



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

*Office of Audits and Evaluations*

VETERANS HEALTH ADMINISTRATION

Sole-Source Service  
Contracting at Regional  
Procurement Office East  
Needs Improvement

REVIEW

REPORT #18-01836-184

SEPTEMBER 17, 2019



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## Executive Summary

This review is one in a series conducted at each of the three Veterans Health Administration (VHA) Regional Procurement Offices. During these reviews, the VA Office of Inspector General (OIG) assessed each office's use of sole-source procedures when awarding service contracts valued at more than \$700,000 in fiscal year (FY) 2017. This review was conducted at Regional Procurement Office (RPO) East.

A sole-source contract is awarded without full and open competition. There are a limited set of circumstances under which a contracting officer may curtail competition because it is believed that competition helps government officials "reassure citizens that their tax dollars are not spent wastefully."<sup>1</sup> The basic premise for requiring competition is that when multiple offerors compete for the government's business, the government may be able to acquire higher-quality goods and services at lower prices than it would if it awarded contracts without competition. Also, competition can help to curb fraud because it allows for periodic changes in the vendors from which the government acquires goods and services.

### What the Review Found

Federal regulation states, with a few exceptions, that a contracting officer will not negotiate sole-source contracts without a written justification and appropriate approvals. The VHA Procurement Manual provides that a justification and approval (J&A) document be completed and approved by the proper authority. The approval authority is determined by the proposed contract amount. For example, approval by the head of contract activity (HCA) is required for a sole-source justification for contracts valued at more than \$700,000. According to the director of the VHA Procurement Audit office, the HCA also serves as the procuring activity advocate for competition, and in that role is responsible for promoting full and open competition by challenging barriers to full and open competition, such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses. HCA approval helps ensure that sole-source contracts are used only when necessary. The lack of HCA approval is a violation of federal regulation. Further, without competition the government could pay more for goods and services and could be more susceptible to fraud.

The OIG reviewed 20 sole-source contracts awarded by RPO East with a total value of about \$41.4 million to determine whether the J&A documents were completed and approved by the proper authority. Of the 20 contracts reviewed, one contract did not require HCA approval, due to a statutory exemption. RPO East contracting officers obtained proper approvals on nine of the remaining 19 sole-source contracts worth about \$21.2 million. Contracting officers are required

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<sup>1</sup> Congressional Research Service, *Competition in Federal Contracting: An Overview of the Legal Requirements*, June 30, 2011.

to ensure all requirements of law, regulations, and all other applicable procedures, including approvals, have been met prior to contract award. RPO East contracting officers did not obtain the required HCA approval before awarding 10 sole-source service contracts worth about \$14.2 million. This occurred because RPO East officials did not follow the J&A document approval process, did not ensure J&A documents were properly updated, did not receive the correct guidance, and misinterpreted regulations. When contracting officers violate federal regulation by failing to obtain the required approval, they exceed their contracting authority. This could result in the termination of their warrant, which is their authority to enter into, administer, or terminate contracts. Accordingly, the contracting officers exceeded their authority on 10 contracts resulting in approximately \$14.2 million in questioned costs. To avoid future questioned costs, RPO East contracting officers must ensure sole-source contracts receive the required approvals by the appropriate authority.

In addition to identifying instances of RPO East contracting officers exceeding their authority, the OIG also found that contracting officers unnecessarily limited competition on four recurring transportation service contracts, worth about \$8.5 million. This occurred because the RPO East contracting officers did not properly plan to award the recurring transportation service contracts competitively. RPO East contracting officials knew ahead of time that the existing contracts for these recurring transportation services would be expiring and should have anticipated recompeting the contracts. Faced with the need to renew these contracts, the contracting officers made sole-source awards for these transportation services. However, federal regulations state that a lack of planning is not a justification for issuing a contract on a sole-source basis. As a result, RPO East contracting officers increased the risk of the government paying more than necessary for these four recurring transportation services as the government did not receive the benefit of competition. Furthermore, contracting officers also increased the risk of a successful protest of the contract award.

## **What the OIG Recommended**

The OIG recommended the executive director, VHA Procurement

1. Ensure awareness of approval procedures and the requirement to prepare a written J&A document for sole-source contracts,
2. Establish procedures to help ensure all J&A documents are prepared and approved by the appropriate authority,
3. Review the actions of contracting personnel involved in the cited contracts and determine whether administrative actions are warranted, and
4. Establish formal coordination with the requiring activity to ensure adequate time is allotted for soliciting and awarding recurring services competitively.

## Management Comments

The executive director, VHA Procurement concurred with all the recommendations and provided acceptable corrective action plans. The OIG considers Recommendation 1 closed based on the actions reported and documentation provided by the executive director. The OIG will monitor implementation of the planned actions for Recommendations 2 through 4 and will close the recommendations when the proposed actions are completed.



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## Abbreviations

eCMS	Electronic Contract Management System
FAR	Federal Acquisition Regulation
FY	fiscal year
HCA	head of contract activity
IDIQ	indefinite-delivery, indefinite-quantity
J&A	justification and approval
NCO	network contracting office
OIG	Office of Inspector General
RPO	Regional Procurement Office
VHA	Veterans Health Administration



## Introduction

The VA Office of Inspector General (OIG) conducted this review to determine whether Regional Procurement Office (RPO) East complied with federal regulations when awarding service contracts on an “other than full and open competition” (sole-source) basis.<sup>2,3</sup>

This review is one in a series conducted at each of the three Veterans Health Administration (VHA) RPOs. During these reviews, the OIG assessed the RPOs’ use of sole-source procedures when awarding service contracts valued at more than \$700,000 in fiscal year (FY) 2017.

