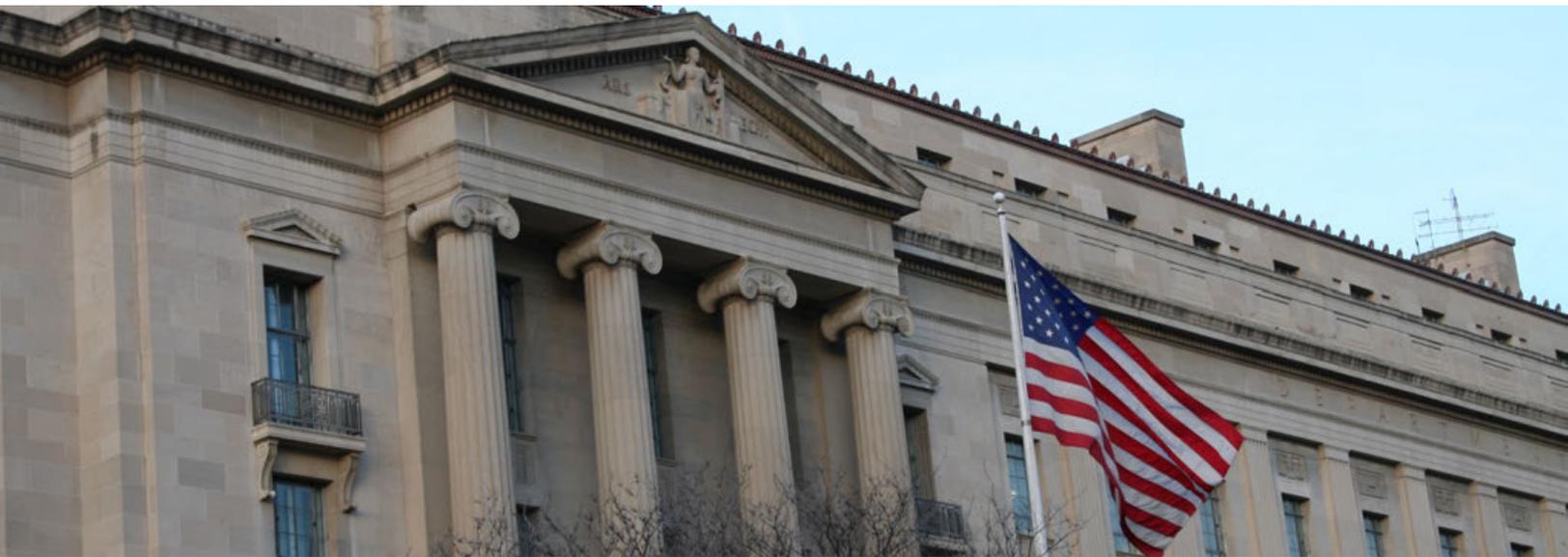




**Office of the Inspector General**  
U.S. Department of Justice

**OVERSIGHT ★ INTEGRITY ★ GUIDANCE**



**Audit of the Bureau of Alcohol,  
Tobacco, Firearms and Explosives  
Sole-Source Small Business  
Contracting**



# Executive Summary

## *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Sole Source Small Business Contracting*

### Objectives

The Department of Justice Office of the Inspector General completed an audit of 16 sole-source contract actions awarded to 9 small businesses by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

The objectives of this audit were to assess ATF's: (1) processes for soliciting small businesses for contract opportunities, (2) procedures and decisions for selecting and awarding sole-source contracts to small businesses, and (3) subsequent oversight of these types of awards.

### Results in Brief

We identified several concerns regarding ATF's administration of sole-source small business contracts. First, ATF did not maintain complete contract files and could not demonstrate that it had conducted required market research before awarding several sole-source contracts. Proper documentation is necessary to show that ATF safeguarded federal funds, furthered the purpose of small business programs, and complied with sole-source contracting authorities. Second, ATF did not consistently monitor the performance of its small business contractors, which weakened its ability to address sub-optimal performance. Lastly, ATF needs to improve how it records acquisition planning for small business contracts awarded in emergency situations.

### Recommendations

Our report contains 11 recommendations to improve how ATF competes, administers, and oversees awards to small businesses. We discussed the results of our audit with ATF and provided a copy of the draft audit report for review and response. ATF's response can be found in Appendix 2, and our analysis of the response is included in Appendix 3.

### Audit Results

The Small Business Act of 1953 (the Small Business Act) established the U.S. Small Business Administration (SBA) to assist and protect the interests of small businesses and ensure federal agencies award small businesses a fair proportion of government contracts and sales. Drawing from the authority of the Small Business Act, SBA annually establishes government-wide small business goals and supports small business assistance programs covering an array of topics, including loans, grants, contracts, and managerial coaching.

For fiscal year (FY) 2016 and 2017, the SBA established a government-wide goal to award a minimum of 23 percent of prime contracting dollars to small businesses. Included in this overall goal are specific sub-goals tied to various SBA programs, including the 8(a) Business Development Program (8(a) Program), which was established to help socially and economically disadvantaged small businesses.

This audit examined how ATF awarded and monitored 16 sole-source contract actions, totaling over \$56 million. ATF awarded these contracts during FY 2016 and 2017 to nine small businesses.

**Alaska Native Corporations (ANCs)** – Seven of the nine small businesses included in our review were designated ANCs under the 8(a) Program. Throughout FY 2016 and 2017, ATF awarded nearly half of its small business contract dollars to ANCs. By making awards to ANCs under the 8(a) Program, ATF was able to leverage this program's unique authorities, which permitted it to award sole-source contracts to ANCs, up to a certain amount, without justifications or approvals that otherwise would be required for other contractors.

**Follow-on Awards** – The SBA defines follow-on awards as an immediate subsequent award, without changes to the contract requirements, awarded to an 8(a) Program business owned by the same company or a subsidiary. The SBA generally prohibits follow-on awards because they can unfairly stifle competition and limit the participation of other 8(a) Program small businesses. Nevertheless, ATF issued the 16 contract actions reviewed under 11 different master contracts,



# Executive Summary

## *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Sole Source Small Business Contracting*

5 of which we determined were follow-on awards to related 8(a) Program companies with a total value of nearly \$19 million. We identified market research and other pre-award documents in the contract files, which openly acknowledged that these were follow-on awards. During interviews, ATF contracting officials confirmed that they were aware of the SBA's rules regarding follow-ons at the time of the award but believed they could award such actions under an exception to the policy. We determined that one of the five follow-on awards did not meet requirements of this exception and thus was improper.

**Market Research and Justifications** – We found that ATF's contract files contained ambiguous or no market research to support the contracting officials' rationale for making sole-source awards for commonplace products and services, such as binoculars, flashlights, guard services, laboratory support, and administrative support. Although the FAR and SBA regulations permit agencies to award sole-source contracts valued up to \$22 million to certain 8(a) Program participants, contracting officials must still perform and document adequate market research under separate FAR requirements to demonstrate that a particular contractor was a qualified small business or 8(a) Program participant capable of satisfying the agency's needs. While all of the contracts reviewed were valued at \$22 million or below, ATF did not conduct or document sufficient market research in its contract files. Also, one of the audited contract actions included an award that ATF made under its role of coordinating and supporting the federal law enforcement response to emergencies and disasters. ATF did not document acquisition planning for this award, which is required when contracting without providing for full and open competition.

**Policies for Monitoring Activities** – We determined that ATF needs to draft, formalize, and implement policies and procedures that require contracting officials to conduct monitoring activities, such as site visits and performance evaluations, to ensure compliance with the SBA, FAR, and contractual requirements. We noted that ATF Contracting Officer's Representatives (COR) responsible for the daily administration and oversight of

the 16 selected contract actions were largely unaware of the presence, amount, or workload of subcontractors.

We also found that ATF did not consistently conduct or document the results of contractor performance evaluations via its COR Monthly Progress Reports or the FAR-required Contractor Performance Assessment Reports System (CPARS). ATF officials told us that they did not complete the CPARS because they did not receive an automated message from the CPARS portal prompting them to do so. We believe that the lack of written policies and procedures establishing consistent protocols for oversight and performance evaluations, especially for contracts with no contractually specified deliverables or performance metrics, puts ATF at risk of enlisting a contractor that is unable to perform in accordance with the contract terms adequately. In addition, when performance evaluations are not completed in CPARS other government agencies may unwittingly engage an underperforming contractor instead of a prospective bidder that is qualified to provide the desired product or service.

**AUDIT OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS  
AND EXPLOSIVES SOLE-SOURCE SMALL BUSINESS  
CONTRACTING**

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# **AUDIT OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES SOLE-SOURCE SMALL BUSINESS CONTRACTING**

## **INTRODUCTION**

The Small Business Act of 1953 (the Small Business Act) established the U.S. Small Business Administration (SBA) to assist and protect the interests of small businesses and ensure federal agencies award small businesses a fair proportion of government contracts and sales.<sup>1</sup> To effectuate this broad mandate, the SBA annually establishes government-wide small business goals and supports small business assistance programs covering an array of topics, including loans, grants, contracts, and managerial coaching. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) awards various types of small business contracts under different SBA programs to help it fulfill its mission to investigate crimes involving firearms, explosives, arson, and the diversion of alcohol and tobacco products; regulate lawful firearms and explosives commerce; and support law enforcement, public safety, and industry partners. ATF's contracting portfolio includes awards to small businesses using sole-source acquisition procedures without soliciting competition from other small businesses.

SBA regulations, the Federal Acquisition Regulation (FAR), and the Justice Acquisition Regulation (JAR) each provide specific requirements that Department of Justice (DOJ) components must implement with regard to designating, soliciting, and contracting with different types of small businesses. Under these requirements, government contracting officials must conduct and document market research to determine the suitability of future contract opportunities for small businesses. Once contracting officials determine that tasks outlined in a prospective contractor's Statement of Work is small-business compatible, contracting officials must send an Offer Letter to the SBA, outlining the terms and conditions of the contract as well as other information sufficient to aid the SBA in determining whether to accept or reject the contracting agency's offer. The Offer Letter must also contain the agency's intent to solicit exclusively to multiple small businesses or, in limited circumstances, directly award a contract to a small business without full and open competition.

### **Small Business Contracting Goals**

For both fiscal years (FY) 2016 and 2017, the SBA established a government-wide goal to award a minimum of 23 percent of prime contracting dollars to small businesses per annum. Included in this overall goal were specific sub-goals tied to the SBA programs for Small Disadvantaged Businesses (SDB), Women-Owned Small Businesses (WOSB), Service-Disabled Veteran Owned Small Businesses (SDVOSB), and Historically Underutilized Business Zone (HUBZone) Businesses. In a similar vein, the SBA developed its 8(a) Business Development Program (8(a) Program) to help small, disadvantaged businesses compete in the federal

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<sup>1</sup> Pub. L. No. 85-536 (2016).

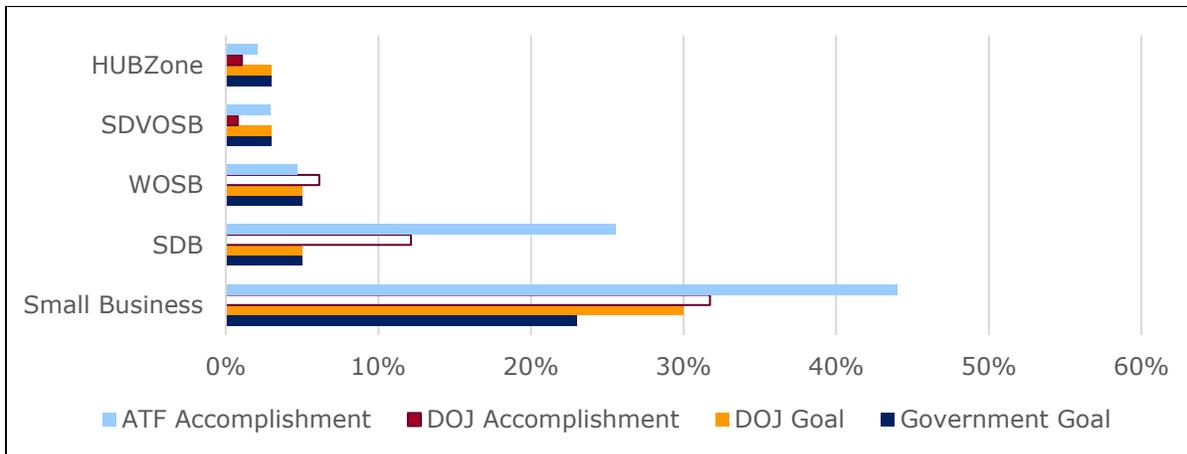
marketplace and gain access to the economic mainstream of American society. The 8(a) Program is a category under the SDB sub-goal and is geared toward businesses owned and controlled (at least 51 percent) by presumed socially and economically disadvantaged individuals, who do not necessarily fit into the aforementioned sub-goal categories.<sup>2</sup>

As part of its mandate to support small businesses, the SBA negotiates with individual federal agencies, including the DOJ, to establish agency-specific small business contracting goals and sub-goals, which may meet or exceed established government-wide goals. The SBA established a government-wide goal to award at least 5 percent of all federal contracting dollars to 8(a) Program participants. Figure 1 details the overall small business contracting goals and sub-goals that the SBA set for the federal government overall and specifically negotiated with DOJ for FY 2016 and 2017.

