2020 other than training. Risk Management Compliance Service's senior procurement analyst told the audit team those reviews were only posted on the service's website. RPO Central's lead procurement compliance analyst disseminated the review dated October 2020 to the branch chiefs and told the audit team they did not report any actions taken in response to that review.<sup>80</sup> The service's senior procurement analyst told the team there were no disagreements with the results of the compliance review from the field. In addition, the service's senior procurement analyst confirmed the December 2021 review was only made available on VA's Office of Acquisition and Logistics website and that, as of May 2022, no responses were received from the heads of contracting activities although, responses were not required.<sup>81</sup> The Office of Acquisition

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<sup>79</sup> GAO, *Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*.

<sup>80</sup> VA's Risk Management Compliance Service disseminated the October 2020 review to the heads of the contracting offices, which include the RPO executive directors, in February 2021.

<sup>81</sup> The website is internal to VA.

and Logistics executive director noted the review findings were, and continue to be, shared periodically with the heads of the contracting activities during monthly meetings.<sup>82</sup>

RPO Central management took some steps to address the weaknesses identified in the October 2020 compliance review. A template for requesting the executive director's determination of product nonavailability was created and shared with the program and network contracting offices according to RPO Central's lead procurement compliance analyst.<sup>83</sup> Also, an informal change was made to the process: a recommendation that the contracting officer include a copy of the Buy American certificate when asking the RPO Central executive director for a domestic product nonavailability determination. RPO Central's lead procurement compliance analyst told the team the purpose of the change was to reinforce the requirement that the Buy American certificate be submitted by the vendor during the solicitation phase and be added to the eCMS contract file for supporting documentation. In addition, the Risk Management Compliance Service's senior procurement analyst presented a one-hour overview of the act and results of the October 2020 review to RPO Central's acquisition staff in June 2021. Of the 45 contracting officers responsible for the 80 sampled contracts, 24 attended the presentation, 14 did not, and no evidence of training attendance was provided for seven contracting officers no longer with VA.

The service's senior procurement analyst and RPO Central's executive director told the team that responses or action plans to correct deficiencies identified during compliance reviews are not required. The executive director also noted that, because acquisitions that may qualify for Buy American Act exceptions and waivers represent a small portion of contracting actions, focus on compliance is not prioritized, and staff turnover and workload present challenges. While the audit team did not evaluate staffing and workload, GAO identified contracting officer workload as a challenge.<sup>84</sup> Even though responses to compliance reviews are not required and regardless of staffing, workload, and the volume of purchases of foreign-made products, RPO Central management's lack of sufficient response to the service's repeated recommendations means missed opportunities to strengthen compliance. Moreover, the repeated recommendations in compliance reviews are consistent with the findings of this report and underscore the need for an assessment of weaknesses identified in the reviews and implementation of corrective actions.

The audit team noted the population of contracts awarded in FY 2019 and FY 2020 used by the Risk Management and Compliance Service for internal compliance reviews included contracts from across VA, such as Strategic Acquisition Center, National Acquisition Center, Veterans Benefits Administration, and the RPOs. The OIG's findings in this report are consistent with the

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<sup>82</sup> In its response to the draft report, VA provided documentation that the FY 2020 and first two quarters of FY 2022 review findings were shared during meetings. Also, a November 2021 meeting discussed key noncompliance areas.

<sup>83</sup> The VHA Procurement Audit Office director told the audit team that the template was removed, and a new folder created on an internal VA site. The folder contains guidance from the Made in America Office about the digital nonavailability waiver submission process for the office's review.

<sup>84</sup> GAO, *Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*.

deficiencies noted in the internal compliance reviews such as missing nonavailability determinations and appropriate clauses, and incorrect application of exceptions or waivers. In 2018, GAO found that agencies, including VA, faced challenges in applying exceptions and waivers and accurate act reporting. GAO also noted VA contracting staff indicated a need for increased training.<sup>85</sup> The OIG's findings, the internal compliance review results, and GAO's report indicate compliance with the act may be inconsistent across VA contracting offices.