Proponents of competition contend that competition helps government officials “reassure citizens that their tax dollars are not spent wastefully.” When multiple offerors compete for the government’s business, the government can acquire higher-quality goods and services at lower prices than it would if it awarded contracts without competition. Also, competition helps to curb fraud because it allows for periodic changes in the vendors from which the government acquires goods and services.<sup>4</sup>

### Competition in Contracting Act of 1984

The Competition in Contracting Act of 1984<sup>5</sup> requires that contracts be entered into after “full and open competition through the use of competitive procedures” unless certain circumstances exist that would permit agencies to use noncompetitive procedures.<sup>6</sup> The Federal Acquisition Regulation (FAR) outlines seven situations in which government agencies can contract without full and open competition:<sup>7</sup>

1. Only one responsible source and no other supplies or services will satisfy agency requirements (FAR § 6.302-1)
2. Unusual and compelling urgency (FAR § 6.302-2)
3. Industrial mobilization; engineering, developmental, or research capability; or expert services (FAR § 6.302-3)

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<sup>2</sup> Contract means a mutually binding legal relationship obligating the seller to furnish supplies or services and the buyer to pay for them. It includes all commitments that obligate the government such as task orders, delivery orders, etc. FAR § 2.101.

<sup>3</sup> A sole-source acquisition is a contract that is solicited and negotiated with only one source.

<sup>4</sup> Congressional Research Service, *Competition in Federal Contracting: An Overview of the Legal Requirements*, June 30, 2011.

<sup>5</sup> Pub. L. 98-369, §§ 2701-2753 (1984), codified at 41 U.S.C. § 3301 et seq.

<sup>6</sup> Congressional Research Service, *Competition in Federal Contracting: An Overview of the Legal Requirements*, June 30, 2011.

<sup>7</sup> FAR § 6.3.

4. International agreement (FAR § 6.302-4)
5. Authorized or required by statute (FAR § 6.302-5)
6. National security (FAR § 6.302-6)
7. Public interest (FAR § 6.302-7)

## **Justification and Approval of Sole-Source Contracts**

Prior to issuing a sole-source contract, federal regulations require that a contracting officer (1) justify, if required, the use of the sole-source contract in writing, (2) certify the accuracy and completeness of the justification, and (3) obtain necessary approvals.<sup>8</sup> The justification must include a description of the services being procured, the statutory authority permitting the exception to competition, and other facts supporting the sole-source award.<sup>9</sup> The VHA Procurement Manual provides a justification and approval (J&A) template to record these justifications.<sup>10</sup>

The approval authority for sole-source contracts is determined by the proposed contract amount.<sup>11</sup> Within VHA, the head of contract activity (HCA) is designated as the approval authority for sole-source contracts valued at more than \$700,000, but not exceeding \$13.5 million. According to the director of the VHA Procurement Audit Office, the HCA for each RPO serves as the competition advocate for its respective Contracting Activity. Procuring activity advocates for competition are responsible for promoting full and open competition by challenging barriers to full and open competition, such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.<sup>12</sup> HCA approval helps ensure that sole-source contracts are used only when necessary. The lack of HCA approval is a violation of federal regulation. Further, without competition the government could pay more for goods and services and could be more susceptible to the risk of fraud.

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<sup>8</sup> FAR § 6.303-1.

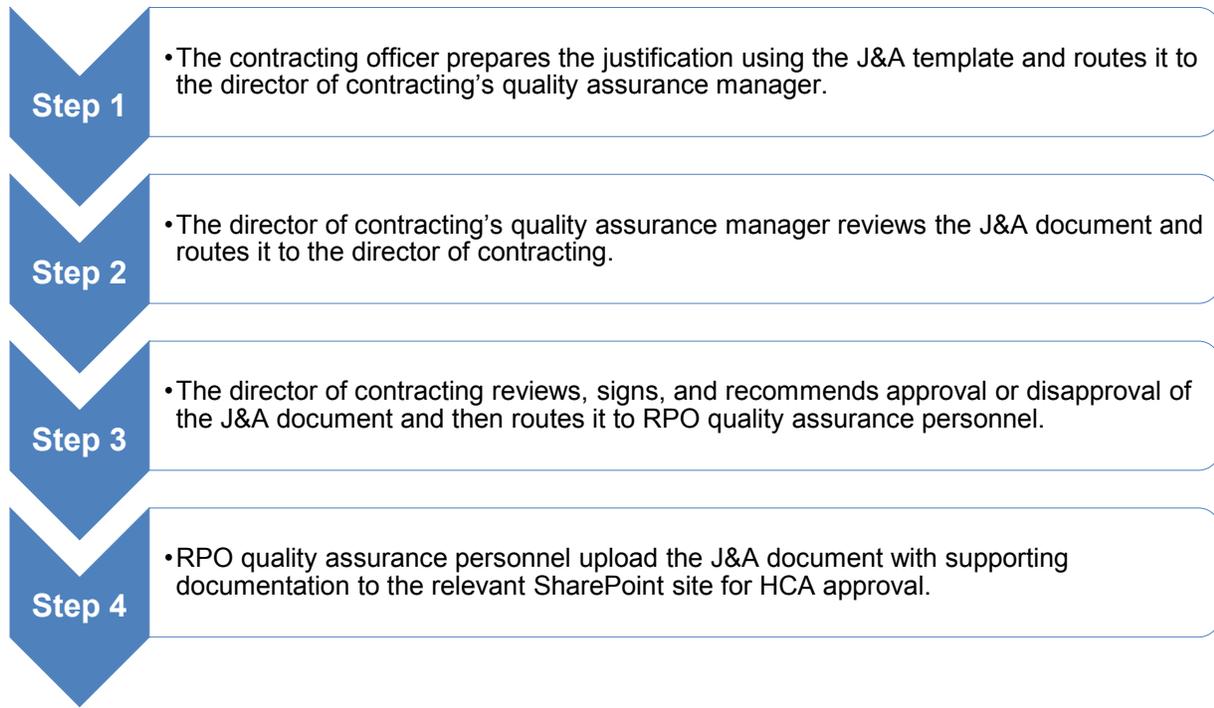
<sup>9</sup> FAR § 6.303-2.

<sup>10</sup> VHA Procurement Manual Part 806.3, *Other Than Full and Open Competition (OFOC) SOP*, Revision: 5, Effective Date: May 2, 2016.

<sup>11</sup> FAR § 6.304.

<sup>12</sup> FAR § 6.502.

Figure 1 shows the process contracting personnel must follow to obtain HCA approval for a sole-source contract.



