



Audit of the Federal Bureau of Prisons' Sole-Source Contract Actions



AUDIT DIVISION

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EXECUTIVE SUMMARY

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Objectives

The Department of Justice (DOJ) Office of the Inspector General (OIG) audited 14 sole-source contract actions (e.g., standalone contracts, purchase orders, delivery orders, or calls) that the Federal Bureau of Prisons (BOP) awarded to 13 contractors between fiscal year 2018 and January 24, 2022. The contract actions totaled over \$58 million. The objectives of this audit were to assess the BOP's: (1) processes for planning and soliciting for contract opportunities, (2) procedures for selecting and awarding its sole-source contracts, and (3) performance monitoring.

Results in Brief

The BOP relies on sole-source acquisitions for some needs related to utilities, security, maintenance and repairs, information technology, social rehabilitation, and medical services. We identified several concerns regarding the BOP's stewardship of the acquisition lifecycle for 14 sampled sole-source contract actions. These concerns stem from insufficient acquisition planning, training, and oversight. Some contract actions lacked sufficient planning and oversight due to turnover of qualified contracting officials (Contracting Officers- CO, Contract Specialists, and Contracting Officer's Representatives-COR). In addition, the BOP's use of acquisition and facility personnel to "augment" its understaffed correctional officer workforce potentially impacted the quality of contract and facility maintenance oversight. Moreover, BOP's contract files did not demonstrate that acquisition planning teams prepared for post-award responsibilities, such as monitoring contract performance and contractor billing. Lastly, we observed that CORs did not consistently receive the required written notification of their appointment, and thus some CORs did not understand their duties, which contributed to contract file deficiencies.

Audit Results

Federal procurement laws and regulations require that COs promote and provide for full and open competition whenever possible. Under certain circumstances, these rules recognize that it may be beneficial for the government to limit competition via statutory preferences or to make a noncompetitive award (i.e., sole-source). While decreasing the number of eligible contractors may result in quicker government acquisitions of products and services, limiting competition may: (1) prevent the government from obtaining the best products and services to meet its needs; and (2) result in the government paying unreasonably high prices.

Unusual and Compelling Sole-Source Justifications

Federal Acquisition Regulation (FAR) Subpart 6.302-2 permits agencies to bypass competitive procedures under certain circumstances that qualify as being of unusual and compelling urgency. We noted that the BOP used the circumstances in this clause as justification for awarding two facilities-related contract actions for a kitchen plumbing project and electrical systems upgrades. In both instances, however, the BOP acknowledged the situations only became emergencies after a lack of continuous monitoring and routine oversight of these activities. The BOP's lack of acquisition workforce succession and contingency planning, as well as its practice of augmenting security functions with other staff potentially impacted contract and facility maintenance oversight that left the BOP unable to avoid the aforementioned "unusual and compelling" circumstances that required immediate repairs.

Succession and Contingency Planning for Acquisition Workforce

The U.S. Government Accountability Office emphasizes the importance for agency management to: (1) demonstrate a commitment to recruit, develop, and retain competent individuals and (2) define succession and contingency plans for key roles to help the entity

continue achieving its objectives. Succession plans address an agency's need to replace competent personnel over the long term while contingency plans address the agency's need to respond to sudden personnel changes that could compromise the internal control system and daily operations. We found that the BOP does not have such a framework in place for its acquisition workforce, which includes the contracting officials responsible for the 14 contract actions that we reviewed. The lack of having such a framework is exacerbated by the turnover in BOP's acquisition personnel. We believe this lapse is at the foundation of the deficiencies discussed below.

Appointment and Career Development of Contracting Officials

The FAR assigns responsibility for contract file maintenance to the contracting officials. However, we found that not all contracting officials had access to the BOP's contract filing system or received required written notification of their appointment explaining their roles and responsibilities. The BOP COs did not issue appointment documents to 4 of the 11 CORs assigned to the sampled contract actions and one of the completed appointment documents lacked an element required by FAR Subpart 1.602-2(d)(7), which states that a COR may be personally liable for unauthorized acts.

Consequently, we found that the BOP's contract files generally lacked required foundational documents and sufficient detail (e.g., market research, acquisition plans, independent government cost estimates, Quality Assurance Surveillance Plans, and limited competition justifications) to support the rationale for pertinent decisions throughout the contract action lifecycles.