## Conclusion

VHA RPO Central's compliance with the Buy American Act fell short of requirements. The OIG found over half of sampled contracts and associated files—the vast majority of those for products reported as foreign-made—contained evidence of noncompliance with the Buy American Act and associated laws, regulations, and policies. Contract file reviewers did not identify these issues or did not complete some required reviews. In addition, VA disseminated just one of the five internal reviews meant to evaluate and strengthen compliance directly to the RPO executive directors. Regardless, RPO Central's executive director did implement one recurring recommendation in 2019 requiring training, which was completed by most of the contracting staff that awarded the sampled contracts. RPO Central management did not provide evidence that the many other recurring recommendations were addressed. Strengthening oversight and contracting officers' knowledge of the Buy American Act and associated laws, regulations, and policies could also address VA weaknesses that GAO identified, such as limited contract oversight.

With an annual budget in the billions, VA significantly affects the nation's economy by spending taxpayer funds. VA's accuracy in reporting is crucial to measuring and assessing the effect of government spending on domestic products. While VA and RPO Central management have taken steps to improve compliance with the act, additional actions should be considered. Based on the results of this audit, VA's own internal reviews, and GAO's 2018 findings, it is in VA's and the taxpayer's interest for VA to determine whether sufficient compliance is occurring in other contracting offices.

## Recommendations 1–3

The OIG recommended the VA Office of Acquisition and Logistics executive director evaluate policies and procedures to make certain they require heads of contracting offices responsible for purchases subject to the Buy American Act to do the following:

1. Assess compliance weaknesses identified by VA Office of Procurement Policy, Systems and Oversight internal reviews, and implement corrective actions determined appropriate.

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<sup>85</sup> GAO, *Buy American Act Actions Needed to Improve Exception and Waiver Reporting and Selected Agency Guidance*, GAO-19-17, December 2018.

2. Require contracting officers responsible for Buy American Act compliance deficiencies identified by contract file reviewers and VA Office of Procurement Policy, Systems and Oversight internal reviews to attend refresher Buy American Act–specific training.

The OIG also made one recommendation to the VHA procurement executive director:

3. Evaluate the contract file review procedures to make certain they require the use of the Definitions of Comment Categories, and presolicitation and preaward checklists, and document that use, to strengthen compliance.

## **VA Management Comments**

The VA Office of Acquisitions and Logistics executive director concurred with recommendations 1 and 2. In response to these recommendations the executive director has initiated an innovation lab to evaluate current policies, procedures, and training, and subsequently make necessary changes to implement the recommendations.

In response to recommendation 3, the acting executive director of VHA procurement concurred in principle with the findings but did not concur with this recommendation. The acting executive director stated VHA has implemented various standardization efforts to strengthen contract compliance and that, in VHA’s experience, enforcing the use of checklists has not proven to increase compliance. The proposed actions in response to recommendation 3 are to create a dashboard that will notify procurement staff of nondomestic purchases before award and initiate a review of the acquisition on the dashboard with the contracting officer to ensure act compliance. The reviews will be conducted for three continuous fiscal years and, thereafter, VHA will determine a plan of action as needed to manage compliance.

The VA Office of Acquisitions and Logistics executive director provided three technical comments and the acting executive director of VHA procurement provided one technical comment, which the OIG addressed below and throughout the report.

Appendixes C and D provide the full text of VA and VHA’s comments.

## **OIG Response**

The corrective action plans provided by the VA Office of Acquisitions and Logistics executive director and the acting executive director of VHA procurement are responsive to the intent of recommendations 1 through 3. Appendixes C and D provide the full text of their comments. The OIG will follow up on the implementation of the planned actions and will close the recommendations when sufficient documentation has been provided that illustrates corrective actions have been implemented.

The OIG incorporated clarifying information in the narrative of the report where appropriate and added explanatory footnotes as needed to address technical comments from VA and VHA. VA provided a technical comment addressing the requirement for the written nonavailability

determination to be included in the file unless the acquisition was conducted through full and open competition, was summarized according to FAR requirements, and garnered no domestic offers. While the requirement is accurate for the procurements reviewed, the requirement has changed. In response, the OIG included a reference to the December 2021 VA deviation from the FAR requirements in the section footnote.

Another VA technical comment requested corrections to the statements regarding compliance reviews noting that (1) findings were also shared and continue to be shared during ongoing Risk Management Compliance Service outreach sessions, and (2) results have been and continue to be periodically shared with heads of contracting activities during monthly meetings. The OIG made the requested changes based on supporting documentation provided. VA also requested a correction to a statement that no responses were received from the heads of contracting activities. In response, the OIG added clarifying text that responses to internal reviews were not required.