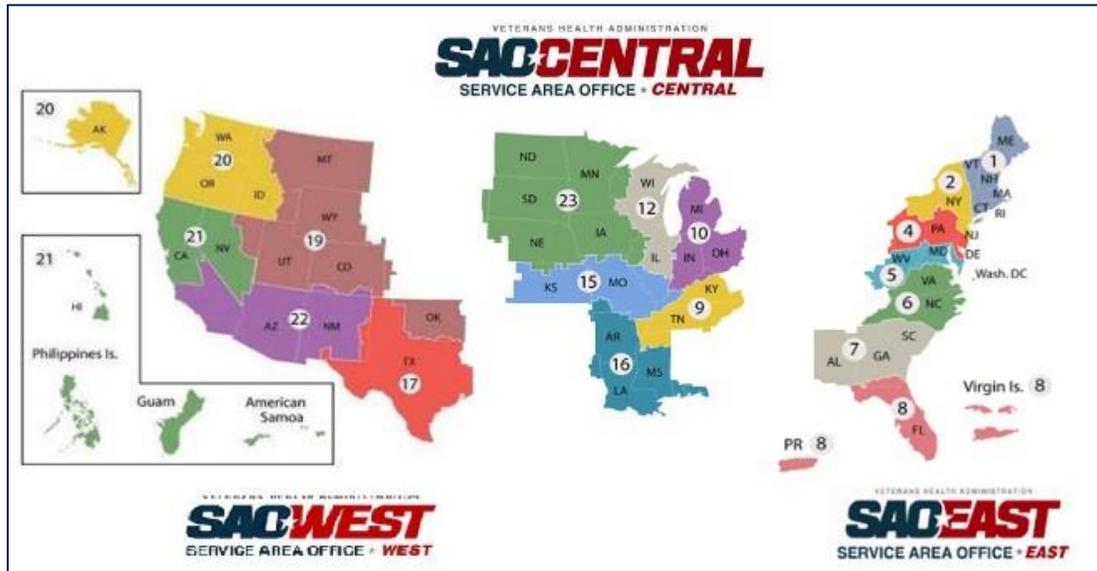
**Figure 1.** Approval procedure for HCA signature

Source: VHA Procurement Manual Part 806.3, Other Than Full and Open Competition (OFOC) SOP, Revision: 5, Effective Date: May 2, 2016, and Attachment 7: VHA Procurement HCA Approval Process

## Regional Procurement Office East

VHA’s Procurement and Logistics Office is responsible for the purchase of \$15 billion in health care products and services for VHA and is composed of three RPOs: Central, East, and West. Each RPO has a designated HCA and is subdivided into network contracting offices (NCOs). RPO East is composed of seven NCOs that provide procurement services for the entire east coast including Puerto Rico. The RPO East HCA is responsible for contracting oversight for nearly 1,000 contracting employees at the seven NCOs.

Figure 2 shows each RPO’s territory and associated NCOs.



**Figure 2.** RPO West, Central, and East NCO Territories<sup>13</sup>  
 (Source: Office of VHA’s deputy chief procurement officer SharePoint)

In FY 2017, RPO East awarded 20 sole-source service contracts each valued at more than \$700,000 totaling approximately \$41.1 million, as shown in Table 1. Of the 20 sole-source contracts, one (patient escort) was awarded to an AbilityOne contractor, a mandatory source of supply that does not require a J&A document or HCA approval.

**Table 1. RPO East Sole-Source Contracts**

Contract	Service	Value*
VA240-17-J-0335	Million Veteran Program print scan mail	\$6,862,025
VA246-16-C-0133	Patient escort	\$5,666,019
VA241-17-C-0138	Brain tissue sequencing	\$3,695,000
VA240-17-J-0202	Million Veterans Program print scan mail	\$3,010,316
VA247-16-F-3328	Wheelchair van transportation	\$2,743,850
VA247-17-C-0039	Ambulance transportation	\$2,635,350
VA247-17-C-0026	Ambulance transportation	\$2,139,826
VA241-16-J-2110	Ambulance transportation	\$1,875,000

<sup>13</sup> Service Area Office (SAO) was renamed RPO during the OIG review.

<b>Contract</b>	<b>Service</b>	<b>Value*</b>
VA246-17-C-0349	Culture transformation	\$1,350,000
VA240-17-J-0311	Research support	\$1,317,555
VA248-17-J-2287	Nursing home services	\$1,260,400
VA247-17-C-0085	Ambulance transportation	\$1,222,578
VA245-16-J-1034	Clinical and administrative support	\$1,123,660
VA248-17-J-0021	Community nursing home care	\$1,029,902
VA247-17-C-0071	Ambulance transportation	\$980,000
VA247-17-P-1835	Ambulance transportation	\$923,700
VA248-17-J-0023	Nursing home services	\$859,144
VA240-17-J-0397	Genomic research	\$855,240
VA244-17-P-6267	Building automation system	\$852,000
VA248-17-J-2231	Nursing home services	\$715,241
	<b>Total</b>	<b>\$41,116,806</b>

Source: VA's Electronic Contract Management System (eCMS)

Note: Values are rounded.

\*These values may include option years.

## Results and Recommendations

### Finding 1: RPO East Contracting Officers Did Not Comply with Federal Regulations

Of the 20 contracts reviewed, one contract did not require HCA approval, due to a statutory exemption.<sup>14</sup> RPO East contracting officers obtained proper approvals on nine of the remaining 19 sole-source contracts worth about \$21.2 million. Contracting officers are required to ensure all requirements of law, regulations, and all other applicable procedures, including approvals, have been met prior to contract award.<sup>15</sup> RPO East contracting officers did not obtain the required HCA approval before awarding 10 sole-source service contracts worth about \$14.2 million. This occurred because RPO East officials did not follow the J&A document approval process, did not ensure J&A documents were properly updated, did not receive the correct guidance, and misinterpreted regulations. As a result, the contracting officers exceeded their authority and the approximately \$14.2 million value of the contracts are questioned costs.<sup>16</sup>

### What the OIG Did

The OIG reviewed all RPO East sole-source service contracts valued at more than \$700,000 awarded in FY 2017 as reflected in VA's eCMS. This included 20 contracts with a total value of about \$41.1 million. The OIG reviewed documentation for each contract to determine whether RPO East contracting officials complied with the requirement to obtain HCA approval. The OIG also corresponded with RPO East contracting officials to obtain clarification regarding contract documentation and requested additional documentation to ensure compliance with federal regulations as necessary.