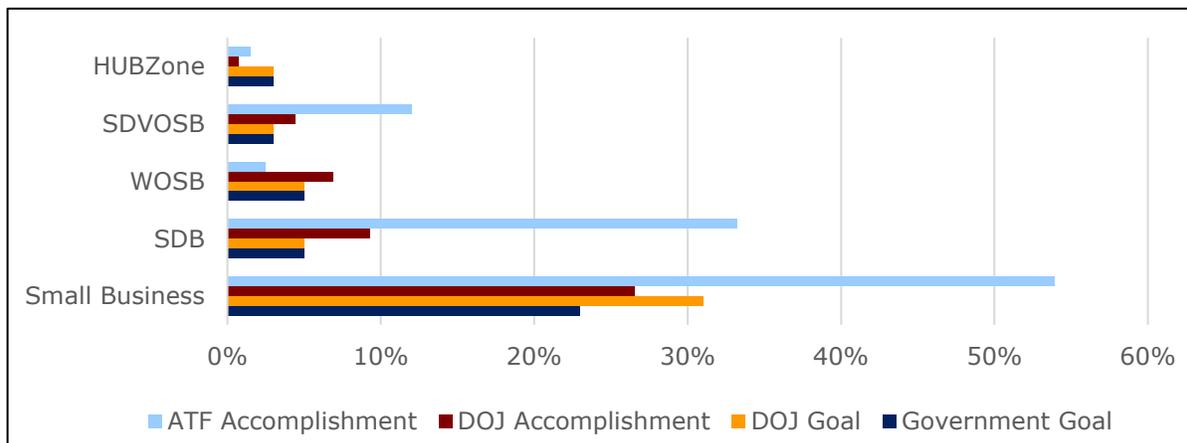
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<sup>2</sup> According to the SBA, for the purposes of the 8(a) Program, "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans," are presumed socially and economically disadvantaged. Other individuals may be found similarly disadvantaged and thus eligible for the 8(a) Program on a case-by-case basis.

**Figure 1**  
**Small Business Goals and Accomplishments**  
**FY 2016**



**FY 2017**



Note: SDB stands for “small disadvantaged business” and includes participants of the 8(a) Program, which are, by definition, both socially and economically disadvantaged businesses.

Sources: SBA and Federal Procurement Data System (FPDS)

Figure 1 also shows that ATF far exceeded, by percentage of its contract dollars, both DOJ’s small business contracting goal and 8(a) Program small disadvantaged business contracting sub-goal in FYs 2016 and 2017. During FY 2016 and 2017, ATF obligated a total of nearly \$506 million contract dollars, of which, a total of over \$238 million was awarded to small business awards.<sup>3</sup> Of the total awarded to small businesses, over \$94 million (40 percent) were for sole-source contracts awarded without competition. Many of these ATF sole-source small

<sup>3</sup> We derived these figures from USASpending.gov, which provides the American public access to information on how their tax dollars are spent under the Federal Funding Accountability and Transparency Act of 2006.

business contracts were to procure non-unique products and services such as uniforms, tactical supplies such as binoculars and flashlights, guard services, laboratory support services, and administrative support services.

### **Office of the Inspector General Audit Approach**

To meet DOJ's small business contracting goals, component-level contracting officials must appropriately identify and secure the services of qualified small businesses that meet their procurement needs. Considering small business requirements, 8(a) Program goals, and ATF's demonstrated 8(a) Program activity, the objectives of the audit were to assess ATF's: (1) processes for soliciting small businesses for contract opportunities; (2) procedures and decisions for selecting and awarding sole-source contracts to small businesses; and (3) subsequent oversight of these types of awards. The scope of the audit covers ATF small business contracting from October 2015 through September 2017.

To accomplish these objectives, we judgmentally selected 16 FY 2016 and 2017 ATF sole-source small business contract actions. The 16 contract actions were issued under 11 different master contracts and Indefinite Delivery/Indefinite Quantity (ID/IQ) contract vehicles. As shown in Table 1, this selection of contract actions is valued at over \$56 million, which we found comprised 59 percent of sole-source contract dollars and 23 percent of the total contract dollars that ATF obligated to small businesses during the audit scope.

**Table 1**  
**Selected ATF Sole Source Small Business Contract Actions**

	<b>Contract Number</b>	<b>Contract Type</b>	<b>Vendor Name</b>	<b>Small Business Type</b>	<b>Action Obligation (\$)</b>
1	DJA-12-DCO-0017	Firm Fixed Price	Rolling Bay, LLC	ANC	1,319,345
2	DJA-12-DCO-0019	Firm Fixed Price	Alutiiq Pacific, LLC	ANC	1,218,497
3	DJA-12-ITO-0064	Firm Fixed Price	Inuteq, LLC	ANC	2,303,530
4	DJA-12-ITO-0105	Time and Materials	Shearwater Systems, LLC	ANC	5,012,672
5	DJA-15-AHDQ-D-0045	Firm Fixed Price	Rolling Bay, LLC	ANC	5,985,730
6	DJA-15-AHDQ-D-0045	Firm Fixed Price	Rolling Bay, LLC	ANC	4,072,746
7	DJA-15-AHDQ-D-0045	Firm Fixed Price	Rolling Bay, LLC	ANC	2,036,373
8	DJA-16-AHDQ-D-0089	Firm Fixed Price	NLT Management Services, LLC	American Indian Tribally Owned (AITO)	2,290,964
9	DJA-16-AHDQ-D-0235	Firm Fixed Price	NLT Management Services, LLC	AITO	1,703,092
10	DJA-16-AHDQ-K-0826	Firm Fixed Price	Alutiiq Advanced Security Solutions, LLC	ANC	6,120,192
11	DJA-16-AHDQ-K-0826	Firm Fixed Price	Alutiiq Advanced Security Solutions, LLC	ANC	6,459,219
12	DJA-17-AHDQ-D-0224	Firm Fixed Price	Arctic Slope Mission Services, LLC	ANC	2,426,234
13	DJA-17-AHDQ-P-0837	Firm Fixed Price	Granny's Alliance Holdings, Inc.	WOSB	2,384,000
14	DJA-17-AHDQ-K-0981	Time and Materials	Shearwater Systems, LLC	ANC	7,002,930
15	DJA-17-AHDQ-P-0837	Firm Fixed Price	Granny's Alliance Holdings, Inc.	WOSB	5,386,500
16	DJA-16-AHDQ-D-0149	Firm Fixed Price	Aurora Industries, LLC	ANC	298,038
<b>Total</b>					<b>\$56,020,062</b>

Note: ATF issued the 16 selected contract actions under 11 different ID/IQ and standalone master contracts.

Source: FPDS and USASpending.gov as of January 2018

To ascertain how ATF solicited, awarded, administered, and oversaw these sole-source small business awards, we analyzed the contract files for these 16 contract actions. The contract files, maintained by the ATF Contracting Officers (CO) and Contracting Officer's Representative (COR), are intended to memorialize the complete history of the contracts and subsequent task orders. The contract file contents reviewed included, but was not limited to, the market research documents, acquisition plans, pre-award offer and acceptance letters exchanged with the SBA, COR Appointment Memorandum, Price Negotiation Memoranda, base-year contracts, task orders, statements of work, modifications, Quality Assurance and Surveillance Plans, and contractor performance evaluations.

We also interviewed the ATF COs and CORs responsible for the solicitation, award, administration, and oversight of the select contracts and subsequent task orders. Additionally, we interviewed other DOJ procurement professionals, including ATF's Acquisition Branch Chief, Competition Advocate, Small Business Advisor, Chief of Quality Assurance and Policy Review, a Contract Specialist, as well as the Director of DOJ's Office of Small and Disadvantaged Business Utilization.

We examined and evaluated ATF's policies, procedures, and guidelines governing its procurement of sole-source small business contracts. We further consulted several SBA officials to clarify interpretations, effective dates, and expectations for contracting agencies and small business program participants with regard to documentation, administration, and oversight.<sup>4</sup>

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<sup>4</sup> Appendix 1 includes further details on our audit objectives, scope, and methodology.

## AUDIT RESULTS

### Fulfilling and Documenting Sole-Source Award Requirements

As a participating agency in various SBA programs, ATF may award sole-source awards to different types of small businesses, so long as these awards meet specific solicitation requirements. We found that ATF did not meet a number of requirements necessary to demonstrate that it effectively awarded sole source contracts to small businesses. First, contract files maintained by ATF did not provide a complete history of sampled sole-source small business contract decisions, as required by the FAR. Second, although acquisition planning and market research is the foundation for awarding a contract, several contract files lacked documents necessary to support ATF's determinations that a small business was qualified and eligible to receive a sole-source award. Third, we determined that offer letters ATF must prepare to obtain SBA approval for small business contracts lacked required key elements. Incomplete offer letters can negatively affect SBA's role of reviewing and approving a proposed small business procurement. Fourth, ATF awarded a substantial portion of the selected contract actions to businesses designated Alaska Native Corporations (ANC) under the SBA's 8(a) Business Development Program (8(a) Program). This program prohibits awarding follow-on contracts to businesses owned by the same entity as an incumbent or other predecessor 8(a) Program business. Fifth, while we found that ATF awarded the 16 contract actions to eligible businesses, ATF awarded one action as a follow-on contract without new requirements that we believe would have been necessary to make such an award allowable. Thus, for this follow-on contract action, ATF contract files could not readily demonstrate that contracting officials effectively supported the purpose of sole-source small business awards.

#### *Conducting and Documenting Market Research*

To help provide a level playing field for disadvantaged small businesses, COs may limit competition and make sole-source contract and set-aside awards to eligible 8(a) Program participants.<sup>5</sup> However, the CO and other contracting officials must balance the expediency of making non-competitive contracts by meeting enhanced contract file documentation requirements.<sup>6</sup> For 8(a) Program sole-source awards, contract files need to incorporate such items as the initial requests to purchase goods or services, acquisition planning and market research (such as cost and price analysis, government price estimates, and industry surveys and proposals), approvals for non-competitive procurements, small business set-aside

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<sup>5</sup> FAR 6.3, *Other Than Full and Open Competition*; FAR 6.204(a), *Section 8(a) Competition*. Set-aside contracts are funding instruments that the government reserves for small businesses in the following certification programs: 8(a), WOSB, SDVOSB, and HUBZone.

<sup>6</sup> The FAR requires that contracting officials maintain a contract file that provides a complete history of the transaction. Under FAR 4.801(b), contract files should: (1) provide a complete background as a basis for informed decisions at each step in the acquisition process; (2) support actions taken; (3) provide information for reviews and investigations; and (4) furnish essential facts in the event of litigation or congressional inquiries.

decisions, the list of contractors solicited, and the contract instrument, including all task orders and modifications.<sup>7</sup> Such documents are necessary to demonstrate that contracting officials safeguarded federal funds and protected the integrity of supported programs through each step of the award process.