The acting executive director of VHA procurement provided one technical comment, requesting the addition of the percentage of the population that nondomestic purchases represent. The OIG included clarifying text to a footnote to include the estimated total population of contracts but did not include the percentage because the populations are estimated as explained in the footnote.

See appendixes C and D for VA and VHA's technical comments.

## Appendix A: Scope and Methodology

### Scope

The audit team conducted its work from June 2021 through July 2022. The scope of the audit focused on compliance by VHA's Regional Procurement Office Central with the requirements of the Buy American Act and associated laws, policies, and regulations in contract awards from October 1, 2017, through March 31, 2021, for products reported as manufactured either outside or inside the United States. The audit team conducted virtual site visits with the VA Office of Acquisition and Logistics and RPO Central contracting offices.

The types and sources of evidence used to address the audit objective included government records, website materials, prior audit reports, and interviews. A statistical sample of contracts was selected from a sampling frame of 181 contracts, with an obligated amount of about \$238.9 million, awarded by RPO Central reported as manufactured outside the United States during the scope period. An additional statistical sample of contracts was selected from a population of 21,652 contracts with an obligated amount of about \$1.3 billion awarded by RPO Central and reported as made inside the United States during the scope period. As described in appendix B, some of the contracts reported as made outside, or in, the United States had contract documents evidencing the opposite place of manufacture.

### Methodology

The audit team identified and reviewed applicable laws, regulations, VA acquisition policies, local procedures, and relevant records. The team also interviewed personnel from the VA Office of Acquisition and Logistics and from RPO Central. To determine whether RPO Central officers awarded contracts in accordance with the Buy American Act and associated laws, policies, and regulations, the team reviewed 40 in-scope statistically selected contracts awarded by RPO Central reported as manufactured outside the United States. These included 20 in-scope contracts with an obligated amount of about \$8.6 million awarded from October 1, 2017, through February 29, 2020 (pre-COVID-19 pandemic), and 20 in-scope contracts with an obligated amount of about \$213.3 million awarded from March 1, 2020, through March 31, 2021 (during the COVID-19 pandemic). The team also reviewed 40 in-scope statistically selected contracts awarded by RPO Central from October 1, 2017, to March 31, 2021, reported as manufactured inside the United States with an obligated amount of about \$226.6 million.

### Internal Controls

The audit team assessed the internal controls of RPO Central's awarded contracts significant to the audit objective. This included an assessment of the five internal control components: control environment, risk assessment, control activities, information and communication, and

monitoring.<sup>86</sup> In addition, the team reviewed the principles of internal controls associated with the objective. The team identified the following three components and four principles as significant to the objective.<sup>87</sup> The team identified internal control weaknesses during this audit and proposed recommendations to address the following control deficiencies:

- Component: Control Environment
  - Principle 2: Exercise oversight responsibility
- Component: Control Activities
  - Principle 10: Design control activities
  - Principle 12: Implement control activities
- Component: Monitoring
  - Principle 16: Perform monitoring activities

## Fraud Assessment

The audit team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant in the context of the audit objectives, could occur during this audit. The team exercised due diligence in staying alert to any fraud indicators by

- determining whether the sampled contracts and corresponding solicitations included the appropriate clauses and provisions for the Buy American Act, trade agreements, or exceptions,
- determining whether the contract file included the vendor's certification of end product origin and whether the certification is applicable to the contracted product,
- determining whether sampled contracts and corresponding solicitations product descriptions match,
- determining whether the appropriate exceptions or waivers were reported in the government system, and
- conducting interviews with responsible officials.

The OIG did not identify any instances of fraud or potential fraud during this audit.

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<sup>86</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

<sup>87</sup> Since the audit was limited to the internal control components and underlying principles identified, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

## **Data Reliability**

The audit team obtained computer-processed data from VA's Electronic Contract Management System. To assess the reliability of these data, the team interviewed officials from RPO Central to validate source documentation and VA Enterprise Acquisition Systems Service regarding the completeness and accuracy of the data. To test for reliability, the audit team checked whether any data were missing from key fields or were outside the times requested. The team also assessed whether the data contained obvious duplication of records or included any inconsistent or inaccurate formulas. The audit team compared data values extracted from VA's eCMS with contract file documentation obtained from eCMS, which is the VA's official contract of record. The audit team concluded that the computer-processed data obtained from VA's Electronic Contract Management System were sufficiently reliable to meet the audit objectives.