### Justification and Approval Process Not Followed

Federal regulation states that, with a few exceptions, a contracting officer will not negotiate sole-source contracts without a written justification and appropriate approvals.<sup>17</sup> Contracting officers are required to ensure all requirements of law, regulations, and all other applicable procedures, including approvals, have been met prior to contract award.<sup>18</sup> The VHA Procurement

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<sup>14</sup> Specifically, one contract was awarded to an AbilityOne contractor, a mandatory source of supply under FAR § 8.7 that does not require a J&A document or HCA approval. FAR § 6.302-5.

<sup>15</sup> FAR § 1.602-1.

<sup>16</sup> The Inspector General Act of 1978 states that the term "questioned costs" includes a cost that is questioned by the OIG because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds. 5 U.S.C. app. 3, § 5(f)(1).

<sup>17</sup> FAR § 6.303-1

<sup>18</sup> FAR § 1.602-1.

Manual provides that a J&A document be completed and approved by the proper authority.<sup>19</sup> The approval authority is determined by the proposed contract amount.<sup>20</sup> For example, HCA approval is required for a sole-source justification for contracts valued at more than \$700,000.<sup>21</sup>

The OIG found that RPO East contracting officers did not obtain the required HCA approval when they awarded 10 sole-source service contracts worth about \$14.2 million.

See Table 2 for a list of the 10 contracts awarded without HCA approval.

**Table 2. Contracts without HCA Approval**

Contract	NCO	Service	J&A Issue	Value
VA247-16-F-3328	NCO 7	Wheelchair van transportation at Atlanta VA Medical Center	Unsigned J&A	\$2.7 million
VA247-17-C-0039	NCO 7	Ambulance services at Charlie Norwood VA Medical Center	Unsigned J&A	\$2.6 million
VA241-16-J-2110	NCO 1	Ambulance services at Boston and Bedford VA medical centers and community based outpatient clinics	Unsigned J&A	\$1.9 million
VA248-17-J-2287	NCO 8	Nursing home services	No J&A	\$1.3 million
VA247-17-C-0085	NCO 7	Ambulance services at Atlanta VA Medical Center	No J&A	\$1.2 million
VA248-17-J-0021	NCO 8	Nursing home services	No J&A	\$1.0 million
VA247-17-C-0071	NCO 7	Ambulance services at Central Alabama Veterans Healthcare System	Unsigned J&A	\$980,000
VA247-17-P-1835	NCO 7	Ambulance services at William Jennings Bryan Dorn VA Medical Center	Unsigned J&A	\$924,000
VA248-17-J-0023	NCO 8	Nursing home services	No J&A	\$859,000
VA248-17-J-2231	NCO 8	Nursing home services	Unsigned J&A	\$715,000
		<b>Total</b>		<b>\$14.2 million</b>

Source: VA's eCMS

Note: Values are rounded.

<sup>19</sup> VHA Procurement Manual Part 806.3, *Other Than Full and Open Competition (OFOC) SOP*, Revision: 5, Effective Date: May 2, 2016.

<sup>20</sup> FAR § 6.304.

<sup>21</sup> VHA Procurement Manual Part 806.3, *Other Than Full and Open Competition (OFOC) SOP*, Revision: 5, Effective Date: May 2, 2016.

For six of the 10 contracts, RPO East contracting officers prepared J&A documents but did not obtain HCA approval. For the remaining four contracts, contracting officers did not complete a J&A document or receive HCA approval based on a misunderstanding of the relevant regulations.

### **J&A Document Prepared but HCA Approval Not Obtained**

The OIG found that RPO East contracting officials prepared a J&A document for six of the 10 contracts but failed to obtain HCA approval on the following:

- On a \$2.7 million wheelchair van transportation contract at the Atlanta VA Medical Center, the RPO East contracting officer stated there was not enough time between the contract end date and the need for the service to be continued to obtain all the required approvals, which included HCA approval.<sup>22</sup>
- On the \$2.6 million ambulance service contract at the Charlie Norwood VA Medical Center, the RPO East contracting officer could not provide an HCA-approved J&A document, nor evidence that the J&A document was routed for the required HCA approval.<sup>23</sup>
- On the \$1.9 million ambulance service contract for the Boston and Bedford VA medical centers and community based outpatient clinics,<sup>24</sup> the NCO 1 branch chief told the VA OIG that she “was provided guidance that an SSJ [sole-source justification] is not required because the orders are part of a multiple-award IDIQ [indefinite-delivery, indefinite-quantity] with the same PWS [performance work statement].”<sup>25</sup> However, the multiple-award IDIQ mentioned was not a multiple-award IDIQ but a sole-source IDIQ, which required HCA approval.<sup>26</sup> This sole-source IDIQ contract was awarded to the incumbent contractor in order to continue the ambulance services while officials prepared to award a contract for the services competitively.<sup>27</sup> Therefore, the branch chief was provided incorrect information by an RPO East procurement analyst, and the J&A document for the sole-source IDIQ should have been approved by the HCA.

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<sup>22</sup> VA247-16-F-3328.

<sup>23</sup> VA247-17-C-0039.

<sup>24</sup> VA241-16-J-2110.

<sup>25</sup> VA241-16-D-0035.

<sup>26</sup> VA241-16-J-2110 is an order from VA241-16-D-0035. VA241-16-D-0035 had a J&A document prepared, but it was not approved by the HCA.

<sup>27</sup> VA241-16-D-0035 was awarded to Brewster Ambulance Service Inc. as a sole-source IDIQ to continue services for the Boston and Bedford VA medical centers and community-based outpatient clinics after the VA241-P-2417 multiple-award IDIQ expired.