FAR 7.102 requires that a CO develop an acquisition plan before making an award to detail the overall strategy for managing the contract, including how responsible agency personnel will fulfill agency procurement needs in a timely manner and at a reasonable price.<sup>8</sup> As part of acquisition planning, key members of the acquisition team – such as the CO, COR, and requesting program office personnel – conduct market research to identify the most suitable approach to acquire, distribute, and support acquired supplies and services.<sup>9</sup>

Both the JAR and the ATF Acquisition Manual restate the FAR's market research requirement.<sup>10</sup> To identify qualified contractors, personnel conducting market research collect and analyze data on products, services, business practices, and vendor capabilities needed to satisfy agency needs. Some techniques for conducting market research may include a combination of contacting individuals in the government and industry regarding market capabilities to meet requirements, reviewing the results of recent market research undertaken to meet similar or identical requirements, and querying various government-wide contractor databases to obtain information relevant to the acquisition. While FAR 10 states that agencies need to conduct market research appropriate to the circumstances of the award, FAR 4.803 (a)(6) requires that contracting officials maintain records in the contract file for all sole-source and set-aside decisions, including the type and extent of market research performed. For these awards, the purpose of market research is to demonstrate that the agency determined that a particular contractor was a qualified small business or 8(a) Program participant capable of satisfying the agency's specific procurement needs.

The DOJ Office of the Inspector General (OIG) reviewed 16 contract actions that ATF issued under 11 different master contracts and we found that, despite the FAR, JAR, and ATF Acquisition Manual market research requirements, the contract files did not consistently demonstrate that contracting officials conducted market research. We found that, while 10 of the 11 master contracts had an acquisition plan in their respective contract file, those 10 acquisition plans were lacking

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<sup>7</sup> FAR 4.803, *Contents of Contract Files*.

<sup>8</sup> FAR 2.101, *Definitions*.

<sup>9</sup> FAR 10, *Market Research*.

<sup>10</sup> JAR 2807.102 (a) (1) states that "DOJ contracting activities shall perform acquisition planning and conduct market research for all acquisitions, in accordance with FAR 7.1." In addition, according to the ATF Acquisition Manual Subpart 10.002 (e), "the CO shall prepare a Market Research Report for the contract file in accordance with FAR 10.002." Finally, subpart 37.103-70 of the ATF Acquisition Manual states that "Program Offices shall conduct market research pursuant to FAR Part 10 for all acquisitions."

sufficient information.<sup>11</sup> Although many of these contracts were sole-source awards made to procure commonplace products (such as binoculars and flashlights) or services (such as security and administrative support), the market research documented as a part of these 10 acquisition plans did not demonstrate whether the ATF: (1) determined if the contractor was a qualified small business capable of satisfying its procurement needs or (2) assessed whether the contractor was suitable for the award or could provide fair and reasonable pricing. More specifically, 7 of the 10 acquisition plans reviewed documented either little or no market research, stating only that “market research was conducted as described in FAR 10,” as part of their acquisition plan. Of these seven acquisition plans:

- Five offered no market research supporting ATF template acquisition plan language or the decision to award the contract to the particular business that received the award.
- Two did not provide detailed support of either the requesting program office or CO evaluation of the capabilities of the small business selected to receive the award or its prices.

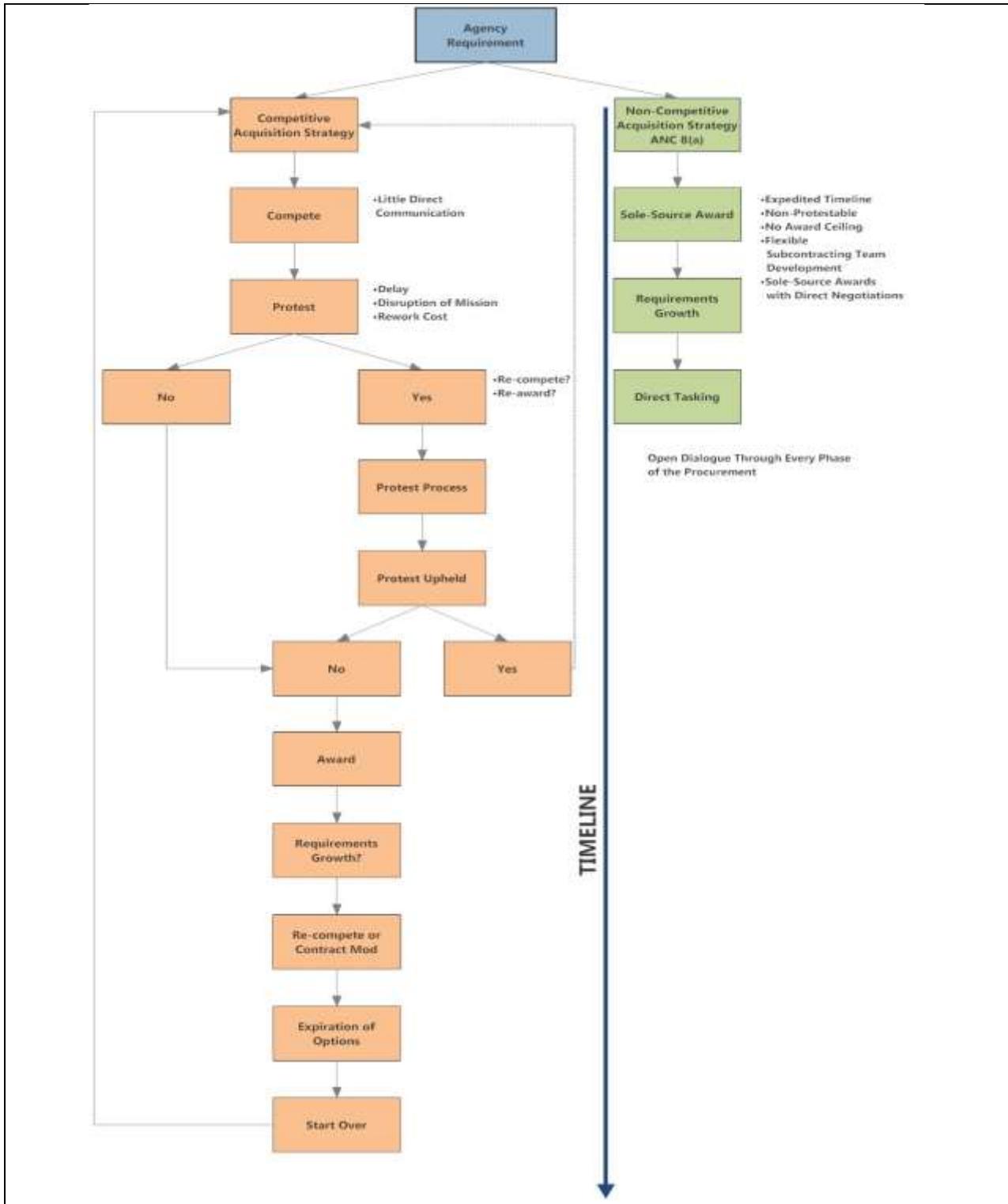
Our interviews and contract file review found that ATF contracting officials did not adequately document market research or demonstrate a consistent understanding of the applicable requirement for direct awards to 8(a) Program small businesses. ATF awarded six of the seven contracts with acquisition plans that contained little or no market research to ANCs and the remaining contract to an American Indian Tribally Owned (AITO) business. According to the ATF Acquisition Branch Chief, ATF prefers to award to 8(a) Program contractors – and particularly to ANCs – because the solicitation and award procedures are less administratively burdensome. For instance, the FAR allows COs to make high-dollar, sole-source awards to ANCs, which makes ANCs unique among 8(a) Program participants. Figure 2 compares the full and open competition award process to the steps used to make a sole-source award to an ANC.

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<sup>11</sup> ATF contracting officials did not complete an acquisition plan for 1 of the 11 master contracts, which was an emergency contract award. We address acquisition planning requirements for emergency contracts later in this report.

**Figure 2**

**Full and Open Competition versus 8(a) Program Sole-Source Procurements to ANCs**



Source: OIG

Based on our discussions with ATF contracting officials, we believe that the accelerated procurement schedule available to 8(a) Program ANCs resulted in contracting officials either not conducting or documenting market research that sufficiently demonstrated that a particular contractor was a qualified small business or 8(a) Program participant capable of satisfying the agency's needs. Without sufficient market research, ATF cannot demonstrate that it: (1) did not make unwarranted sole-source awards in favor of incumbent contractors; (2) maximized the participation of other small businesses in the SBA's development programs; or (3) ensured the adequacy of their government cost estimates used to demonstrate that they selected the most qualified eligible contractors at fair and reasonable prices.

Complete and accurate contract files are necessary to demonstrate effective contract management. Considering the lack of market research we found maintained in the contract files for 8(a) Program contracts, we recommend that ATF implement controls to enforce FAR, JAR, and ATF acquisition planning requirements by conducting and documenting adequate market research that demonstrates that proposed sole-source awards are the most suitable approach to acquire, distribute, and support the required supplies and services.

#### *Ensuring Only Eligible Businesses Receive 8(a) Program Awards*

When evaluating a need identified by the requesting program office, the CO may determine whether the 8(a) Program can effectively fulfill the requirements via acquisition planning. If the CO decides to make a sole-source award under the 8(a) Program, the CO must confirm that the recipient contractor is: (1) eligible to receive an award under the 8(a) Program and (2) not owned or operated by the same individuals who received a previous 8(a) Program award to fulfill the same procurement need.

Unlike SBA's rules for other small business programs, which permit businesses to self-certify their small business status, SBA rules for the 8(a) Program require that each contractor obtain an affirmative written certification of eligibility (eligibility letter) from the SBA, in addition to self-certifying, before a contractor may be eligible to receive an award.<sup>12</sup> The 8(a) Program provides a statutorily-established 9-year eligibility period to certified businesses to build their competitive and institutional knowledge. After this time, the certified business is said to have "graduated" from the program better equipped to compete in the

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<sup>12</sup> 13 C.F.R. § 124. To obtain designation as an 8(a) business, a company must create a business profile and apply via the SBA's Dynamic Small Business Search (DSBS) at <http://certify.sba.gov>, which is a publicly accessible database. The SBA reviews all applications and sends a letter to the applicant indicating acceptance or rejection.

federal business environment.<sup>13</sup> We confirmed that ATF awarded the 16 audited contract actions to businesses within their 8(a) Program eligibility period.

### *Restricting Follow-On Contracts to ANCs*

In 1986, Congress amended the Small Business Act to support the economic development of Alaska Natives and make ANCs eligible to participate in the SBA's 8(a) Program. This change granted ANCs and other types of small businesses owned by socially and economically disadvantaged individuals distinct competitive advantages compared to other 8(a) Program participants.<sup>14</sup> For example, while the Small Business Act permitted most 8(a) Program businesses to receive sole-source contracts up to a certain dollar threshold, ANCs could receive unlimited sole-source contracts regardless of dollar amount.<sup>15</sup> In addition, while the Small Business Act prohibited most other 8(a) Program participants from owning multiple businesses that also participated in the 8(a) Program, ANCs were not subject to this restriction. Table 2 presents a comparison of the distinct, relatively less restrictive requirements involved in awarding a sole-source small business contract to an ANC compared to other 8(a) Program participants.

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<sup>13</sup> The SBA eligibility letter details the start and end dates of a business's 9-year eligibility period. The SBA Dynamic Small Business Search (DSBS) website details the profile and eligibility dates of each 8(a) Program participant. If a contractor's eligibility is valid at any of the time of: (1) an agency's solicitation; (2) offer; or (3) the SBA's acceptance, then any subsequently awarded contract action is valid.

<sup>14</sup> In addition to ANCs, the SBA also extends these competitive advantages to Indian Tribes, native Hawaiian Organizations, and Community Development Corporations.

<sup>15</sup> Contracts whose value is at or below the "competitive threshold" (\$4 million, \$7 million for manufacturing contracts) may generally be awarded on a sole-source basis, without the competition among 8(a) Program businesses that would result if the contract were set aside. In contrast, contracts whose value exceeds the competitive threshold, generally must be set-aside for competitions in which all 8(a) Program businesses may compete unless there is not a reasonable expectation that at least two eligible and responsible 8(a) Program businesses will submit offers at a fair market price.