The data obtained from eCMS excluded most out-of-scope contracts; however, some in-scope contracts may also have been inadvertently removed. As a result, the statistical estimates in this report are conservative and likely underrepresent actual dollar amounts associated with contracts and files with at least one compliance deficiency. The team also noted that one file for products reported as manufactured outside the United States contained evidence they were made domestically. Similarly, four contract files for products reported as made in the United States included evidence indicating they were foreign-made. These reporting errors in five of 80 contract files were considered when the team estimated the amount of obligated funds associated with noncompliant contracts and files. See appendix B for more information.

## **Government Standards**

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

## Appendix B: Statistical Sampling Methodology

### Approach

To assess the VHA RPO Central's compliance with the Buy American Act and associated laws, regulations, and policies, the audit team sampled awarded contracts and corresponding files within the audit period.

### Population

The team used information extracted from VA's eCMS database to identify a population of contracts awarded by VHA's RPO Central for the audit period October 1, 2017, through March 31, 2021. After the team excluded contracts that were not issued by the VA, or were exempt from the Buy American Act, were modifications of existing contracts, or were purchase orders for contract modifications, the estimated population of awarded contracts was 21,833 with an obligated amount of \$1,577,193,339.

Using the "place of manufacture" field in the data, the team categorized the contracts based on whether the products were reported as manufactured outside or in the United States. Awarded contracts for products reported to be manufactured outside and in the United States totaled 181 with an obligated amount of \$238,898,839, and 21,652 with an obligated amount of \$1,338,294,500, respectively.

### Sampling Design

The audit team selected a statistical sample of 40 contracts from the population of records for products reported to be manufactured outside the United States. The population was initially stratified into prepandemic (October 2017 through February 2020) and during-the-pandemic (March 2020 through March 2021) categories.<sup>88</sup>

To improve statistical estimates, the OIG selected contracts with a systematic, probability-proportional-to-size method, with the size measure being the obligated dollar amount for each contract. Applying this method systematically, the OIG identified contracts in the sampling frame that have disproportionately large, obligated amounts as "high dollar," and automatically included them in the sample. It then selected from the remaining "low-dollar" contracts according to the appropriate probability-proportional-to-size algorithm. For this project, the algorithm was systematic based on obligated amount. This approach ensured the selection of contracts with a variety of obligated amounts.

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<sup>88</sup> Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19)," 85 Fed. Reg. 15,337 (March 18, 2020). The period for the pandemic was based on the proclamation.

A sample of 20 contracts (including both high-dollar certainty selections and low-dollar probabilistic selections) was obtained from each stratum, totaling \$213.3 million and \$8.6 million, respectively. To ensure a minimum sample size of 40 from the sampling frame, two out-of-scope contracts were replaced with probabilistically selected (via probability-proportional-to-size, not systematic, selection) contracts. One of the out-of-scope contracts was awarded by a VA entity other than RPO Central, and the other was a non-VA-awarded Federal Supply Schedule contract. These two contracts are representative of other contracts in the sampling frame that are also out of scope. Using the same sampling design, the OIG selected for review an additional statistical sample of 40 contracts for products reported as manufactured in the United States. These contracts were all selected via probability proportional to size (no certainty selections required). Two out-of-scope contracts (one being a contract for services, and the other for a rental) were replaced. The obligated amount of these 40 contracts was \$226.6 million.