- On the \$980,000 ambulance service contract for the Central Alabama Veterans Healthcare System, the RPO East contract specialist stated the following in an official memorandum for record, which was signed by the associated contracting officer and branch chief:<sup>28</sup>

Due to the emergent need and haste of the contract specialist and contract officer to get the contract awarded, the J&A was not routed properly for review and approval. The parties involved in this mistake have been reminded and counseled on proper file reviews to ensure all sole-source requirements are completed properly for all future requirements.

- On the \$924,000 ambulance service contract for the William Jennings Bryan Dorn VA Medical Center, the RPO East contracting officer stated that historical data were used to develop its estimated quantities and prices.<sup>29</sup> Based on the historical data, the estimated value of the contract was less than \$700,000 and therefore, the initial J&A document did not require HCA approval. However, the RPO East contracting officer then awarded the contract for \$924,000, using the initial J&A document, claiming that there was an urgent need to fulfill the requirement. The RPO East contracting officer should have updated the value of the initial J&A document and routed it for HCA approval, as the contract value had increased above the threshold requiring HCA approval.
- On the \$715,000 nursing home service contract, the RPO East contracting officer stated that she didn't know why a justification was not signed by the HCA.<sup>30</sup> In addition, she stated "The JOFOC [justification for other than full and open competition] wasn't signed by those up in the chain of command because more than likely it wasn't submitted up through the chain of command."

### **J&A Document Not Prepared and HCA Approval Not Obtained**

The OIG found that RPO East contracting officials did not obtain HCA approval for four contracts because they did not prepare J&A documents. Three of the four contracts were for nursing home service contracts valued at \$3.1 million. For these contracts, RPO East contracting officials prepared a memorandum for record titled, "Justification for Other than Full and Open Competition."<sup>31</sup> According to the memos, the nursing home services were authorized or required

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<sup>28</sup> VA247-17-C-0071.

<sup>29</sup> VA247-17-P-1835.

<sup>30</sup> VA248-17-J-2231.

<sup>31</sup> VA248-17-J-2287, VA248-17-J-0021, and VA248-17-J-0023.

by a statute that allows for the procurement of certain health care resources without regard to any other law or regulation.<sup>32</sup>

While VA acquisition regulation 806.302-5(2) permits the award of sole-source contracts for certain healthcare resources without a J&A document, that regulation does not apply to nursing home services contracts.<sup>33</sup> Thus, J&A documents and appropriate approvals were required for these three contracts. As a result of the misinterpretation of the regulations, the contracting officers did not complete the required J&A documents for the nursing home services and, furthermore, did not obtain HCA approval. In addition, the OIG found that the memo did not satisfy the requirement of a completed J&A document because it did not list the correct statutory authority permitting the exception to competition and did not utilize the required J&A template from the VHA Procurement Manual.<sup>34,35</sup>

For the fourth contract, a \$1.2 million ambulance service contract at the Atlanta VA Medical Center, an RPO East contracting officer did not prepare a J&A document and did not obtain HCA approval because, according to an RPO East branch chief, there was not enough time to complete a J&A document for the contract.<sup>36</sup> The branch chief stated the following in a memorandum for record:

Due to the urgent nature of the requirement, proper market research could not be conducted and an approved Justification for Other than Full and Open Competition could not be completed for this requirement... The Atlanta VAMC [VA Medical Center] could not let the Ambulance Service lapse therefore they provided an Emergency Memo dated March 31, 2017, to continue services.

## **Contracting Officers Exceeded Their Authority**

When contracting officers fail to obtain required approval for sole-source contracts, they exceed their contracting authority, which could result in the termination of their warrant.<sup>37</sup> Accordingly, the approximately \$14.2 million value of the 10 awarded contracts are considered questioned

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<sup>32</sup> The statute cited in the memos was 38 U.S.C. § 8153.

<sup>33</sup> As explained in the preface to the January 15, 2008, revisions to the VA acquisition regulation, “[n]ursing home contracts must be negotiated in accordance with the FAR and VAAR [VA acquisition regulation].” Federal Register 2715, vol. 73, no. 10 (January 15, 2008). (codified at 48 CFR § 801, et seq.).

<sup>34</sup> FAR § 6.303-2.

<sup>35</sup> VHA Procurement Manual Part 806.3, *Other Than Full and Open Competition (OFOC) SOP*, Revision: 5, Effective Date: May 2, 2016.

<sup>36</sup> VA247-17-C-0085.

<sup>37</sup> VA Acquisition Regulation, Part 801.690-7, *Termination*, states a contracting officer’s warrant (i.e. his or her authority to enter into, administer, or terminate contracts) may be revoked or rescinded for taking an action that exceeds his or her authority.

costs. To avoid future questioned costs, contracting officers must ensure sole-source service contracts are approved by the appropriate approval authority.

In addition, because the contracts were entered into without proper authority, there was an increased risk that a protest of the contract award would succeed.<sup>38</sup> While these contract awards were not protested, a protest (even if not successful) would have resulted in increased administrative costs.

## Conclusion

RPO East contracting officers did not obtain the required HCA approval for 10 sole-source service contracts. For four of the 10 contracts, contracting officers did not prepare the J&A document before awarding the contract. As a result, the contracting officers exceeded their authority, resulting in approximately \$14.2 million in questioned costs. Further, the contracting officer increased the risk of the government paying more than necessary for the services and increased the risk of a successful protest.

## Recommendations 1–3

The OIG recommended that the executive director, VHA Procurement

1. Ensure awareness of approval procedures and the requirement to prepare a written justification and approval document for sole-source contracts,
2. Establish procedures to help ensure all justification and approval documents are prepared and approved by the appropriate authority, and
3. Review the actions of contracting personnel involved in the cited contracts and determine whether administrative actions are warranted.

## Management Comments

The executive director, VHA Procurement concurred with all recommendations and provided acceptable corrective action plans. In response to Recommendation 1, the executive director stated national training was provided to staff in June 2018 regarding sole-source contracting. For Recommendation 2, the executive director stated procedures will be established or will develop a system's check to ensure all justifications and approval documents are prepared and approved by the appropriate authority. For Recommendation 3, the executive director stated the RPO East HCA will review the actions cited in the report and determine whether any personnel actions are warranted. Actions on Recommendations 2 and 3 are expected to be completed by January 2020.