**Table 2****8(a) Program Requirements for Non-ANC and ANC Businesses**

<b>Requirement</b>	<b>Non ANC Businesses</b>	<b>ANC Businesses</b>
<b>Number of small businesses program participant may own</b>	Only one in a lifetime and no more than 20 percent of another 8(a) Program business.	No limit as long as each business is in a different primary industry. <sup>a</sup>
<b>Determining eligible size for small business program</b>	For-profit, nonprofit, domestic, and foreign affiliates considered in size determination.	Other affiliated companies not considered in size determination; however, the SBA may find the existence of affiliation if, for example, it determines that the 8(a) Program ANC firm or firms have a substantial unfair competitive advantage within an industry. <sup>b</sup>
<b>Competitive threshold</b>	Can receive sole-source contracts for up to \$4 million (\$7 million for manufacturing). Procurements must be competed whenever possible before accepted on a sole-source basis.	No threshold limiting sole-source contract awards. Procurements need not be competed before accepted on a sole-source basis. May receive sole-source contracts up to \$22 million without justification. <sup>c</sup>
<b>Demonstrating social and economic disadvantage</b>	Must (1) be a member of a group identified as socially disadvantaged or prove social disadvantage by meeting certain standards and (2) must prove economic disadvantage.	Identified in legislation as socially and economically disadvantaged.
<b>Leadership background</b>	President or Chief Executive Officer must be a disadvantaged individual.	President or Chief Executive Officer need not be a disadvantaged individual.
<b>Potential for success</b>	Must be in business in primary industry classification for at least 2 years before 8(a) Program application date. The SBA can waive the requirement if certain conditions are met, such as substantial business experience, adequate capital, and past success on contracts.	Must be in business in primary industry classification for at least 2 years before 8(a) Program application date or demonstrate to the SBA potential for success (i.e., technical and management experience; financial capability; past experience).

<sup>a</sup> Businesses are often involved in the production and distribution of one or more goods and services. This process is the chain of production in which there are primary business activities and secondary, or support activities. The U.S. Census Bureau defines a primary industry as the activity in the business that generates the most revenue.

<sup>b</sup> 13 C.F.R. § 121.103(a)(2) defines affiliation as when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.

<sup>c</sup> The competitive thresholds for "8(a) Program ANCs Businesses" are contained in 80 Fed. Reg. § 38298 and subject to change. The original \$20 million threshold, which was adjusted for inflation to \$22 million in July 2, 2015 (effective October 1, 2015), became effective on April 18, 2012 via 77 Fed. Reg. § 23369-01.

Sources: OIG, SBA, and U.S. Government Accountability Office (GAO), *Increased Use of Alaska Native Corporations' Special 8(a) Provision Calls for Tailored Oversight*, GAO-06-399, (April 2006), 8.

In February 2011, the SBA restricted the ability of ANCs to receive “follow-on” awards.<sup>16</sup> This restriction was made in an effort to balance the competitive landscape between ANCs and other 8(a) Program participants. A follow-on contract happens whenever an 8(a) Program ANC business passes a contract to a second ANC business owned and operated by the same entity or individuals. Under this rule, an ANC cannot receive a sole-source 8(a) Program contract that is a follow-on contract previously awarded to another 8(a) Program business owned by the same company. This rule recognizes that the award of a sole-source follow-on contract to an incumbent or subsidiary business unfairly stifles competition and limits the participation of other, unrelated 8(a) Program small businesses.

We found that ATF awarded five sole-source follow-on contracts to businesses owned by several of the ANCs included in our review who received a previous 8(a) Program award. Through January 2018, ATF obligated \$19 million to these five sole-source follow-on awards. Contracting officials stated that awarding such follow-on contracts allowed them to limit disruptions between procurements, thus ensuring the continuity of critical work while providing the requesting program office the ability to continue working with the same contractors.

Contract file documents indicated that ATF contracting officials knew that these contract actions were to businesses owned by the same individuals that owned small businesses that received the previous 8(a) Program award. ATF contracting officials stated to us that they affirmatively awarded these contracts under what they considered to be an exception to the follow-on restriction under 13 C.F.R. § 124.504.<sup>17</sup> This exception allows an agency to award a follow-on contract so long as the proposed new acquisition represents a 25-percent increase to price, or a significant increase or change in the scope of the existing contract. ATF officials stated that they considered the products and services to be new requirements, and thus exempt from the SBA and FAR prohibitions.

We compared the respective statements of work and prices of each follow-on contract to those of the initial contracts to determine whether the required capabilities and amount of the products and services procured via the follow-on contracts changed significantly and thus constituted new requirements under 13 C.F.R. § 124.504. As summarized in Table 3, one of the five follow-on contracts did not meet the exemption that ATF believed constituted a new requirement under 13 C.F.R. § 124.504, and thus was improperly awarded.

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<sup>16</sup> Federal Register Vol. 76 No. 29 Part VII Small Business Administration 13 C.F.R. § 121 and 124 Small Business Size Regulation; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Final Rule. FAR 19.808-1(e), *Sole Source*.

<sup>17</sup> 13 C.F.R. § 124.504(c)(1)(ii)(C) states, “The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional or different types of capabilities or work.”

**Table 3**  
**Analysis of New Requirements for Follow-On Contracts**

<b>Initial Contract</b>	<b>Follow On Contract</b>	<b>Increase in Total Follow On Contract Value Over 25 percent?</b>	<b>Follow On Contract Statement of Work Included Significant Changes?</b>	<b>Permissible as Follow On Contract Under 13 C.F.R. § 124.504?</b>
Contractor A Contract 1 Period of Performance (Jul. 2012 - Jun. 2017)	Contractor J Contract X Period of Performance (Oct. 2017 - Sept. 2022)	Yes	No	Yes
Contractor B Contract 2 Period of Performance (Aug. 2012 - Jul. 2017)	Contractor F Contract 8 Period of Performance (Aug. 2016 - Jul. 2019)	No	No	No
Contractor K Contract Y Period of Performance (Apr. 2007 - Mar. 2012)	Contractor C Contract 3 Period of Performance (Apr. 2012 - Mar. 2017)	Yes	No	Yes
Contractor C Contract 3 Period of Performance (Apr. 2012 - Mar. 2017)	Contractor G Contract 9 Period of Performance (Apr. 2017 - Apr. 2022)	Yes	Yes	Yes
Contractor D Contract 4 Period of Performance (Sept. 2012 - Sept. 2017)	Contractor D Contract 11 Period of Performance (Sept. 2017 - Sept. 2020)	Yes <sup>a</sup>	Yes	Yes

Note: The entities referenced in this table were not identified by name because they did not have a significant effect on our audit approach, findings, or audit recommendations.

<sup>a</sup> The price increase for this contract was due to ATF consolidating multiple statements of work together to form a new requirement for a single award. Based on FAR 2.101, *Definitions*, bundling is defined as a subset of consolidation that combines two or more requirements, previously provided or performed under separate smaller contracts, into a solicitation for a single contract, a multiple-award contract, or a task or delivery order. The resulting award increased the total ceiling value of the follow-on contract to nearly \$22 million, which is the threshold limit for awarding an ANC an 8(a) Program award without justification for full and open competition.

Source: OIG Analysis of ATF Contract Files

A business taking over the work previously performed by another business owned by the same company via a follow-on contract not only creates the perception that a small business may remain in the 8(a) Program permanently simply by reorganizing, it also harms other ANC contractors that were eligible to provide the desired products and services by denying them the opportunity to develop their businesses. Therefore, we recommend that ATF implement internal controls to prohibit using the 8(a) Program to award improper sole-source follow-on contracts to 8(a) Program businesses owned by the same company or individual that were awarded the previous 8(a) Program contract. To be effective, the internal control should include a requirement that contracting officials receive regular training regarding applicable SBA and FAR prohibitions on follow-on contracts within the 8(a) Program.

### *Compiling Complete and Accurate Offer Letters*

After an agency determines that contract requirements can be accomplished by an 8(a) Program small business, the agency must send an offer letter to the SBA to propose its intent to award an 8(a) Program contract.<sup>18</sup> The agency may submit an offer letter with a contractor in mind or request that the SBA recommend a small business with the capacity to fulfill the contract requirements. Generally, the SBA has 10 working days after receiving an offer letter to review the proposed procurement and accept or reject it in writing.<sup>19</sup> If the proposing agency does not receive a reply to its offer letter from the SBA, generally the agency can assume that the SBA has accepted its proposed procurement.

The 16 contract actions included in this audit were issued under 11 different master contracts, 10 of which ATF awarded under the 8(a) Program and thus required offer letters. FAR 19.804-2(a) lists the information that awarding agencies must include in offer letters sent to the SBA. We examined the 10 offer letters to determine whether ATF included the required items, where applicable. As detailed in Table 4, we found that ATF prepared offer letters that did not always incorporate required information.

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<sup>18</sup> FAR 19.804-2, *Agency Offering*.

<sup>19</sup> The 10-day period applies to contracts with values that exceed the Simplified Acquisition Threshold (SAT), FAR 2.101, *Definitions*, states that SATs are not to exceed \$150,000 for acquisitions of supplies and services. The SAT not to exceed amount was updated as of April 13, 2018 to \$250,000 for acquisitions of supplies and services. In addition, acquisitions of supplies or services that are determined to be used to support contingency operations and to facilitate defense against or recovery from an attack have an SAT defined as: (1) \$750,000 for any contract to be awarded and performed inside the United States and (2) \$1.5 million for any contract to be awarded and performed outside the United States. For acquisitions of supplies or services that are to be used to support a humanitarian or peacekeeping operation, the SAT is defined as \$500,000 for any contract to be awarded and performed outside the United States.

**Table 4**  
**Analysis of FAR Requirements for Offer Letter to SBA**

<b>FAR 19.804-2(a) Offer Letter Information Requirement</b>	<b>Included in Offer Letters</b>
The estimated period of performance.	9 of 10
The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.	3 of 10
A statement that prior to the offering, no solicitation for the specific acquisition has been issued as a small business, HUBZone, SDVOSB set-aside, or a set-aside under the WOSB Program, and that no other public communication has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone, SDVOSB set-aside, or a set-aside under the WOSB Program.	3 of 10
Identification of any particular 8(a) Program participant designated for consideration, including a brief justification such as— (i) The 8(a) Program participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or (ii) The acquisition is a follow-on or renewal contract and the nominated 8(a) Program participant is the incumbent.	3 of 10
Identification of all 8(a) Program participants, which have expressed an interest in consideration for the acquisition.	7 of 10

Source: OIG Analysis of ATF compliance with FAR 19.804-2(a) requirements.

One offer letter did not include the contract's projected period of performance. Without the period of performance, neither the requesting agency nor the SBA can measure the duration of the contract against the prospective contractor's 9-year eligibility period in the 8(a) Program. ATF also did not detail the acquisition history in 7 of the 10 offer letters. Without such information, the SBA may not be made aware that the requested goods or services were previously provided by other 8(a) Program small businesses and thus the potential for the proposed procurement to be a follow-on contract. Three offer letters did not report that other 8(a) Program contractors responded to solicitations and offered proposals to fulfill the proposed acquisition. Without this information, the SBA is unable to obtain a complete picture regarding interested contractors that meet the requirements under the 8(a) Program.

The offer letters that ATF prepared and submitted to the SBA also contained information that was inconsistent with information maintained in the contract file. For example, one offer letter stated that the acquisition was for a new procurement; however, the acquisition plan revealed that another contractor already provided ATF the requirement. A second offer letter proposed a firm-fixed price type contract although the actual award was a time and materials ID/IQ type contract.

Accurate and complete offer letters assist the SBA in maintaining current and accurate records necessary to fulfill its mission to enhance the viability of small businesses. Conversely, offer letters that are missing information or contain inaccurate information negatively affects the SBA's ability to review and approve requested 8(a) Program contract actions. Nevertheless, ATF policies do not address how COs should develop offer letters for SBA review. As a result, COs develop offer letters based on their individual understanding of FAR requirements. We therefore recommend that ATF implement policies that require ATF COs to prepare complete and accurate 8(a) Program offer letters in accordance with FAR 19.804-2(a).