Our review of facilities-related contract actions further determined that the BOP's policies and procedures contained minimal guidance on Procurement Administrative Lead Times (PALT). PALT is the amount of time needed to complete the milestones leading to contract award, including acquisition planning. Multiple contracting officials assigned to the contract actions we reviewed indicated rushed procurements, which influenced: (1) the procurement vehicle type chosen (i.e., sole source versus open competition) and (2) contributed to the identified file maintenance, performance evaluation, and billing issues.

Small Business Offer Letters

We found that BOP contracting officials did not include all information required by FAR Subpart 19.804-2 in the offer letters sent to the Small Business Administration (SBA) for the 6 contract actions awarded using SBA's 8(a) Business Development Program preferences.

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. Although the SBA accepted the BOP's incomplete offer letters, offer letters with missing or inaccurate information negatively affect the SBA's ability to review and approve requests to contract using the SBA program. Nevertheless, BOP 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.

Contractor Performance Evaluations

BOP contracting officials did not submit all the contractor performance evaluations to the FAR-required Contractor Performance Assessment Reports System for the 14 audited contract actions. The evaluations that the BOP submitted were often untimely, incomplete, and did not cover the correct evaluation periods. The BOP submitted an evaluation when we requested it in June 2022, over 3 years after the deadline. As of February 2023, the BOP has also not completed two evaluations that were due in January 2023.

Contractor Billing

We sought to review 14 invoices submitted by the contractors since the BOP's October 2021 transition to a new financial system, but only reviewed 13 because the BOP could not find one. Of the invoices reviewed, we found that 12 did not include all elements required by the FAR. We also determined that the BOP paid 5 of the 12 invoices 11 to 138 days late, resulting in \$2,453 in interest charges.

Recommendations

Our report contains nine recommendations to help the BOP improve its controls and activities related to its sole-source contract actions.

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Introduction

The Competition in Contracting Act of 1984 (CICA) and the Federal Acquisition Regulation (FAR) require contracting officers (CO) to acquire products and services in a cost-effective manner by promoting and providing for full and open competition to the maximum extent practicable. Both CICA and FAR recognize that, under certain circumstances, it may be beneficial for the federal government to limit competition by decreasing the eligible contractor pool based on statutory preferences or to award noncompetitively to a single contractor (i.e., sole-source). Typically, decreasing the number of eligible contractors results in the government receiving more targeted bids, thus allowing the government to acquire products and services more quickly with lower administrative costs when compared to a fully competitive award.

Despite these benefits, limiting competition may: (1) prevent the government from obtaining the best products and services to meet its needs; and (2) result in the government paying unreasonably high prices. To mitigate these risks, the FAR prescribes the following policies and procedures to help agencies to navigate award methods that limit competition.

Table 1

Limited Competitive Award Methods

Characteristics	FAR Part 13, Simplified Acquisition Procedures (SAP)	FAR Subpart 6.3, Other Than Full and Open Competition	FAR Subparts 6.2, 19.1, and 19.8 Set-Aside and Sole-Source for Small Businesses
Description	Steps to streamline the purchase of relatively simple supplies and services that have a total value not exceeding the Simplified Acquisition Threshold (SAT). ^a	Procedures for limiting competition under seven statutory authorities and circumstances: (1) only one responsible source, (2) an unusual and compelling urgency for selecting a source, (3) a source with developmental or research capability, (4) an international agreement requiring use of a source, (5) a source authorized or required by statute, (6) a risk that disclosure of agency needs would compromise national security, or (7) public interest requiring the use of a specific source.	Procedures for making awards that the government reserves or “sets aside” for businesses in the Small Business Administration’s (SBA) certification programs, such as those designated: 8(a) and Service-Disabled Veteran-Owned Small Business (SDVOSB). ^b
Requires a Written CO Justification?	No	Yes	Depends. Only for certain SBA preference-based awards at or above statutory thresholds (e.g., 8(a) awards greater than \$25 million and SDVOSB greater than \$4 million).

^a FAR Subpart 2.101, *Definitions*, states that SATs are not to exceed \$250,000 for acquisitions of products and services as of February 16, 2018. Additionally, certain acquisitions of products or services have a SAT defined as: (1) \$750,000 for any contracts awarded and performed domestically and (2) \$1.5 million for contracts awarded and performed outside the United States.