## **Weights**

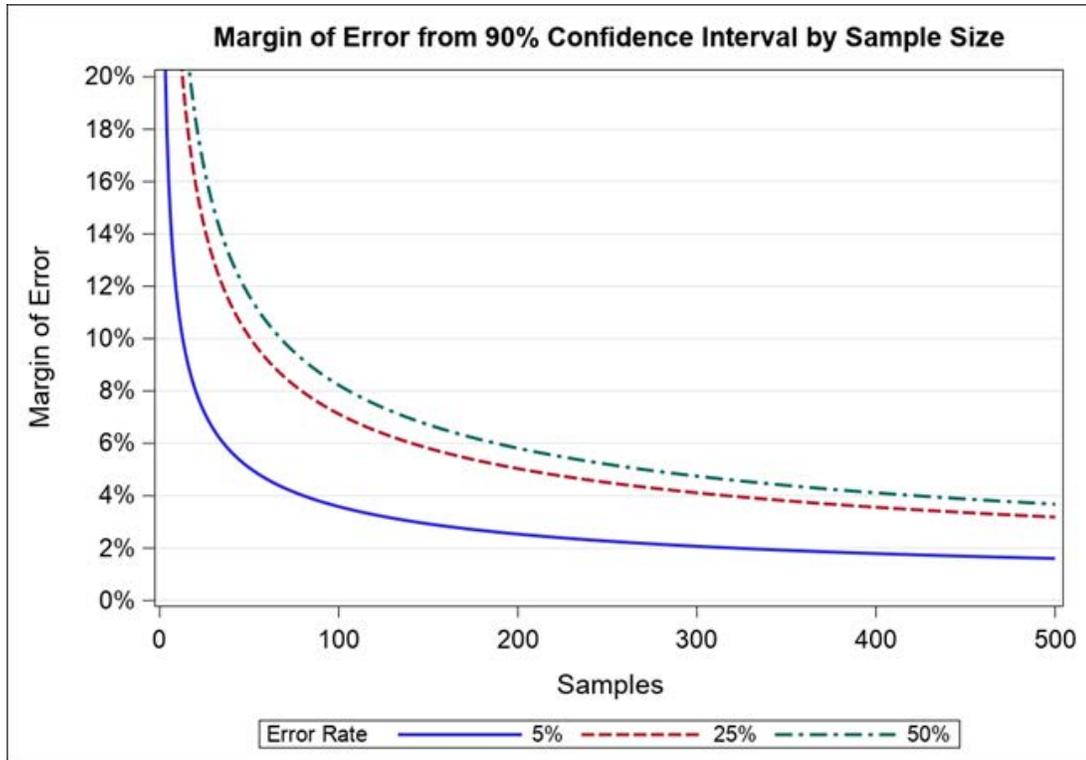
The estimates in this report were calculated using weighted sample data. Samples were weighted to represent the population from which they were drawn. The team used the weights to compute estimates. For example, the team calculated the population sizes by summing the sampling weights for all sample records that were in scope for each population.

## **Projections and Margins of Error**

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While precision improves with larger samples, the rate of improvement does not significantly change as more records are added to the sample review. Figure B.1 shows the effect of progressively larger sample sizes on the margin of error.



**Figure B.1.** Effect of sample size on margin of error.  
Source: VA OIG statistician's analysis

## Statistical Projections

Projections were calculated for the period October 2017 to March 2021 for the two populations described above—contracts for products made outside the United States, and contracts for products made in the United States. The projections involve the estimated amount of obligated dollars in each population and the estimated amount of obligated dollars associated with contracts and files that include at least one compliance deficiency.

As planned, the set of projections for each population was to be based on a separate sampling frame, one identified as contracts for products reported as made “outside” and the other “in” the United States. However, the audit revealed that some contracts for products reported as made outside the United States had documentation evidencing domestic manufacture and vice versa. It was therefore necessary to use both sampling frames to project the number of contracts and the number of errors for each population.

Based on the above considerations, each statistical analysis essentially involves four strata: (1) a certainty stratum of those contracts automatically selected from the outside the United States sampling frame, (2) a stratum of noncertainty, prepandemic contracts from the outside the United States sampling frame, (3) a stratum of noncertainty, during-pandemic contracts from the outside the United States sampling frame, and (4) a stratum of all contracts from the in the United States sampling frame.

Within each stratum, contracts were categorized by types of noncompliance and by the actual population to which they pertain. Four contracts were for products reported as made domestically although documents in the contract file evidenced the products were manufactured outside the United States. Also, one contract was for products reported as made outside the United States although the contract file evidenced the products were made domestically. The projections in this report attribute these contracts to the population to which they pertain, not to the sampling frame from which they were selected. Other contracts may have been included in the wrong sampling frame (the place of manufacture was sometimes unclear), but the statistical projections are conservatively based on the assumption that all such contracts are in the correct sampling frame. If this assumption is incorrect, the statistical estimates in this report are conservative, likely underrepresenting actual dollar amounts associated with contracts and files that include at least one compliance deficiency. Nonetheless, this missing or incorrect information is problematic, and these contracts represent numerous other contracts in the population with the same missing, unclear, or incorrect information. Consequently, this lack of clarity is counted as noncompliance in the reported projections.