## **Contract Administration and Oversight**

We also identified several areas for improvement regarding ATF's administration and oversight of the 16 selected small business sole-source contract actions. First, we noted that ATF COs did not always properly designate and document their delegation of duties and procurement authority via COR Designation Memorandum as required by the FAR. Second, we found that ATF contracting officials did not consistently monitor small business contractors and should seek to enhance performance monitoring activities, such as COR Monthly Progress Reports, CPARS performance evaluations, and site visits. In addition, we determined that it is imperative that ATF includes guidelines for a succession plan not only to comply with FAR requirements regarding contract file maintenance and document retention, but also to ensure that historical knowledge of the contract is preserved in a manner that facilitates effective continuing administration and oversight of the contract in the event of the responsible contracting officials' departure from the agency. Lastly, we found instances when ATF CORs were uninformed regarding the presence of subcontractors or the division of labor between the prime small business contractor and the known subcontractors. We believe that this increases the risk of noncompliance with regulatory limits on the amount of subcontractor pass-through costs and small business contract effort requirements.

### *Performance Monitoring*

To protect the government's interests after awarding a contract, the FAR requires that contracting officials monitor contract performance. Thus, contracting agencies need to design and implement a performance monitoring framework conducive to effective contract administration and oversight. We believe that an adequate performance monitoring framework entails: (1) establishing performance metrics based on a contract's measurable deliverables and terms and conditions; (2) regularly conducting monitoring activities, such as, site visits and performance evaluations; and (3) designing and enforcing policies and procedures to ensure that the agency consistently applies and documents the framework.

### Contracting Officer's Representative Appointment Memorandum

The FAR assigns COs the responsibility of ensuring performance of all necessary actions for effective contracting and contractor compliance with all contract terms and conditions. However, to assist with the day-to-day administration of a contract, the FAR permits COs to appoint CORs to perform specific contract administration or technical functions. Because CORs serve as the "eyes and ears" of the CO, the FAR requires that the CO communicate, in writing, the extent of the COR's authority to act on his or her behalf.<sup>20</sup> The FAR also requires that contracting officials retain the written COR appointment in the contract file.<sup>21</sup> Recognizing that CORs serve a vital role in ensuring that contractors meet the contract performance requirements in terms of quality, quantity, schedule

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<sup>20</sup> FAR subpart 1.602-2, *Contracting Officers Responsibilities*.

<sup>21</sup> FAR subpart 1.604(a), *Contracting Officer's Representative (COR)*.

and price, the ATF Acquisition Manual specifically requires that COs document COR appointments and responsibilities via COR Appointment Memorandum.

Despite this requirement, we found that one ATF employee performed COR duties without written delegation of procurement authority for one of the sampled contracts. Based on our interviews with contracting officials, we determined that this employee functioned as a COR without a written COR appointment memorandum from the contract's inception in March 2016 through November 2017. At that time, as a result of our inquiry, the CO issued a COR Appointment Memorandum for the award.

While we did not identify administrative deficiencies related to the contract while this employee served as a COR without an appointment memorandum, we note that the lack of written COR Appointment Memorandum increases the risk that CORs may be unaware of: (1) the limitations of their authority, designed to prevent unauthorized commitments or changes that affect contract terms and conditions; and (2) their personal liability for such unauthorized contract actions. Without a written COR designation, there is also an increased risk that CORs may not fully understand the breadth of their administrative and oversight responsibilities required to ensure that the government is receiving what it paid for. We recommend that ATF implement a procedure to verify that COs provide and maintain in the contract file written COR Appointment Memorandum to memorialize delegations of procurement authority and COR appointments.

#### Performance Measures and COR Monitoring Activities

The contract files for the 16 selected contract actions did not contain evidence to support that ATF contracting officials adequately monitored the performance of contract workers. For example, although one of our sampled contract actions contained multiple labor categories with corresponding duties, the contract's Statement of Work did not include deliverables or performance measures sufficient to allow the COR or contractor to evaluate whether contractual tasks were properly completed. Without standard measureable performance evaluation criteria, the COR did not have a consistent basis to determine whether the contractor met contract requirements and supported the goals of the federal program.

ATF contracting officials responsible for another sampled contract action, stated that ATF had to request that the contractor dismiss an underperforming contract worker. The contract was for support services for an IT security system. The individual assigned to provide support services was unable to perform at the contracted skill level to fulfill the contract requirements and administer the system. According to the COR, ATF was largely unaware of the individual's inadequate performance until an ATF employee, who worked closely with the dismissed contract worker, notified the COR of the performance concern. This notification occurred only after the contractor missed important reporting deadlines that affected required contract deliverables. Although the COR stated that she subsequently implemented spot checks of contract deliverables, these spot checks were not documented and the underperforming contract worker remained on the

project for 2 additional years while performance deficiencies persisted. We believe that ATF could have prevented or detected the performance issues earlier had the contract's Statement of Work contained performance measures to assist the COR in tracking the contract's milestones.

We further noted that the COR responsible for monitoring one of the contracts sampled did not comply with the duties and responsibilities set forth in the COR appointment memorandum. The COR appointment memorandum required that the COR inspect and monitor the contractor's performance of the technical requirements of the contract and ensure that the performance is strictly within the scope of the contract and allotted budget. The COR told us that she monitors the contract daily by physically observing the contract workers on site and sometimes spot checking the work being performed. However, our review of the contract files did not identify any documents to substantiate that the monitoring had taken place. Since the contract has insufficient performance measures, the contracting officials should have documented their monitoring efforts in the contract file to support proper oversight of the contract. Without predetermined performance measures or expectations, the contractor cannot be held accountable for nonperformance and the COR cannot ensure that the contractor is performing at the expected level in accordance with contract requirements.

With the exception of construction and transportation procurements, the FAR does not specifically require that contracting officials conduct site visits.<sup>22</sup> However, we believe that the nature of some types of contract work, depending on the services provided and location of performance, warrant periodic site visits to safeguard government funds by ensuring that contract workers are attentive to their contractual duties. Moreover, routine site visits can serve as an important performance monitoring tool to alert contracting officials of potential performance shortfalls and mitigate the risk that inadequate performance will negatively affect the government program's budget and timeline.

We noted instances when ATF CORs performed sporadic site visits that identified performance concerns on the contract actions under audit. For example, the COR for a sampled contract action conducted site visits to observe contract guards and ensure that the contractor provided adequate services. However, the COR did not document these site visits. Considering that site visits may help CORs proactively identify performance issues, we recommend that ATF evaluate and update its oversight policies and procedures to facilitate performance-based monitoring by: (1) requiring that future Statements of Work include specific and appropriate measures to assist CORs in evaluating performance, and (2) identifying when CORs should perform and document contractor site visits.

#### Contracting Officer Representative Monthly Progress Report

In February 2014, ATF provided training to COs and CORs on a new internal requirement to complete COR Monthly Progress Reports. These reports document

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<sup>22</sup> None of the 16 contract actions we reviewed were for construction or transportation.

the results of monthly discussions between the COR and the CO regarding contract status, are signed by the CO and the COR, and maintained in the contract file. This report also allows the COR to document surveillance methods, contract status, timeliness of work, significant problems or issues, remedial actions taken by the contractor, meeting summaries, trips or conferences, contract personnel changes, and budget and expenditures.

The ATF COR Appointment Memorandum for the contract actions reviewed after 2014 listed completing COR Monthly Progress Reports as one of the COR's responsibilities for maintaining performance documents. The ATF Acquisition Branch Chief required COR Monthly Progress Reports for all contracts valued at \$10 million and above. Although not required by external regulation or policy, the ATF Logistics and Acquisition Division implemented the COR Monthly Progress Reports to increase the contracting officials' visibility of any performance issues under the larger dollar actions.

Despite ATF's proactive implementation of COR Monthly Progress Reports, we found that ATF CORs did not always comply with the requirement. For instance, the COR for one of the sampled contract actions did not complete COR Monthly Progress Reports from the beginning of the contract. The contract's period of performance was April 2017 through April 2022 and the COR did not complete a COR Monthly Progress Report until February 2018 when she became aware of the requirement. Furthermore, we determined that the COR did not reconcile monthly invoices to ensure the contract did not exceed its approved budget. This responsibility was listed in the COR Appointment Memorandum, signed by the COR in March 2017.

ATF has not provided employees with training on the COR Monthly Progress Report since 2014, when it established the requirement. We recommend that ATF develop and provide training for all COs and CORs on its required COR Monthly Progress Reports and provide refresher training as necessary.

#### Contractor Performance Assessment Reporting System

The FAR requires that contracting officials prepare annual and final performance evaluation reports of contractor performance and enter them into the Contractor Performance Assessment Reporting System (CPARS), a government-wide reporting tool.<sup>23</sup> To meet this requirement, the ATF Acquisition Manual requires that contracting officials electronically submit contractor performance

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<sup>23</sup> FAR 42.1502, *Policy*. (a) General. Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Government wide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

reports to the CPARS at the completion of contract performance or the end of an interim period of a contract that exceeds 1 year. To this end, ATF's COR Appointment Memorandum template includes the CPARS reporting requirement.

For various reasons, only 8 of the 16 contract actions we reviewed required CPARS reports in FYs 2016 and 2017.<sup>24</sup> However, as shown in Table 5, ATF contracting officials submitted only 5 of the 8 required CPARS (63 percent) for FY 2016, and 7 of the 8 required CPARS (88 percent) for FY 2017.

**Table 5**  
**Contractor Performance Assessment Reporting System (CPARS) Compliance**

Contract Action	FY 2016			FY 2017		
	Number of CPARS Required	Number of CPARS Completed	Rate of Completion (Percent)	Number of CPARS Required	Number of CPARS Completed	Rate of Completion (Percent)
DJA-12-DCO-0017	1	1	100	1	1	100
DJA-12-DCO-0019	1	1	100	1	1	100
DJA-12-ITO-0064	1	0	0	1	0	0
DJA-12-ITO-0105	1	0	0	1	1	100
DJA-15-AHDQ-D-0045	1	0	0	0	0	0
DJA-16-AHDQ-D-0089	1	1	100	1	1	100
DJA-16-AHDQ-K-0826	1	1	100	1	1	100
DJA-16-AHDQ-D-0149	1	1	100	1	1	100
DJA-17-AHDQ-P-0837	0	0	0	1	1	100
Totals or Percent of Completion	8	5	63	8	7	88

Source: OIG analysis of ATF compliance with FAR 42.1502 requirements.

ATF contracting officials told us that they did not complete the mandatory annual performance evaluations of the contract actions in CPARS because they did not receive an automated reminder from CPARS to do so.

The CPARS captures contractor past performance information that is then made available to other agencies for use in source selections. CPARS supports the FAR requirement that federal agencies consider past performance information prior to making a contract award. The CPARS is similar to a "report card" on how well a contractor is performing or has performed on an individual contract. CPARS

<sup>24</sup> For FY 2016, four of the contract actions had not yet been awarded and therefore a CPARS report for FY 2016 was not required. Contractor evaluations are performed on the master contract or the contract action, but not on a modification of a master contract or contract action. Three modifications applied to the same contract action in which the CPARS report was already completed. Finally, one contract action was accounted for under the master contract in which the CPARS report was already completed.

For FY 2017, three contract actions ended in FY 2016 and therefore no CPARS was required. One contract action was accounted for under the master contract in which a CPARS report was already completed. Two contract actions were modifications to a contract action in which that CPARS was already completed. One contract action was not required because the contract began in April 2017 and the CPARS is not due until April 2018, which is outside the scope period. Finally, one contract action was not required because the contract action began in September 2017 and CPARS is not due until September 2018.

evaluations are automatically transmitted to the Past Performance Information Retrieval System, where ATF and other agencies can use the information to make informed decisions prior to awarding a federal contract. When performance evaluations in CPARS are not completed, other government agencies may unwittingly engage an underperforming contractor instead of one that is qualified to provide the desired product or service. An underperforming contractor could setback an entire program, resulting in unnecessary delays and a waste of taxpayer dollars. We recommend ATF adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and ATF Acquisitions Manual, rather than relying on the system's automated messages to prompt completion.