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<sup>38</sup> Any contractor who can demonstrate it was prejudiced by the award, i.e., a competitor that was excluded from competition by the sole-source procurement, could have protested the award.

## **OIG Response**

The executive director, VHA Procurement corrective actions plans are responsive to the intent of the recommendations. The OIG considers Recommendation 1 closed based on the actions reported and documentation provided. The OIG will monitor implementation of the planned actions for Recommendations 2 and 3 and will close the recommendations when the proposed actions are completed.

## Finding 2: RPO East Contracting Officers Unnecessarily Limited Competition on Four Sole-Source Transportation Service Contracts

RPO East contracting officers unnecessarily limited competition on four sole-source transportation service contracts worth about \$8.5 million. This occurred because the contracting officers did not properly plan to procure these recurring transportation services. As a result, the contracting officers increased the risk of the government paying more than necessary for these services and increased the risk of successful contract protests.

### Lack of Planning Unnecessarily Limited Competition

Federal regulations prescribe policies and procedures for promoting and providing full and open competition.<sup>39</sup> However, the OIG found that RPO East contracting officers unnecessarily limited competition on four contracts worth about \$8.5 million. Specifically, the contracting officers “sole-sourced” the awards to the incumbent contractors to perform recurring services that the contracting officers should have anticipated and awarded competitively. See Table 3 for the contracts where the contracting officer unnecessarily limited competition.

**Table 3. Contracts That Unnecessarily Limited Competition**

Contract	Service	Value
VA247-16-F-3328	Wheelchair van transportation at the Atlanta VA Medical Center	\$2.7 million
VA247-17-C-0039	Ambulance services at the Charlie Norwood VA Medical Center	\$2.6 million
VA241-16-J-2110	Ambulance services at the Boston and Bedford VA medical centers and community based outpatient clinics	\$1.9 million
VA247-17-C-0085	Ambulance service at the Atlanta VA Medical Center	\$1.2 million
	<b>Total</b>	<b>\$8.5 million</b>

Source: VA’s eCMS

Note: Values are rounded.

Federal regulation states that lack of planning is not a justification for issuing a contract on a sole-source basis.<sup>40</sup> However, the OIG determined that the contracting officers unnecessarily limited competition for four transportation services contracts because they did not properly plan the award of the recurring transportation service contracts competitively.

<sup>39</sup> FAR § 6.1.

<sup>40</sup> FAR § 6.301.

## Two Contracts for Transportation Services at the Atlanta VA Medical Center

On October 1, 2016, an RPO East contracting officer awarded a \$2.7 million sole-source contract for recurring wheelchair van transportation at the Atlanta VA Medical Center.<sup>41</sup> This was a six-month contract awarded to the incumbent contractor, MLB Transportation Inc., based on an unusual and compelling urgency (FAR § 6.302-2). The OIG found that RPO East contracting officials had awarded multiple extensions and interim contracts to MLB Transportation Inc. since April 2015. RPO East contracting officials knew for more than a year that the existing contract for wheelchair van transportation services would be expiring and they would need to re compete the contract. In other words, there was no reason—other than a failure to plan—that this requirement became unusually and compellingly urgent. See Table 4 for a complete list of the extensions and interim contracts awarded to the incumbent contractor without competition.

**Table 4. Contracts Awarded without Competition to MLB Transportation Inc.**

Contract	Description of contract	Period of performance
VA247-15-D-0272	Six-month contract	April 1, 2015–September 30, 2015
VA247-15-D-0272 P00002	Four-month extension	October 1, 2015–January 1, 2016
VA247-15-D-0272 P00003	Two-month extension	February 1, 2016–March 31, 2016
VA247-16-D-1978	Six-month contract	April 1, 2016–September 30, 2016
VA247-16-F-3328	Six-month contract	October 1, 2016–March 31, 2017
VA247-16-F-3328 P00002	Six-month extension	April 1, 2017–September 30, 2017

Source: VA's eCMS

On April 1, 2017, an RPO East contracting officer awarded a \$1.2 million sole-source contract for recurring ambulance services at the Atlanta VA Medical Center.<sup>42</sup> This was a six-month contract awarded to the incumbent contractor, Central Emergency Medical Services, LLC. As discussed above, the contracting officer did not prepare a J&A document and did not obtain HCA approval for this award because, according to an RPO East branch chief, there was not enough time to complete a J&A document for the contract. However, the OIG found that RPO East contracting officials awarded multiple extensions and interim contracts since January 2015. This was a recurring services requirement that the contracting officers should have been aware of and planned for accordingly.

<sup>41</sup> VA247-16-F-3328.

<sup>42</sup> VA247-17-C-0085.

See Table 5 for a complete list of the extensions and interim contracts awarded to the incumbent contractor without competition.

**Table 5. Contracts Awarded without Competition to  
Central Emergency Medical Services, LLC**

Contract	Description of contract	Period of performance
VA247-P-0766 P00009	Nine-month contract	January 1, 2015–September 30, 2015
VA247-15-F-1526 P00001	Three-month extension	October 1, 2015–December 31, 2015
VA247-16-C-0107	Three-month contract	January 1, 2016–March 31, 2016
VA247-16-C-0107 P00001	Six-month extension	April 1, 2016–September 30, 2016
VA247-16-C-0107 P00002	Six-month extension	October 1, 2016–March 31, 2017
VA247-17-C-0085	Six-month contract	April 1, 2017–September 30, 2017
VA247-17-C-0085 P00001	Six-month extension	October 1, 2017–March 31, 2018
VA247-17-C-0085 P00002	Three-month extension	April 1, 2018–June 30, 2018
36C24718C0178	Three-month contract	July 1, 2018–September 30, 2018

Source: VA's eCMS

### **Ambulance Service at the Charlie Norwood VA Medical Center**

On January 1, 2017, an RPO East contracting officer awarded a \$2.6 million sole-source contract for ambulance service at the Charlie Norwood VA Medical Center.<sup>43</sup> The contract was awarded for one year to the incumbent contractor, Regional Services LTD, Southstar Ambulance Service, based on an unusual and compelling urgency per FAR 6.302-2. RPO East officials knew for several years that ambulance services at the Charlie Norwood VA Medical Center would need to be recompeted. Therefore, there was no reason—other than a failure to plan—that this requirement became unusually and compellingly urgent. The J&A document stated that a long-term solicitation would be issued within 60 days; however, the OIG found that multiple extensions and interim contracts followed.