^b Through authorities established in FAR Subpart 19.800 and the Small Business Act, 15 U.S.C. § 631 et seq., agencies may partner with SBA to award set-asides competitively or use sole-source procedures for certain small business contracts.

Source: FAR and the SBA

BOP Contracting Structure

The Federal Bureau of Prisons (BOP) relies on a multitude of contractually acquired products and services to fulfill its missions of protecting society and maintaining custody of inmates in a safe, secure, and humane environment in more than 120 prisons and community-based facilities across the United States. Yet, the OIG has identified multiple systemic concerns in the BOP's acquisition program, from pre-award to post-award and encompassing its acquisition planning and contract performance monitoring processes.¹ These concerns have been characterized by inefficient management and suboptimal contractor performance, which together wasted taxpayer dollars and put the health and safety of the BOP's staff and inmates at risk.

The BOP employs a decentralized procurement structure and assigns unlimited contracting authority to the COs at the BOP's Field Acquisition Office (FAO) in Grand Prairie, Texas. Historically, the OIG has noted a lack of direct communication and coordination among the BOP's key internal stakeholders, which has resulted in the BOP awarding some contracts and agreements that do not reflect an informed assessment of the BOP's overall needs.² Further, the geographical location of BOP facilities and the unique needs of BOP operations may greatly impact the number of eligible, qualified contractors with the willingness or availability to bid on BOP awards.

Such circumstances have compelled the BOP's contracting officials to use the provisions in Table 1, making it increasingly important for them to adequately justify, support, and preserve decisions for future use by various stakeholders, namely successor contracting officials. Based on USAspending.gov data, contract actions awarded using limited competitive methods comprised roughly 27 percent of BOP contract actions (at or above the SAT) between October 2017 and January 2022.³ Hereafter, we refer to such contract actions awarded using limited competitive methods as "sole-source."

¹ The OIG most recently highlighted many of these ongoing challenges in a Management Advisory Memorandum, *Notification of Concerns Resulting from Multiple Office of the Inspector General Reviews Related to the BOP's Strategy for its Medical Services Contracts*, 22-113 (September 2022), <https://oig.justice.gov/sites/default/files/reports/22-113.pdf>.

The OIG previously reported on deficiencies in the BOP's planning, administration, and oversight of a sole-source contract. U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Audit of the Federal Bureau of Prisons' Perimeter Security Strategy and Efforts Related to the Contract Awarded to DeTekion Security Systems, Incorporated, to Update the Lethal/Non-Lethal Fence at Nine United States Penitentiaries*, Audit Report 20-115 (September 2020), https://oig.justice.gov/sites/default/files/reports/20-115_1.pdf.

² The BOP's key internal acquisition stakeholders include FAO, the contracting officials (e.g., CO, Contract Specialist, Contracting Officer's Representative, or equivalent personnel), and program office personnel at each BOP institution.

³ USAspending.gov provides the American public access to information on how their tax dollars are spent under the Federal Funding Accountability and Transparency Act of 2006.

From fiscal year (FY) 2018 through January 24, 2022, contract actions awarded using limited competitive methods comprised about 16 percent of DOJ contract actions (at or above the SAT) and 34 percent of government-wide contract actions (at or above the SAT). We further noted that during the height of the pandemic (i.e., FY 2020 through 2022), while the BOP's overall contract dollars obligated increased, the BOP awarded an average of 7 percent less sole-source/limited competition contract actions than it had in FY 18 and 19.

OIG Audit Approach

The objectives of this audit were to assess, across a judgmental selection of 14 sole-source contract actions with potential total value of over \$58 million, the BOP's: (1) processes for planning and soliciting for contract opportunities, (2) procedures for selecting and awarding its sole-source contracts, and (3) performance monitoring.

Our sample derived from a nearly \$4 billion universe of almost 20,000 BOP sole-source contract actions awarded between the beginning of fiscal year (FY) 2018 and January 24, 2022. From this universe, we selected contract actions: (1) at or above the SAT, (2) involving contractors that the OIG had not examined, and (3) with performance periods that we did not reasonably expect would conclude during our audit. The 14 contract actions covered procurements for utilities, security, maintenance and repairs, information technology, social rehabilitation, and medical services. The BOP awarded the 14 contract actions using two standalone contracts, 9 standalone purchase orders, 2 delivery orders (one of which was issued under a Federal Supply Schedule), and an order (known as a call) issued under a Blanket Purchase Agreement (BPA).⁴ Table 2 summarizes each of the 14 sole-source contract actions reviewed. For further details on our sampling methodology, see Appendix 1.