### *Contract Administration Succession Planning*

The FAR also requires that contract files be maintained at organizational levels to ensure conformance with agency regulations for file location and maintenance.<sup>25</sup> FAR 4.803 provides examples of required documentation that must be maintained in the contract files, including documents demonstrating actions taken or reflecting actions taken by contracting officials pertinent to the contract.<sup>26</sup>

Despite the FAR's requirements, we determined that ATF did not consistently maintain records needed to support some contract decisions related to the 16 contract actions reviewed.

- The ATF issued one of the audited contract actions under a July 2012 master contract award with a ceiling price of \$19.8 million. While both USASpending.gov and FPDS listed a ceiling price for this master contract award of slightly over \$19 million, records in the DOJ's Unified Financial Management System (UFMS) reflected a ceiling price that increased to nearly \$31 million.<sup>27</sup> The CO told us that the prior CO had executed the contract action to increase this contract's ceiling price and left no notes regarding the reason for the funding increase. ATF could not provide any documents to support the ceiling price increase in UFMS or otherwise explain why UFMS reflected a different ceiling price for this master contract than USASpending, FPDS, and the contract file.

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<sup>25</sup> FAR 4.802(c) states, "Files must be maintained at organizational levels that ensure (1) effective documentation of contract actions, (2) ready accessibility to principal users, (3) minimal establishment of duplicate and working files, (4) the safeguarding of classified documents, and (5) conformance with agency regulations for file location and maintenance."

FAR 4.805(a) states, "Agencies must prescribe procedures for the handling, storing, and disposing of contract files, in accordance with the National Archives and Record Administration (NARA)..." It also establishes that contracts awarded and related records have a retention period of 6 years.

<sup>26</sup> FAR 4.803(a).

<sup>27</sup> UFMS provides consolidated management information and the capability to meet all mandatory requirements of the FAR and the JAR. The system streamlines and standardizes business process and procedures across all components, providing secure, accurate, timely and useful financial data across the Department. See <https://www.justice.gov/jmd/major-information-systems-3>.

- A COR for another contract action, who died unexpectedly in March 2018, reportedly maintained contract information on his ATF-assigned computer separate from the official contract file. After the COR's death, the CO and the newly-appointed COR could not locate monitoring and price evaluation documents in the contract file. The CO and new COR informed us that the agency had erased the prior COR's computer soon after his death, which destroyed any records maintained on this computer.

While the ATF Acquisition Manual incorporates the FAR's requirement to maintain adequate contract files, the manual provides no baseline with regard to the types of information that must be maintained in the contract file to document a contract's history adequately. Given the potential for contract personnel attrition and other organizational changes, contract file requirements should include all decision documents to ensure contract administration continuity. We recommend that ATF update its policies and procedures to include guidelines for succession planning to demonstrate that the historical knowledge of contract actions are preserved in a manner that facilitates effective, continuous administration and oversight of the contract in the event of responsible contracting officials' separation from the agency.

#### *Identifying Potential for Subcontracting Effort*

The FAR requires that a contractor report in writing to the CO work effort changes resulting in subcontractors performing more than 70 percent of the total cost of the work.<sup>28</sup> For small business contracts, the FAR further requires that small business prime contractors who receive an award, and not subcontractors, must perform at least 50 percent of the cost incurred on each contract.<sup>29</sup> Awarding agencies are responsible for ensuring 8(a) Program contractors comply with the limitations related to subcontracting requirements. The overall purpose of limiting subcontractor effort serves to ensure that a small business does not serve simply as an instrument to obtain contract work for a larger company seeking to perform as a subcontractor.

The prime contractor for 2 of the 11 master contracts we reviewed included relevant work performed by subcontractors.

- One 8(a) Program contract action was a firm-fixed price award that included subcontractor work that was not detailed in the ATF contract. Specifically, the prime contractor subcontracted work to two other companies that it was related to, either as its parent company or its parent company's subsidiary. Further, one of the companies that performed subcontracting work was also the previous prime contractor for the work under contract.

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<sup>28</sup> FAR 52.215-23, *Limitation of Pass-Through Charges*.

<sup>29</sup> FAR 52.219-14, *Limitations on Subcontracting*.

- Another 8(a) Program contract action was awarded with the understanding that it would be a “teaming arrangement” with another company. The teaming agreement stated that one company would be the prime contractor and a second company would be the subcontractor.<sup>30</sup> The ATF official reported expecting that the teaming arrangement would assist the prime contractor in fulfilling the contract. However, the company that agreed to serve as a subcontractor went out of business during the contract period and contract performance diminished significantly.

For these contracts, neither the ATF’s Acquisition Branch Office nor the requesting program office monitored or oversaw the relationships between the prime contractor and its subcontractors. In addition, ATF did not have a process in place to ensure that these small businesses, as prime contractors, complied with subcontractor limits and performed at least 50 percent of the contract effort.

We determined that ATF lacks policies or procedures needed to ensure compliance with limitations on subcontract effort before or after awarding a small business contract to the prime contractor. Instead, ATF personnel stated that they believed the SBA was responsible for ensuring that prime contractors complied with applicable subcontractor limitations. Without assessing the potential for subcontractors before making an award, ATF cannot: (1) ensure that prime contractors comply with small business subcontractor limits and notifications, (2) minimize the risk of unnecessary pass-through charges, or (3) proactively address performance concerns. We recommend that ATF develop policies and procedures to include preventative and detective measures, during the pre-award and post-award phases, regarding the use of subcontractors on small business contracts.

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<sup>30</sup> FAR 9.601 defines a teaming arrangement as “an arrangement in which two or more companies form a partnership or joint venture to act as a potential prime; or a potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.”

## **Managing Emergency-Related Small Business Contracts**

One of the audited contract actions included an award that ATF made as the agency responsible for coordinating federal law enforcement response to emergencies and disasters. ATF did not document that it performed required acquisition planning for this procurement, even though its estimated value was over \$2.5 million. In addition, ATF should have obtained written approval from the ATF Competition Advocate for this acquisition because it was awarded without providing for full and open competition.

### *ATF Role in Responding to Federal Emergencies*

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides for the federal declaration of a major disaster or emergency and subsequent deployment of federal law enforcement agencies to provide and assist in disaster or emergency relief. The federal government coordinates emergency response efforts under a National Response Framework, which comprises a comprehensive set of planning documents. The Public Safety and Security Annex to the National Response Framework (ESF-13) designates ATF as the federal law enforcement agency charged with coordinating security, planning, and general federal law enforcement efforts during a federal disaster or emergency.<sup>31</sup> This makes ATF the primary federal agency responsible for supporting law enforcement preparedness, response, and recovery efforts when local resources are overwhelmed or when federal support is required.

While the Stafford Act provides federal agencies emergency procurement authorities, it nevertheless encourages agencies to consider awarding contracts to small businesses, including local organizations, firms, and individuals, to meet emergency needs and to facilitate competition whenever practical. In furtherance of its role under ESF-13, ATF awarded a contract action to a woman-owned small business, to establish and operate responder base camps and other support sites for 1,300 law enforcement personnel deployed to respond to Hurricane Harvey in Texas.<sup>32</sup> In awarding this sole-source contract action, the ATF cited an "Unusual and Compelling Urgency" under FAR 6.302-2, which allowed for the award of a contract without full and open competition.

However, Stafford Act emergency authorities do not waive some specific federal agency procurement requirements that pertain to acquisition planning and approvals. Specifically, ATF requires that all procurements with an estimated or

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<sup>31</sup> ESF-13 – Public Safety and Security Annex: ESF Coordinator, Primary Agency, and Agency Actions.

<sup>32</sup> ATF awarded this contract action after Justice Management Division (JMD) issued activated emergency procurement flexibilities for Hurricane Harvey in August 2017.

expected value of over \$2.5 million (inclusive of all options) incorporate a formal acquisition plan, as explained in the following section.<sup>33</sup>

### *Need for Acquisition Planning*

The FAR requires that the awarding agency must develop an acquisition plan when making a sole-source award.<sup>34</sup> The purpose of the acquisition plan is to demonstrate that the awarding agency: (1) assessed whether the contractor could actually provide the services required, and (2) estimated the overall value of the award. The FAR permits an agency head to adopt policies that describe the circumstances under which compiling an acquisition plan may not be feasible or otherwise required.<sup>35</sup> However, the ATF Acquisition Manual did not include provisions that waived acquisition planning for urgent or unusual circumstances, as cited by ATF in making this sole-source award. Thus, for emergency, sole-source contract actions totaling over \$2.5 million, ATF must still prepare an acquisition plan.

We found that ATF did not complete an acquisition plan for a sole-source contract action in our sample. ATF officials stated that the contracting official did not prepare an acquisition plan because initial funding for this contract was below the acquisition-plan threshold. Specifically, the contracting officer set the initial funding of this contract at \$676,875. On the second day of the award, ATF modified the contract to increase its scope and funding to over \$3 million. Over time, ATF further modified the award to increase its ceiling value to over \$9.3 million. ATF closed this contract on December 5, 2017, after paying nearly \$8.5 million.

ATF should have developed an acquisition plan for this sole-source award the first time the contract action modified the award and increased its value to over \$2.5 million. The subsequent modifications ATF made to this award to increase its funding indicate that ATF would have benefitted from acquisition planning, which would have provided it an opportunity to better forecast and estimate contract needs by considering the total cost to the government of acquiring, operating, and supporting the contracted services. An acquisition plan also would have assisted the Acquisition Branch Office in identifying the contractor's significant reliance on subcontractors to fulfill the services. We recommend that ATF implement policies to confirm that contract files for procurements undertaken for unusual and urgent circumstances comply with relevant acquisition planning requirements.

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<sup>33</sup> ATF Acquisition Manual Subpart 1.602-70 - *Policy Compliance Review*.

<sup>34</sup> FAR 7.102(a), *Acquisition Plans*.

<sup>35</sup> FAR 7.103(m), *Agency Head Responsibilities*.

## *Documenting Sole-Source Contract Approval*

Contracting personnel must complete a Justification for Other than Full and Open Competition (JOFOC) for any sole-source contract action.<sup>36</sup> The purpose of a JOFOC is to serve as a contemporaneous record detailing why the required items or services should be obtained without competition. The FAR requires that JOFOCs for contract actions valued between \$700,000 and \$13.5 million be reviewed and approved by ATF's Competition Advocate, which ATF incorporated in its Acquisition Manual.<sup>37</sup> The Competition Advocate serves an important role in each federal agency to promote the acquisition of items and services through full-and-open competition and scrutinize the need for sole-source contract actions. ATF's Office of Management Assistant Director/Chief Financial Officer serves as ATF's Competition Advocate.

While contracting personnel compiled a JOFOC for the sampled sole-source contract action, the Competition Advocate did not document approval of the JOFOC. ATF contracting personnel stated that the Competition Advocate reviewed the contract in their role as Office of Management Assistant Director/Chief Financial Officer. Nevertheless, without evidence of the Competition Advocate's approval of the JOFOC, ATF is not positioned to demonstrate that the justification was appropriately evaluated. We recommend that ATF require that ATF's Competition Advocate documents the review and approval of JOFOCs, as required for sole-source contract actions.

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<sup>36</sup> FAR 6.302-5(c)(2)(iii) exempts contracts for less than or equal to \$22 million awarded under the 8(a) Program to require a written Justification and Approval, known as a JOFOC for ATF.

<sup>37</sup> FAR 6.304(a)(2) – *Approval of the Justification*.