The statistical estimates are reported for obligated funds. Obligated funds provide an approximation for, but may differ from, actual expenditures.

For the two populations, tables B.1 (outside the United States) and B.2 (in the United States) display the estimated numbers of total obligated dollars and obligated dollars associated with contracts and files containing one or more deficiencies, along with associated statistics.

**Table B.1. Projected Amount of Obligated Dollars Associated with Contracts for Products Manufactured outside the United States**

Projection	Point estimate (\$)	90 percent confidence interval (\$)				Count from sample
		Margin of error	Two-sided lower limit	Two-sided upper limit	One-sided lower limit	
Population	364,407,439	100,920,914	263,486,526	465,328,353	285,777,127	43*
Any error	280,613,539	100,920,914	179,692,626	381,534,453	201,983,227	40

Source: VA OIG analysis of statistically sampled contracts.

\*The count from the sample reflects the addition or subtraction of sample items that incorrectly reported the country of manufacture.

**Table B.2. Projected Amount of Obligated Dollars Associated with Contracts for Products Manufactured in the United States**

Projection	Point estimate (\$)	90 percent confidence interval (\$)				Count from sample
		Margin of error	Two-sided lower limit	Two- sided upper limit	One-sided lower limit	
Population	1,147,653,851	120,301,819	1,027,352,032	1,267,955,671	1,053,923,332	37*
Any error	351,049,983	151,154,029	199,895,954	502,204,011	233,281,642	12

Source: VA OIG analysis of statistically sampled contracts.

\*The count from the sample reflects the addition or subtraction of sample items for which the country of manufacture was incorrectly reported.

## Appendix C: Management Comments, Office of Acquisition and Logistics

### Department of Veterans Affairs Memorandum

Date: 24 August 2022

From: Executive Director, Office of Acquisition and Logistics (OAL) (003A)

Subj: Draft Report, Buy American Act Compliance Deficiencies at Regional Procurement Office Central,  
Project Number: 2021-02641-AE-0119

To: Assistant Inspector General for Audits and Evaluations (52)

1. The Executive Director, OAL provides the following responses to the three recommendations contained in the draft report. Requested corrections to specific areas of the report are also included after the recommendation response for review and possible inclusion in the final report by the Office Of Inspector General (OIG).

**Recommendation 1:** The OIG recommended the VA Office of Acquisition and Logistics executive director evaluate policies and procedures to make certain they require heads of contracting (HCA) offices responsible for purchases subject to the Buy American Act to do the following: Assess compliance weaknesses identified by VA Office of Procurement Policy, Systems and Oversight internal reviews, and implement corrective actions determined appropriate.

**VA Response to Finding and Recommendation:** Concur

**Implementation Plan:** OAL has initiated an innovation lab to evaluate current policies, procedures, and training and subsequently make necessary changes to implement this recommendation.

**Anticipated Completion Date:** 90-days after final report issuance.

**Recommendation 2:** The OIG recommended the VA Office of Acquisition and Logistics executive director evaluate policies and procedures to make certain they require heads of contracting offices responsible for purchases subject to the Buy American Act to do the following: Require contracting officers responsible for Buy American Act compliance deficiencies identified by contract file reviewers and VA Office of Procurement Policy, Systems, and Oversight internal reviews to attend refresher Buy American Act-specific training.

**VA Response to Finding and Recommendation:** Concur

**Implementation Plan:** OAL has initiated an innovation lab to evaluate current policies, procedures, and training and subsequently make necessary changes to implement this recommendation.

**Target Completion Date:** 90-days after final report issuance.

**Recommendation 3:** The OIG also recommended the VHA procurement executive director: Evaluate the contract file review procedures to make certain they require the use of the Definitions of Comment Categories, pre-solicitation and pre-award checklists, and documents that use, to strengthen act compliance.

**VA Response to Finding and Recommendation:** Response to be provided separately by Veterans Health Administration (VHA).

**Implementation Plan:** Implementation plan to be provided separately by VHA.

**Target Completion Date:** Target completion date to be provided separately by VHA.

2. The Executive Director, OAL requests the following corrections be made to the final report by the OIG.

Draft Report Page 13: Correction Requested to the following statement: “The written nonavailability determination must be included in the file unless the acquisition was conducted through full and open competition, was summarized according to FAR requirements, and garnered no domestic offers.”