⁴ FAR Subparts 2.101 and 13.303-1 define several government contracting procurement vehicles, including: (1) a purchase order is an offer by the government to buy products or services based on specified terms and conditions; (2) a delivery order is an order for products placed against an established contract or with government sources; (3) a Federal Supply Schedule, also known as a General Services Administration Schedule or Multi-Award Schedule, is a long-term government-wide contract with companies that provide commercial products and services at fair and reasonable prices; and (4) a BPA is a simplified acquisition method of filling anticipated repetitive needs for products or services by establishing charge accounts with qualified vendors so that an agency may place a call against the agreement to request a service or product. Single-award BPAs involve the government awarding one vendor the BPA and all subsequent calls because the expected work is so integrally related that only a single source can reasonably perform the work.

Table 2

Selected BOP Sole-Source Contract Actions

Contract Action	Product or Service Purchased	Limited Competitive Award Method		Total Potential Obligated
		Statutory Authority	Small Business Award Basis	
1	Utilities - Electric	Only One Source	N/A	\$29,017,904
2	Engineering Services	Not Competed Under SAP	8(a)	9,895,914
3	Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing	Not Competed Under SAP	8(a)	4,499,998
4	Poured concrete foundation and structure contractors	Only One Source	8(a)	4,476,794
5	Telecommunications Resellers	Not Competed Under SAP	SDVOSB	2,824,000
6	Computer Systems Design Services	Only One Source	8(a)	2,528,851
7	Other aircraft parts and auxiliary equipment manufacturing	Not Competed Under SAP	8(a)	2,000,000
8	General Medical and Surgical Hospitals	Only One Source	N/A	677,230
9	Administrative and Management Consulting	Not Competed Under SAP	8(a)	651,010
10	Other Residential Care Facilities	Only One Source	N/A	481,000
11	General Medical and Surgical Hospitals	Only One Source	N/A	409,672
12	Medical Laboratory Services	Not Competed Under SAP	N/A	404,544
13	Software Publishing	Only One Source	N/A	259,016
14	Offices of Physicians (Except Mental Health Specialists)	Only One Source	N/A	250,000
Total				\$58,375,933

Source: OIG Analysis of BOP entries in USAspending.gov as of January 24, 2022

Note: The BOP awarded Contract Actions 3 and 7 to the same contractor.

To accomplish our objectives, we:

- Consulted, via interviews and other interactions, 22 BOP personnel responsible for the acquisition lifecycle (i.e., planning, soliciting, selecting, awarding, and performance monitoring) of the selected contract actions and discussed with them experiences, roles, and responsibilities to obtain insight into records and events surrounding the contract actions not necessarily captured in the contract files.⁵
- Reviewed personnel documents, such as selection and appointment letters and training records, for the aforementioned BOP personnel.
- Reviewed contract files to understand the history and plans for future iterations of the 14 contract actions. The reviewed documentation included but was not limited to: BOP procurement policies

⁵ BOP personnel consulted included: the current Chief of the Acquisitions Branch, the Acting Chief of the National Acquisitions Branch, the Competition Advocate, eight Contracting Officers (CO), three Contract Specialists, seven Contracting Officer's Representatives (COR), and the Chief of Financial Management.

and procedures, acquisition plans, contract performance records, correspondence with the SBA, executed contract documents and modifications, pricing analyses, limited competition justifications, and statements of work.

- Reviewed the SBA's Dynamic Small Business Search database for eligibility information on the 7 of 14 contract actions solicited using small business preferences.
- Examined support for contractor billing and government payment of costs.

We evaluated the aforementioned information and considered whether the processes practiced by the BOP complied with laws, regulations, internal policies, and applicable contractual requirements.

Appendix 1 contains further details on our audit objectives, scope, and methodology.