## **CONCLUSION AND RECOMMENDATIONS**

Our evaluation of the 16 small business sole-source contract actions, spanning FY 2016 and 2017, revealed that ATF needs to improve its solicitation, award, administration and oversight of these types of contracts. We found that most of the selected high-dollar contracts examined were concentrated among seven contractors designated as ANCs under the 8(a) Program. Contractors classified as ANCs qualify for additional exemptions in addition to those afforded to other 8(a) Program participant types. For example, for certain 8(a) Program participant types, including ANCs and AITOs, the FAR and SBA rules permit contracting officials to award sole-source contracts, up to a certain threshold, without the justifications required for other procurements. Regardless of the threshold, contracting officials must still perform and document adequate market research in accordance with the FAR. While all of the contract actions reviewed were below the threshold, we found that the contract files contained ambiguous or no market research because the justification exemption created a disincentive for ATF to document the pre-award analysis that was the basis for contracting officials' judgments. Insufficient market research and documentation hinders the government's ability to obtain products or services from capable sources at fair and reasonable prices. We also noted that the SBA has accepted the contracts under the 8(a) Program without obtaining the appropriate FAR required support to make sound determinations on the proposed small business contracts.

We also found that ATF's contract oversight policies and procedures need to be improved to ensure that it receives the required products and services. First, several Statements of Work lacked performance measures that communicated how the government should evaluate the contractor's effort. Second, we found that ATF contracting officials did not consistently monitor small business contractors and should seek to enhance performance monitoring activities, such as COR Monthly Progress Reports, performance evaluations in CPARS, and site visits. In addition, we determined that it is imperative that ATF design and implement a succession plan not only to comply with FAR requirements regarding contract file maintenance and document retention, but also to ensure that historical knowledge of contracts are preserved in a manner that facilitates effective continuing administration and oversight of the contract in the event of the responsible contracting officials' departure from the agency.

Finally, while effectuating its role in coordinating and supporting the federal law enforcement response to emergencies and disasters, ATF needs to ensure that it documents acquisition planning for contracts valued at over \$2.5 million and obtain written approval, as appropriate, for acquisitions awarded without providing for full and open competition.

We recommend that ATF:

1. Implement controls to enforce FAR, JAR, and ATF acquisition planning requirements by conducting and documenting adequate market research that demonstrates that proposed sole-source awards are the most suitable approach to acquire, distribute, and support the required supplies and services.
2. Implement internal controls to prohibit using the 8(a) Program to award improper sole-source follow-on contracts to 8(a) Program businesses owned by the same company or individual that were awarded the previous 8(a) Program contract.
3. Implement policies that require ATF COs to prepare complete and accurate 8(a) Program offer letters in accordance with FAR 19.804-2(a).
4. Implement a procedure to verify that COs provide and maintain in the contract file written COR Appointment Memorandum to memorialize delegations of procurement authority and COR appointments.
5. Evaluate and update its oversight policies and procedures to facilitate performance-based monitoring by: (1) requiring that future Statements of Work include specific and appropriate measures to assist CORs in evaluating performance, and (2) identifying when CORs should perform and document contractor site visits.
6. Develop and provide training for all COs and CORs on its required COR Monthly Progress Reports and provide refresher training as necessary.
7. Adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and ATF Acquisitions Manual, rather than relying on the system's automated messages to prompt completion.
8. Update its policies and procedures to include guidelines for succession planning to demonstrate that the historical knowledge of contract actions are preserved in a manner that facilitates effective, continuous administration and oversight of the contract in the event of responsible contracting officials' separation from the agency.
9. Develop policies and procedures to include preventative and detective measures, during the pre-award and post-award phases, regarding the use of subcontractors on small business contracts.
10. Implement policies to confirm that contract files for procurements undertaken for unusual and urgent circumstances comply with relevant acquisition planning requirements.
11. Require that ATF's Competition Advocate documents the review and approval of JOFOCs, as required for sole-source contract actions.

## **STATEMENT ON INTERNAL CONTROLS**

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), was not made for the purpose of providing assurance on its internal control structure as a whole. ATF and contractor management are responsible for the establishment and maintenance of internal controls.

As noted in the Audit Results section of this report, we identified deficiencies in ATF's internal controls that are significant within the context of the audit objectives. Specifically, we found deficiencies in ATF policies and procedures for contract solicitation, award, administration and oversight. These weaknesses in internal controls are detailed within our report and we believe the weaknesses should be addressed.

Because we are not expressing an opinion on the internal control structure of ATF and the contractors, this statement is intended solely for the information and use of ATF. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## **STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS**

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF), management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. ATF's management is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives:

- 13 C.F.R. 121 Small Business Size Regulation (2018),
- 13 C.F.R. 124 8(a) Business Development/Small Disadvantaged Business Status Determinations (2018),
- Pub. L. No. 85-536 (2016) Small Business Act,
- Federal Acquisition Regulation (FAR) and corresponding Justice Acquisition Regulation (JAR), where applicable, including:
  - FAR 1.6, Career Development, Contracting Authority, and Responsibilities;
  - FAR 4.8, Government Contract Files;
  - FAR 6.204, Section 8(a) Competition;
  - FAR 6.3, Other Than Full and Open Competition;
  - FAR 7.1, Acquisition Plans;
  - FAR 9.6, Contractor Team Arrangements;
  - FAR 10, Market Research;
  - FAR 19.8, Contracting with the SBA-8(a) Program;
  - FAR 42.15, Contractor Performance Information;
  - FAR 52.215-23, Limitations of Pass-Through Charges;
  - FAR 52.219-14, Limitations on Subcontracting; and
  - JAR 2807, Acquisition Planning.

Our audit included examining, on a test basis, ATF's compliance with the aforementioned laws and regulations that could have a material effect on ATF's operations. We interviewed auditee personnel, assessed internal control procedures, examined procedural practices and accounting records.

As noted in the Audit Results section of this report, we found that ATF, did not have controls in place to ensure compliance with the FAR, JAR, C.F.R., and U.S.C. Specifically, we noted deficiencies in ATF's policies and procedures governing contract solicitation, award, administration as well as oversight. This led to: (1) over-reliance on 8(a) Program awards to ANCs to the detriment of other viable small businesses, (2) award of unallowable follow-on sole-source contracts to

ineligible small businesses, (3) insufficient documentation of market research that failed to support the contracting officials' rationale and decision making, including the decision to pursue a sole-source a procurement, and (4) lapses in statutorily mandated contractor performance evaluations.

### OBJECTIVES, SCOPE, AND METHODOLOGY

#### Objectives

The objectives of our audit were to assess ATF's: (1) processes for soliciting small businesses for contract opportunities, (2) procedures and decisions for selecting and awarding sole-source contracts to small businesses, and (3) subsequent oversight of these types of awards.

#### Scope and Methodology

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

This was an audit of 16 judgmentally selected sole-source contract actions, totaling over \$56 million, awarded by ATF's Acquisition Branch Office to 9 small businesses for tactical supplies, uniforms, temporary emergency relief shelter, guard services, administrative support, laboratory support, and crime gun intelligence analysis. Our audit covered, but was not limited to, the aforementioned procurements supporting the: (1) National Tracing Center in Martinsburg, West Virginia; (2) National Laboratory Centers in California, Maryland, and Atlanta; (3) ATF Headquarters in Washington, D.C.; (4) Special Operations Division in Washington, D.C.; and (5) hurricane recovery zones nationwide. The 16 contract actions comprised all small business sole-source contracts with over \$1 million obligated, from October 1, 2015, through September 30, 2017, including an additional award.

#### *Contract Solicitation, Award, Administration, and Oversight*

To assess the adequacy of ATF's solicitation, award, administration, and oversight of the 16 selected contract actions, we reviewed the Partnership Agreement between DOJ and the SBA to gain an understanding of the division of responsibility between the two entities across the small business contract life cycle. We also reviewed ATF and DOJ internal policies and procedures that establish guidelines regarding general contract solicitation, award, administration, and oversight and DOJ's small business procurements.

In addition, we analyzed the contract files for all 16 judgmentally selected contract actions as well their master contracts. This allowed us to view the history of the contract actions as documented by ATF contracting officials. The contract file contents reviewed included, but was not limited to, the market research documents, acquisition plans, pre-award offer and acceptance letters exchanged with the SBA, COR Appointment Memoranda, Price Negotiation Memoranda,

base-year contracts, task orders, statements of work, modifications, Quality Assurance and Surveillance Plans, and contractor performance evaluations.

### *Interviews and Expert Consultations*

We conducted over 23 interviews of ATF Contracting Officers (CO) and Contracting Officer's Representatives (COR) as well as other DOJ procurement professionals regarding their roles in the solicitation, award, administration, and oversight of sole-source contract actions with small businesses.<sup>38</sup> These interviews allowed us to gain an understanding of the scope of work performed under the 16 contract actions as well as the detective and preventative internal controls incorporated in the monitoring processes implemented by ATF. Areas discussed spanned the entire small business contract life cycle and included, but were not limited to, CO and COR duties, market research, sole-source justifications, small business outreach, small business contract offering and acceptance, contract administration and oversight policies versus actual practices, training, site visits, performance evaluations, and financial control activities. We subsequently performed further analysis based on risk areas identified during the interviews.

The other DOJ procurement professionals interviewed included the: (1) ATF Acquisition Branch Chief, (2) ATF Competition Advocate, (3) current and former ATF Small Business Advisors, (4) ATF Chief of Quality Assurance and Policy Review, (5) a Contract Specialist, (6) an ATF Section Chief within the Acquisition Branch Office, and (7) the Director of DOJ's Office of Small and Disadvantaged Business Utilization. We interviewed these individuals to obtain an understanding of the process for establishing annual small business goals. Additionally, we discussed the DOJ procurement professionals' roles in the pre-award and post-award phases of the contracts with emphasis on oversight.

In addition to the ATF contracting officials and DOJ procurement professionals interviewed, we also consulted officials from the SBA, including the: (1) Director of Business Development Programs within the Office of the Inspector General, (2) Director of Program Oversight, (3) Acting Deputy Associate Administrator in the Office of Field Operations, (4) two Associate Administrators from the Office of Government Contracting and Business Development, (5) the Director of Policy and Planning, and (6) the Associate General Counsel for Litigation and Claims to obtain clarity on SBA rules. Specifically, we inquired about interpretations, effective dates, and expectations for contracting agencies' and small business program participants' documentation, administration, and oversight.

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<sup>38</sup> We interviewed the 5 COs and 10 CORs responsible for the solicitation, award, administration, and oversight of the 16 judgmentally selected contract actions.

**THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND  
EXPLOSIVES' RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Assistant Director*

*Washington, DC 20226*

*www.atf.gov*

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MEMORANDUM TO: Assistant Director  
Office of Professional Responsibility and Security Operations

FROM: Assistant Director  
Office of Management

SUBJECT: OIG Draft Report – Audit of the Bureau of Alcohol, Tobacco, Firearms  
and Explosives Sole-Source Small Business Contracting

This memorandum responds to the recommendations contained in the Office of Inspector General's (OIG) report titled "Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Sole-Source Small Business Contracting." We welcome OIG's constructive comments and appreciate the opportunity to respond.

**Recommendation # 1. Implement controls to enforce FAR, JAR, and ATF acquisition planning requirements by conducting and documenting adequate market research that demonstrates that proposed sole-source awards are the most suitable approach to acquire, distribute, and support the required supplies and services.**

ATF concurs with this recommendation. ATF will ensure market research is more thoroughly documented in the contract files. This will be done through annual workforce training. ATF will conduct monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. ATF policy and compliance reviews will also apply renewed emphasis on ensuring adequate market research is documented in contract files. Periodic random audits will be conducted of contract files not requiring pre-award policy/legal reviews.

**Recommendation #2. Implement internal controls to prohibit using the 8(a) Program to award improper sole-source follow-on contracts to 8(a) Program businesses owned by the same company or individual that were awarded the previous 8(a) Program contract.**

Assistant Director  
Office of Professional Responsibility and Security Operations

ATF concurs with this recommendation. ATF will conduct annual workforce training on the requirements for 8(a) sole source procurements. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. ATF policy and compliance reviews will also apply renewed emphasis on ensuring compliance with 8(a) sole source requirements. Increased training, as well as more detailed SBA offering letters, will help ensure compliance as well. Periodic random audits will be conducted of contract files not requiring pre-award policy/legal reviews.