This statement was accurate for the procurements reviewed but is not currently accurate. OAL requests that the statement be altered, or a footnote added to identify that while this statement is correct for the time period that this review was conducted, the requirements for the written nonavailability determination have changed. As of December 01, 2021, a class deviation titled “Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Requirements for Nonavailability Determinations Under the Buy American Statute,” has mandated that a written nonavailability determination is required regardless of (i) The acquisition was conducted through the use of full and open competition; (ii) The acquisition was synopsisized in accordance with 5.201; (iii) No offer for a domestic end product was received.

Draft Report Page 21: Correction Requested to the following statements: “Risk Management Compliance Service’s senior procurement analyst told the audit team those reviews were only posted on the service’s website.” “In addition, the service’s senior procurement analyst confirmed the December 2021 review was only made available on VA’s Office of Acquisition and Logistics website.”

The reviews were posted to the website, but the findings were also shared and continue to be shared during ongoing Risk Management Compliance Service outreach sessions. Additionally, results have been and continue to be periodically shared with HCAs during monthly meetings.

Draft Report Page 21: Correction Requested: “no responses were received from the heads of contracting activities.”

This statement implies that comments were required from the HCAs. This statement might be better stated as it was a few sentences above: “The service’s senior procurement analyst told the team there were no disagreements with the results of the compliance review from the field.” or something similar.

*The OIG removed point of contact information prior to publication.*

(Original signed by)

Angela Billups, Ph.D.

*For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended*

## Appendix D: VA Management Comments, VHA Procurement

### Department of Veterans Affairs Memorandum

Date: 8/30/2022

From: Acting Executive Director, VHA Procurement

Subj: OIG Draft Report, Buy American Act Compliance Deficiencies at Regional Procurement Office Central, Report #00-00000-000

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review and comment on the draft report, Veterans Health Administration: Buy American Act Compliance Deficiencies at Regional Procurement Office Central.
2. VHA appreciates OIG review of Buy American Act contract requirements. VHA agrees with OIG's findings and is interested in improving compliance with the Buy American Act and associated laws, regulations, and policies.
3. VHA requests the OIG include additional facts regarding the percentage of VHA purchases that were manufactured in US vs. non-manufactured in the US. Please add to page 11 the percentage of actions that the 181 contracts with products reported as manufactured outside the United States represents when compared to the total number of actions in the population. Currently the OIG describes the population with only a monetary value. The data would add more value to the report with a more complete description of the contracting population. For example, "181 contracts out of a total of 21,833 contract actions or 0.8%" more accurately conveys that the percentage of non-manufactured items purchased by VHA is very low when compared to the entire purchasing population.
4. VHA concurs that any actions to improve compliance weaknesses and improve training need to be taken at the Department level, built into agency-wide policy, and should apply to all administrations and program offices.
5. VHA concurs with the OIG findings in principle, which means specifically VHA concurs with the findings but non-concurs with the recommendation for VHA. Since the centralization of VHA procurement in 2010, VHA has implemented various standardization efforts to strengthen contract compliance. Enforcing the use of mandatory checklists has not proven to increase contract compliance. VHA Procurement has successfully improved contract compliance using a combination of metrics, training initiatives and procurement analyst reviews. VHA has provided an alternative action plan.
6. VHA will take the following actions to improve contract compliance.
  - a. VHA will create a dashboard that will notify Procurement Analysts of Not Yet Awarded Actions with a Place of Manufacture being Outside of the U.S.
  - b. Procurement Analysts will initiate a review of the actions on the dashboard with the CO to ensure Buy America Act and Trade Agreement Act compliance is addressed such as: the contract is indeed for an end product(s) manufactured outside of the U.S.; the correct provisions and clauses have been incorporated into the solicitation; an exception was

applied correctly (if applicable); a nonavailability determination was approved (if applicable), etc. prior to award. The reviews will be conducted for three continuous fiscal years, and thereafter, VHA will determine a plan of action (as needed) to manage compliance with the Buy American and Trade Agreements requirements.

7. VHA welcomes further discussion with OIG to help the Department improve Buy American Act compliance.

*The OIG removed point of contact information prior to publication.*

(Original signed by)

Acting Executive Director VHA Procurement  
Joe Maletta

*For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

## OIG Contact and Staff Acknowledgments

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<b>Contact</b>	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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