Audit Results

The BOP Needs to Develop and Implement Succession and Contingency Plans for its Acquisition Workforce

The Federal Bureau of Prisons (BOP) relies on sole-source procurements to acquire various items and services. We identified concerns regarding the BOP's stewardship of the acquisition lifecycle for 14 sampled sole-source contract actions. BOP did not maintain complete contract files to demonstrate that its acquisition planning teams applied well-established acquisition tenets, including market research, acquisition plans, Quality Assurance Surveillance Plans (or equivalent documents), cost estimates, and limited competition justifications. CORs for some acquisitions did not understand their roles and responsibilities because they did not receive appointment documents. Contracting officials (i.e., Contracting Officers, Contract Specialists, Contracting Officer's Representatives, or equivalent personnel) also did not sufficiently fulfill certain post-award responsibilities, such as monitoring contract performance and billing.

The BOP's lack of acquisition workforce succession and contingency planning also inadvertently risks sustaining instances of facility maintenance deferrals that, in turn, have led to emergency situations that BOP used to justify at least 2 of the 14 sampled sole-source contract actions. The U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* emphasize the importance for agency management to: (1) demonstrate a commitment to recruit, develop, and retain competent individuals; and (2) define succession and contingency plans for key roles to help the entity continue achieving its objectives. Succession plans address an agency's need to replace competent personnel over the long term while contingency plans address the agency's need to respond to sudden personnel changes that could compromise the internal control system and daily operations.⁶ The BOP acquisition framework needs to incorporate these standards and the FAR, which assigns the ultimate responsibility for the acquisition lifecycle to Contracting Officers (CO), assisted by qualified individuals with properly delegated authority, requiring agency heads to establish and maintain a procurement career management program.⁷ Such a program is necessary to provide a system for the selection, appointment, and termination of COs consistent with Office of Management and Budget (OMB) guidance.⁸

As this report details, the BOP's administration of its acquisition planning framework has left its contracting officials ill-equipped to fulfill basic responsibilities, such as maintaining contract files sufficient to constitute a complete procurement history. Rather than an acquisition environment demonstrative of well-developed succession and contingency plans, we found that:

- Some of the selected contract actions did not have designated contracting officials and thus lacked oversight while the BOP looked to assign new or back-up personnel. For instance, it took the BOP

⁶ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14704G (September 2014), 30-31.

⁷ FAR Subparts 1.602, 1.602-2(d), and 1.603-1.

⁸ See the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) standards for skill-based training in performing contracting and purchasing duties as detailed in the April 2005 OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce*.

about 5 months to identify and name the contracting officials responsible for two of the 14 contract actions in our sample. BOP officials ultimately determined that one of the contracting officials was on medical leave while the others had left the agency.

- At least 4 BOP personnel that we interviewed, including multiple FAO officials, told us that the BOP has had difficulty recruiting qualified contracting officials (particularly for COR positions at the BOP's various institutions).⁹
- FAO COs have little to no involvement with contract actions once they sign the awards. This leaves CORs responsible for the daily oversight of contract actions. Nevertheless, some CORs did not receive required written delegations that explain their duties and limitations on their authority. We also determined that CORs who lacked technical expertise related to the procurements under their purview relied heavily on BOP subject matter experts, who were untrained in government contracting and not designated by the CO, to monitor performance and review contractor invoices.

The BOP needs qualified BOP contracting officials to refine and hold its acquisition planning teams to Procurement Administrative Lead Times (PALT). OMB defines PALT as the amount of time needed to complete the milestones leading to contract award, including acquisition planning.¹⁰ Moreover, having unauthorized personnel administer and oversee procurements may result in unauthorized commitments, personal services contracts, and out-of-scope changes, all of which can potentially lead to cost overruns and legal disputes.¹¹ Consequently, the files for the 14 selected contract actions did not always contain

⁹ In July 2022 Congressional testimony, former BOP Director Michael Carvajal acknowledged staffing shortages as a serious issue facing the BOP, emphasizing correctional officer vacancies. Michael D. Carvajal, Director of Federal Bureau of Prisons, before the Committee on Homeland Security and Government Affairs – Permanent Subcommittee on Investigations United States Senate, concerning “[Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta](#)” (July 26, 2022), https://www.bop.gov/resources/news/pdfs/dir_carvajal_written_statment_20220726_hearing.pdf

In September 2022, BOP Director Colette Peters testified that in 2019, the BOP had contracted and continues to work with an outside consultant to develop a comprehensive recruitment campaign to fill vacancies. Despite this and other recruitment efforts, hiring remains a challenge as the BOP has 800 fewer Salaries and Expenses staff than it had at the start of calendar year 2022. Colette S. Peters, Director of Federal Bureau of Prisons, before the Committee on the Judiciary United States Senate, concerning “[Oversight of the Federal Bureau of Prisons](#)” (September 29, 2022), https://www.bop.gov/resources/news/pdfs/dir_statement_20220929_hearing.pdf