**Recommendation #3. Implement policies that require ATF COs to prepare complete and accurate 8(a) Program offer letters in accordance with FAR 19.804-2(a).**

ATF concurs with this recommendation. ATF will ensure 8(a) Program offer letters fully comply with the requirements of FAR 19.804-2(a). ATF will review and update Standard Operating Procedures as necessary, and conduct annual workforce training on the FAR requirements for 8(a) program offering letters. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. ATF policy and compliance reviews will also apply renewed emphasis on ensuring complete and accurate 8(a) Program offer letters are documented in contract files. Periodic random audits will be conducted of contract files not requiring pre-award policy/legal reviews.

**Recommendation #4. Implement a procedure to verify that COs provide and maintain in the contract file written COR Appointment Memorandum to memorialize delegations of procurement authority and COR appointments.**

ATF concurs with this recommendation. When CORs are required, ATF will ensure appointment letters are properly issued and a copy maintained in the contract file. ATF will review and update Standard Operating Procedures as necessary, and will conduct annual workforce training on the requirements for properly documenting appointment of CORs. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. ATF policy and compliance reviews will also apply renewed emphasis on ensuring COR appointment letters are documented in contract files. Periodic random audits will be conducted of contract files not requiring pre-award policy/legal reviews.

**Recommendation #5. Evaluate and update its oversight policies and procedures to facilitate performance-based monitoring by: (1) requiring that future Statements of Work include specific and appropriate measures to assist CORs in evaluating performance, and (2) identifying when CORs should perform and document contractor site visits.**

ATF concurs with this recommendation. ATF will work to increase and improve its use of performance based requirements and the most appropriate method of performance monitoring. ATF will review and update Standard Operating Procedures as necessary, and will conduct annual workforce training on the need for adequate performance measures and monitoring. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables at which formalized training will be presented on a variety of acquisition topics. ATF will also send Contracting Officers to

Assistant Director  
Office of Professional Responsibility and Security Operations

external training related to performance monitoring. ATF policy and compliance reviews will also apply renewed emphasis on ensuring there is an adequate plan for monitoring performance. Periodic random audits will be conducted of contract files not requiring pre-award policy/legal reviews.

**Recommendation #6. Develop and provide training for all COs and CORs on its required COR Monthly Progress Reports and provide refresher training as necessary.**

ATF concurs with this recommendation. ATF will conduct refresher training on its COR monthly report requirement. Policy will conduct periodic random audit of files to ensure compliance.

**Recommendation #7. Adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and ATF Acquisitions Manual, rather than relying on the system's automated messages to prompt completion.**

ATF concurs with this recommendation. ATF will update its Standard Operating Procedures to increase oversight by running and reviewing monthly reports of CPARS which are due to ensure all required CPARS are entered into the system timely and correctly.

**Recommendation #8. Update its policies and procedures to include guidelines for succession planning to demonstrate that the historical knowledge of contract actions are preserved in a manner that facilitates effective, continuous administration and oversight of the contract in the event of responsible contracting officials' separation from the agency.**

ATF concurs with this recommendation. ATF will update its Standard Operation Procedures to include guidelines on succession planning. Acquisition personnel (1102s and CORs) will also be reminded of the importance of ensuring the contract file thoroughly documents the procurement and performance monitoring process; and that documents not stored in paper files are maintained on a Shared Drive. Periodic random audits will be conducted of contract files to ensure compliance.

**Recommendation #9. Develop policies and procedures to include preventative and detective measures, during the pre-award and post-award phases, regarding the use of subcontractors on small business contracts.**

ATF concurs with this recommendation. ATF will conduct workforce training and periodic re-training regarding subcontract limitations under small business set-asides and 8(a) contracts. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. ATF will update Standard Operation Procedures to develop and implement a self-certification form requiring contractors to certify the level of subcontracting proposed prior to award; and certifying the level of subcontracting actually achieved prior to exercising an option period.

**Recommendation #10. Implement policies to confirm that contract files for procurements undertaken for unusual and urgent circumstances comply with relevant acquisition planning requirements.**

Assistant Director  
Office of Professional Responsibility and Security Operations

ATF concurs with this recommendation. ATF will update its policy and Standard Operating Procedures to reflect appropriate requirements for urgent and compelling circumstances such as emergency procurements during hurricane responses.

**Recommendation #11. Require that ATF's Competition Advocate documents the review and approval of JOFOCs, as required for sole-source contract actions.**

ATF concurs with this recommendation. ATF will conduct annual workforce training regarding review and approval levels for sole source requirements. Training will be conducted through monthly Acquisition, Policy and Compliance training roundtables to present formalized training on a variety of acquisition topics. Policy will conduct periodic random file reviews to ensure compliance.

Please let me know if I can be of further assistance on this or any other matter.

  
Vivian B. Michalic

**OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this audit report to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF's response is incorporated in Appendix 2 of this final report. In response to our audit report, ATF concurred with our recommendations and, as a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

**Recommendations for ATF:**

- 1. Implement controls to enforce FAR, JAR, and ATF acquisition planning requirements by conducting and documenting adequate market research that demonstrates that proposed sole-source awards are the most suitable approach to acquire, distribute, and support the required supplies and services.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will conduct employee training annually, at its Acquisition, Policy, and Compliance training roundtables, to ensure market research is adequately documented in contract files. ATF also stated that it will perform policy and compliance reviews, with emphasis on adequately documenting market research. Additionally, ATF stated that it intends to perform random audits of all contract files that have not previously undergone an internal ATF pre-award policy/legal review.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) annual training for contract personnel centered on performing and documenting adequate market research and (2) internal policy and compliance reviews and periodic audits of contract files that have not previously undergone an internal ATF pre-award policy/legal review.

- 2. Implement internal controls to prohibit using the 8(a) Program to award improper sole-source follow-on contracts to 8(a) Program businesses owned by the same company or individual that were awarded the previous 8(a) Program contract.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that, through its monthly roundtables, it will perform annual workforce training on 8(a) Program sole-source requirements. ATF also stated that it will perform policy and compliance reviews and periodic audits of contract files with the emphasis on compliance with 8(a) Program sole-source requirements. ATF further stated that it will increase training to ensure that ATF contract personnel submit to the U.S. Small Business

Administration (SBA) more detailed SBA Offer Letters, which will facilitate compliance with the SBA program requirements.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) annual training to contracting personnel on the award of sole-source contracts under the 8(a) Program and (2) policy and compliance reviews and periodic audits of contract files to ensure 8(a) Program requirements are met during the pre-award process.

**3. Implement policies that require ATF COs to prepare complete and accurate 8(a) Program offer letters in accordance with FAR 19.804-2(a).**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will review and update its Standard Operating Procedures (SOP) and provide annual training to its contracting personnel on FAR requirements for 8(a) program offering letters (offer letters) during monthly roundtables. ATF will also perform policy and compliance reviews and periodic audits of contract files focusing on complete and accurate offer letters in accordance with FAR 19.804-2(a).

This recommendation can be closed once ATF provides evidence of the updated SOPs, including procedures to ensure the preparation of complete and accurate offer letters. In the same vein, ATF should also provide evidence of the design and implementation of the proposed annual training for contracting personnel on how to properly complete offer letters. Additionally, ATF should provide evidence of the design and implementation of ATF policy and compliance reviews and periodic audits of contract files to ensure complete and accurate offer letters are submitted to SBA in compliance with FAR 19.804-2(a).

**4. Implement a procedure to verify that COs provide and maintain in the contract file written COR Appointment Memorandum to memorialize delegations of procurement authority and COR appointments.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will review and update its SOP and provide annual training to its contracting personnel during their monthly roundtables focused on adequate documentation of Contracting Officer Representatives (COR) appointment procedures. ATF will also perform policy and compliance reviews and periodic audits of contract files that have not previously undergone an internal ATF pre-award policy/legal review.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) updated SOPs, including information for COR appointments, (2) related annual training for ATF contract personnel covering the appropriate documentation of COR appointment letters, (3) plan to update and provide this training periodically

to contract personnel, and (4) ATF policy and compliance reviews and periodic audits of contract files to ensure adequate documentation of COR appointment letters.

**5. Evaluate and update its oversight policies and procedures to facilitate performance-based monitoring by: (1) requiring that future Statements of Work include specific and appropriate measures to assist CORs in evaluating performance, and (2) identifying when CORs should perform and document contractor site visits.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will review and update its SOP and provide annual training to its contracting personnel, focused on adequate performance measures and monitoring, during their monthly roundtables. ATF also stated that it will send contracting personnel to external training related to performance monitoring. In addition, ATF stated that it will perform policy and compliance reviews and periodic audits of contract files that have not previously undergone an internal ATF pre-award policy/legal review.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) updated SOPs, including guidelines for adequate performance monitoring procedures and documentation requirements, (2) annual training provided to ATF contract personnel regarding adequate documentation of contractor performance, and (3) ATF policy and compliance reviews and periodic audits of contract files to ensure adequate documentation of contractor performance.

**6. Develop and provide training for all COs and CORs on its required COR Monthly Progress Reports and provide refresher training as necessary.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will conduct refresher training on COR Monthly Progress Report requirements. ATF also stated that it will conduct periodic random audits of the files to ensure compliance with COR Monthly Progress Report requirements.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) refresher training provided for contract personnel for the completion of COR Monthly Progress Reports, (2) plan to update and provide this training periodically to contract personnel, and (3) audits of contract files to ensure compliance of the COR Monthly Progress Reports.

- 7. Adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and ATF Acquisitions Manual, rather than relying on the system's automated messages to prompt completion.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will update its SOP to increase oversight by running and reviewing monthly reports of CPARS to ensure that all required CPARS are entered into the system timely and correctly.

This recommendation can be closed once ATF provides evidence of the updated SOPs to adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and ATF Acquisitions Manual, rather than relying on the system's automated messages to prompt completion.

- 8. Update its policies and procedures to include guidelines for succession planning to demonstrate that the historical knowledge of contract actions are preserved in a manner that facilitates effective, continuous administration and oversight of the contract in the event of responsible contracting officials' separation from the agency.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will update its SOPs to include guidelines on succession planning. Acquisition personnel (e.g., Contract Specialists and CORs) will also be reminded of the importance of ensuring the contract file thoroughly documents the procurement and performance monitoring process. Specifically, ATF will emphasize that documents not stored in paper contract files should be maintained on a shared drive. ATF stated that it will conduct periodic random audits of contract files to ensure compliance.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) updated SOPs to include guidelines on succession planning and, (2) audits of the contract files to ensure compliance of its policies and procedures.

- 9. Develop policies and procedures to include preventative and detective measures, during the pre-award and post-award phases, regarding the use of subcontractors on small business contracts.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will conduct workforce training and periodic re-training regarding subcontract limitations under small business set-asides and 8(a) Program contracts during their monthly round tables. ATF will also update SOPs to develop and implement a self-certification form, which requires contractors to certify the level of: (1) subcontracting proposed prior to award; and (2) subcontracting actually achieved prior to exercising an option period.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) training provided for contract personnel for the application of subcontract limitations under small business set-asides and 8(a) Program contracts, (2) plan to update and provide this training periodically to contract personnel, (3) updated SOPs on the development and self-certifying forms requiring contractors to certify the level of subcontracting proposed prior to award and certifying the level of subcontracting actually achieved prior to exercising an option period, and (4) final self-certifying forms accompanying the SOP.

**10. Implement policies to confirm that contract files for procurements undertaken for unusual and urgent circumstances comply with relevant acquisition planning requirements.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will update its policy and SOPs to reflect appropriate requirements for urgent and compelling circumstances, such as emergency procurements during hurricane responses.

This recommendation can be closed once ATF provides evidence of the updated policy and SOPs to confirm that contract files for procurements undertaken for unusual and urgent circumstances comply with relevant acquisition planning requirements.

**11. Require that ATF's Competition Advocate documents the review and approval of JOFOCs, as required for sole-source contract actions.**

Resolved. ATF concurred with our recommendation. ATF stated in its response that it will conduct annual workforce training regarding review and approval levels for sole source requirements during their monthly round tables. In addition, ATF stated that Policy will conduct periodic random file reviews to ensure compliance.

This recommendation can be closed once ATF provides evidence of the design and implementation of the proposed: (1) annual training provided for contract personnel for review and approval levels for sole source requirements and (2) the randomly conducted periodic file reviews to ensure compliance of review and approval of JOFOCs as required for sole-source contract actions.



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