<sup>43</sup> VA247-17-C-0039.

See Table 6 for a complete list of the extensions and interim contracts awarded to the incumbent contractor without competition.

**Table 6. Contracts Awarded without Competition**

Contract	Description of contract	Period of performance
VA247-17-C-0039	One-year contract	January 1, 2017–December 31, 2017
VA247-17-C-0039 P00001	Three-month extension	January 1, 2018–March 31, 2018
36C24718C0108	Six-month contract	April 1, 2018–September 30, 2018
36C24719P0014	Three-month contract	October 1, 2018–December 31, 2018
36C24719P0014 P00001	Six-month extension	January 1, 2019–June 30, 2019

Source: VA's eCMS

In addition, the OIG found that the J&A document for the six-month contract awarded for April 1, 2018–September 30, 2018, contained the following note.<sup>44</sup>

The only reason that this has been approved is to prevent disruption of critical patient services. The Contracting Office failed to get a proper instrument in place in a timely manner that would've prevented this situation. Disciplinary actions have been taken against the responsible contracting staff.

The HCA also provided his own personal note in the J&A document.

The end of a contract's period of performance should surprise neither the contracting staff nor the requiring activity. Thus, the amount of time required to place the proper follow-on contract is never a good excuse for a sole-source action. Additionally, I find that NCO 7 improperly executed extensions to this contract. NCO 7 shall provide the HCA with monthly, written progress reports for the long-term contract placement. The HCA expressly does not allow this bridge contract to be extended in any way, shape or form.

## **Ambulance Services at the Boston and Bedford VA Medical Centers and Community Based Outpatient Clinics**

On October 1, 2016, an RPO East contracting officer awarded a \$1.9 million contract for recurring ambulance service at the Boston and Bedford VA medical centers and community-based outpatient clinics.<sup>45</sup> This contract was awarded to Brewster Ambulance Service Inc. against an IDIQ sole-source contract. RPO East officials knew for several years that ambulance services at the Boston and Bedford VA medical centers and community-based

<sup>44</sup> 3624718C0108.

<sup>45</sup> VA241-16-J-2110.

outpatient clinics would need to be recompeted. The J&A document prepared in March 2016 stated that a competitive contract was in process but would not be awarded in time to prevent a loss of service to veterans. However, the OIG found that the contracting office issued multiple extensions and interim contracts following this contract.<sup>46</sup> See Table 7 for a complete list of the extensions and interim contracts awarded to the incumbent contractor without competition.

**Table 7. Contracts Awarded without Competition**

Contract	Description of contract	Period of performance
VA241-16-D-0035*	Six-month contract	March 27, 2016–September 30, 2016
VA241-16-J-2110	Six-month extension	October 1, 2016–March 31, 2017
VA241-17-D-0051	Three-month contract	April 1, 2017–June 30, 2017
VA241-17-D-0051 P00001	Two-month extension	July 1, 2017–August 31, 2017
VA241-17-D-0051 P00002	Three-month extension	September 1, 2017–November 30, 2017
VA241-17-D-0051 P00003	One-month extension	December 1, 2017–December 31, 2017
VA241-17-D-0051 P00004	Two-month extension	January 1, 2018–February 28, 2018
VA241-17-D-0051 P00005	Four-month extension	March 1, 2018–June 30, 2018

Source: VA's eCMS

\* Task order VA241-16-J-2110 was issued on IDIQ contract (VA241-16-P-0035), which was issued on March 26, 2016, as a sole-source award to Brewster Ambulance Service Inc. with a base period of performance of March 27, 2016, through June 30, 2016, and an option period of July 1, 2016, through September 30, 2016. The period of performance was then extended through March 31, 2017, and task order VA241-16-J-2110 was issued under the IDIQ contract.

## Increased Risk

Since these contracts were not competed, there was an increased risk of the government paying more than necessary for these services. Specifically, by limiting competition, the government did not receive the benefit of competition, which could have resulted in savings through lower, more competitive pricing.

In addition, there was an increased risk that a protest of the contract awards would succeed.<sup>47</sup> While these contract awards were not protested, a protest (even if not successful) would have resulted in increased administrative cost.

<sup>46</sup> Contract VA241-16-J-2110, valued at \$1.9 million, with a period of performance from October 1, 2016, through March 31, 2017.

<sup>47</sup> Any contractor who can demonstrate it was prejudiced by the award, i.e., a competitor that was excluded from competition by the sole-source procurement, could have protested the award.

## Conclusion

RPO East contracting officers unnecessarily limited competition for four recurring transportation service contracts worth about \$8.5 million. As a result, the contracting officers increased the risk of the government paying more than necessary for these services and increased the risk of a successful protest.

## Recommendation 4

The OIG recommended that the executive director, VHA Procurement

4. Establish formal coordination with the requiring activity to ensure adequate time is allotted for soliciting and awarding recurring services competitively.

## Management Comments

The executive director, VHA Procurement concurred with Recommendation 4 and provided an acceptable corrective action plan. In response to Recommendation 4, the executive director stated he will direct each RPO director and the directors of contracting to hold at least biweekly program status meetings with the network contracting staff and customers to ensure adequate time is allotted for soliciting and awarding recurring services competitively. Action on this recommendation is expected to be completed by January 2020.

## OIG Response

The executive director, VHA Procurement corrective action plan is responsive to the intent of the recommendation. The OIG will monitor implementation of the planned action for Recommendation 4 and will close the recommendation when the proposed action is completed.

## Appendix A: Contracts Reviewed

The OIG reviewed 20 sole-source service contracts. Table A.1 details the results of the OIG team's review.