We consulted the BOP Human Resource Management Division (HRMD), situated in the BOP's headquarters or “Central Office” in Washington, D.C., to gain insight into the BOP's human capital management and to obtain pertinent statistics for the CO/Contract Specialist job series (i.e., General Schedule 1102). Regarding the CO/Contract Specialist job series, HRMD informed us that, as of June 2022, the BOP had: (1) 44 full-time equivalents who retired or left the agency for other positions within the past year, (2) 285 onboard with 34 retirement-eligible within the next year, and (3) 77 vacancies, which it plans to fill through USAjobs.gov announcements and direct-hire authority.

¹⁰ OMB [Memorandum on Reducing Procurement Administrative Lead Time Using Modern Business Practices](#) (January 2021).

¹¹ FAR Subpart 2.101, *Definitions* and FAR Subpart 37.104, *Personal Services Contracts*, defines a personal services contract as one that, by its express terms or as administered, makes the contract personnel appear to be, in effect, government employees and involves the relative continuous supervision and control of contract personnel by a government employee.

Continued

sufficient support for decisions made during the: (1) planning and soliciting, (2) selecting and awarding, and (3) performance monitoring phases, as presented in the three report sections that follow.

Section 1: Acquisition Planning and Soliciting for Contract Opportunities

Unusual and Compelling Justifications

FAR Subpart 6.302-2 states that when an agency's need for a product or service is of such an unusual and compelling urgency that the government would be seriously injured unless the agency can limit the number of sources from which it solicits bids or proposals, the agency does not have to use full and open competition. This provision applies to situations when: (1) an unusual and compelling urgency precludes competition, and (2) a delay in awarding a contract would result in serious injury (financial or other) to the government. The FAR further restricts when an agency may avail itself of these provisions, stipulating that unusual and compelling justifications must be written, approved, and meet several other criteria.¹²

The BOP referenced "unusual and compelling" circumstances as justification for using sole-source procedures to award 2 of 14 contract actions to acquire services to fix longstanding BOP facility deficiencies.¹³

- ***Facility Electrical Systems.*** This contract action's scope of work described "a backlog of deferred maintenance on electrical systems" at 29 facilities nationwide. This contract action also indicated that "enduring staffing and funding shortages have made providing the required comprehensive technical system maintenance difficult to achieve" and that a "recent catastrophic system failure occurred at one of [the BOP's] institutions, which stressed the immediate need to address the situation." The COR told us the incident was a fire at one facility that resulted in the movement of staff and inmates to other institutions. Because of this incident, the BOP received enough funding to allow it to address longstanding electrical system, hazardous materials, mold, lead paint, and asbestos in the other 28 facilities.

A CO may approve an unauthorized commitment, such as the purchase of products or services above an individual purchase card holder's spending authority, through "ratification" as described in FAR Subpart 1.602-3. Such a process would involve both the government and contractor, and may only be performed when, among other things, "[t]he resulting contract would otherwise have been proper if made by an appropriate [CO]."

¹² FAR Subparts 6.302-2(c) and 6.302-2(d) further require agencies to request offers from as many potential sources as practicable under the circumstances before resorting to limiting competition on the basis of unusual and compelling circumstances. If an agency uses unusual and compelling circumstances to limit competition, the contract action performance period cannot exceed the time necessary to: (1) meet the unusual and compelling requirements of the work to be performed under the contract action and (2) for the agency to enter another contract for the required products and services through competitive procedures. Also, the performance period may not exceed 1 year, including all options, unless the head of the agency determines (in writing) that exceptional circumstances apply. Any subsequent modification using this authority, which will extend the performance period beyond 1 year under this same authority, requires a separate determination that satisfies the criteria in FAR Subpart 6.302-2(d)(2) through (d)(5).

¹³ In July 2022, former BOP Director Carvajal testified that BOP's Modernization & Repair (M&R) program faced a backlog of approximately \$2 billion while the BOP was receiving an average annual appropriation of \$95 million to cover major repairs, security, equipment, and telecommunication, salaries, travel, training, architectural and engineering services, and additional emergency and disaster-related funding.