**Table A.1. RPO East FY 2017 Sole-Source Contracts**

Contract	Service	Value*	Did the HCA approve the J&A document?	Was a J&A document prepared?
VA240-17-J-0335	Million Veteran Program print scan mail	\$6,862,024.50	Yes	Yes
VA246-16-C-0133	Patient escort	\$5,666,018.64	Not required	Not required**
VA241-17-C-0138	Brain tissue sequencing	\$3,695,000.00	Yes	Yes
VA240-17-J-0202	Million Veteran Program print scan mail	\$3,010,315.95	Yes	Yes
VA247-16-F-3328	Wheelchair van transportation	\$2,743,850.00	No	Yes
VA247-17-C-0039	Ambulance transportation	\$2,635,350.40	No	Yes
VA247-17-C-0026	Ambulance transportation	\$2,139,826.00	Yes	Yes
VA241-16-J-2110	Ambulance transportation	\$1,875,000.06	No	Yes
VA246-17-C-0349	Culture transformation	\$1,350,000.00	Yes	Yes
VA240-17-J-0311	Research support	\$1,317,555.00	Yes	Yes
VA248-17-J-2287	Nursing home services	\$1,260,400.00	No	No
VA247-17-C-0085	Ambulance transportation	\$1,222,578.48	No	No
VA245-16-J-1034	Clinical and administrative support	\$1,123,660.00	Yes	Yes
VA248-17-J-0021	Community nursing home care	\$1,029,902.00	No	No
VA247-17-C-0071	Ambulance transportation	\$980,000.00	No	Yes
VA247-17-P-1835	Ambulance transportation	\$923,700.00	No	Yes
VA248-17-J-0023	Nursing home services	\$859,144.00	No	No
VA240-17-J-0397	Genomic research	\$855,240.00	Yes	Yes
VA244-17-P-6267	Building automation system	\$852,000.00	Yes	Yes
VA248-17-J-2231	Nursing home services	\$715,241.20	No	Yes
	<b>Total</b>	<b>\$41,116,806.23</b>		

Source: VA's eCMS

\*These may include option years.

\*\*This contract was awarded to an AbilityOne contractor, which does not require a J&A document or HCA approval, per FAR § 6.302-5.

## Appendix B: Scope and Methodology

### Scope

The review team conducted review work from March 2018 through July 2019. The review included all RPO East sole-source service contracts valued at more than \$700,000 awarded in FY 2017. This included 20 contracts with a total value of about \$41.1 million.

### Methodology

To accomplish the review objective, the review team identified and reviewed applicable laws, federal regulations, VA policies, operating procedures, and guidelines related to other than full and open competition contracts. The review team used VA's eCMS to review the contract file for relevant contract documentation on each service contract to determine whether RPO East contracting officials complied with sole-source requirements. The review team also contacted RPO East contracting officials to obtain clarification regarding the contract documentation or requested additional documentation to ensure compliance with the federal regulations as necessary.

### Fraud Assessment

The review team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The review team exercised due diligence in staying alert to any fraud indicators by:

- Reviewing the Department of Defense OIG fraud red flags and indicators to identify fraud indicators that are applicable to this project. The review team identified four red flags applicable to contracts including:
  - Contract documentation,
  - Excluding qualified bidders,
  - Source selection, and
  - Unjustified sole-source.
- Soliciting the OIG's Office of Investigations to determine if there were any ongoing cases.
- Completing the Fraud Indicators and Assessment checklist.

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

### **Data Reliability**

The OIG used VA's eCMS to obtain the universe of sole-source service contracts. Testing was performed on the data for validity by comparing it with supporting contract documentation in eCMS. The OIG found minor inconsistencies in the data; however, it was determined reliable and would not affect the OIG's findings, conclusions, and recommendations.

### **Government Standards**

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

## Appendix C: Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of benefits	Better use of funds	Questioned costs
1–3	By establishing procedures for justification and approval document preparation and approval for sole-source contracts, it will ensure HCA approval is obtained as required and will not result in questioned costs.	\$0	\$14,245,166
	<b>Total</b>	<b>\$0</b>	<b>\$14,245,166</b>

*Source: OIG finding*

*Note: Values do not include cents.*

## Appendix D: Management Comments

### Department of Veterans Affairs Memorandum

Date: August 7, 2019

From: Executive Director, VHA Procurement

Subj: OIG Draft Report, Sole-Source Service Contracts at Regional Procurement  
Office East Need Improvement

To: Counselor to the Inspector General

1. I have reviewed the draft report and concur with 4 of 4 recommendations.
2. Attached is the VHA Procurement corrective action plan for the report's recommendations.

(Original signed by)

Ricky L. Lemmon

Executive Director, VHA Procurement

Veterans Health Administration

VETERANS HEALTH ADMINISTRATION (VHA)  
Action Plan

OIG Draft Reports - Sole-Source Service Contracts at Regional Procurement  
Office East Need Improvement

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Recommendations/	Status	Target Completion
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The OIG recommended the Executive Director VHA Procurement:

Recommendation 1. Ensure awareness of approval procedures and the requirement to prepare written justification and approval documents for sole-source contracts.

VHA Comments: Concur

VHA Executive Director for Procurement provided National training on June 12, 2018 on the topic of Sole-Source / OTFOC. Please see the attached training presentation and training invitation.

Status :	Target Completion Date :
Complete	NA

Recommendation 2. Establish procedures to help ensure all justification and approval documents are prepared and approved by the appropriate authority.

VHA Comments: Concur

VHA Executive Director for Procurement will establish procedures or develop a system's check to ensure all justification and approval documents are prepared and approved by the appropriate authority.

Status :	Target Completion Date :
In Progress	January 2020

Recommendation 3. Review the actions of contracting personnel involved in the cited contracts and determine whether administrative actions are warranted.

VHA Comments: Concur

RPO East HCA will review the actions cited in the report and determine if any personnel actions are warranted.

Status :	Target Completion Date :
In Progress	January 2020

Recommendation 4. Establish formal coordination with the requiring activity to ensure adequate time is allotted for soliciting and awarding recurring services competitively.

VHA Comments: Concur

VHA Executive Director for Procurement will direct each RPO Director and the Directors of Contracting to hold at least bi-weekly program status meeting with the Network Contracting staff and customers to ensure adequate time is allotted for soliciting and awarding recurring services competitively.

Status :  
In Progress

Target Completion Date :  
January 2020

*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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