- ***Kitchen Plumbing.*** This contract action paid for an emergency renovation of a facility’s kitchen due to corroded pipes. The COR for this acquisition stated that the kitchen went without structural inspection since the facility was built in 1974. When the COR became aware of a drainage issue, the COR proceeded to “snake the drain” and “hit earth,” meaning that the clogged pipe had become disconnected or otherwise deteriorated.¹⁴ A subsequent inspection found that the drainpipe was no longer connected to the waste line.

Applying FAR’s “unusual and compelling” exception to longstanding deficiencies or lapses in oversight effectively incentivizes the poor contract monitoring and controls that led to the sustained deficiencies in the first place. “Unusual and compelling” should mean exactly that—not routine service or something that could not have been reasonably expected. While we acknowledge that the exemplified instances required immediate attention, we do not believe that relying on provisions that curtail full and open competition for such ongoing situations is sustainable or appropriate. Moreover, such a practice jeopardizes the BOP’s mission readiness.¹⁵ These two contracts were predictable, unaddressed maintenance needs that devolved into unusual and compelling circumstances because of inattention and/or lack of available funds or a plan to address them in a timely manner.

We further noted that the BOP’s practice of augmenting security functions with other staff risks impacting its mission-critical contracts and exacerbating the unfilled maintenance needs caused by the BOP’s lack of an infrastructure strategy. The BOP considers all its employees, including those with contract oversight responsibilities, to be “correctional workers” and thus frequently assigns personnel, even those whose normal duties do not involve security (e.g., nurses, technicians, teachers, and foodservice workers), to perform correctional officer duties whenever it is faced with budget or staffing shortages. All employee disciplines, including technicians responsible for physical facility operations, rotate into inmate supervision roles.

When augmentation of security duties occurs, the BOP officials who are called upon to support the BOP’s security mission may be unable to fulfill their primary responsibilities.¹⁶ No one rotates into the other, non-security positions to fill the resulting operational void. This has the potential to impact contract and maintenance oversight, in addition to the other occupations that are more commonly referenced when discussing BOP’s reliance on augmentation, such as nurses and teachers. While employees responsible for contracting support duties may appear to be administrative in nature, leaving these roles vacant has the potential to place the BOP mission at risk because the breadth of their responsibilities require expertise and ongoing monitoring—to avoid “unusual and compelling” circumstances that required immediate

¹⁴ Images of the subject plumbing issue can be found at Appendix 4.

¹⁵ In a May 2023 report, the OIG found that BOP’s ability to address its infrastructure requirements is impacted by its lack of an infrastructure strategy and not requesting adequate funding to meet its infrastructure needs, resulting in insufficient funding, increasingly costly maintenance and, in the most extreme circumstances, having to shutter institutions and relocate inmates because deferred maintenance and repairs result in unsafe conditions. DOJ OIG, [Audit of the Federal Bureau of Prisons’ Efforts to Maintain and Construct Institutions](https://oig.justice.gov/sites/default/files/reports/23-064_1.pdf), Audit Report 23-064 (May 2023), https://oig.justice.gov/sites/default/files/reports/23-064_1.pdf

¹⁶ HRMD informed us that, because the COR role is ancillary, by virtue of their primary positions, the over 1,000 BOP CORs may also have to rotate into security positions as needed. We also noted that the BOP organization charts refer to the officials in its Office of the Procurement Executive and Acquisitions Branch as “correctional program officers.”

repairs of electrical systems and plumbing in the sole-source contract actions described above.¹⁷ While we make no recommendation in this report regarding the BOP's use of augmentation, based on the contracting and acquisition issues we identified in this audit, we believe that the BOP should consider the ramifications for its contracting function, particularly on efficiency and cost of operations, of augmenting security with acquisition personnel.

Moreover, contract monitoring plans, such as QASPs or equivalent documents, would assist the BOP in allocating resources strategically to help mitigate future "unusual and compelling" circumstances. We therefore recommend that the BOP consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions and incorporate their roles and contract surveillance responsibilities into meaningful monitoring plans, such as QASPs or equivalent documents.

Establishing and Maintaining Contract Files to Preserve Foundational Documents and Decisions

FAR Subpart 2.101 defines acquisition planning as the process involving the coordinated and integrated efforts of all personnel responsible for an acquisition (i.e., the acquisition planning team) toward developing a comprehensive plan for fulfilling the agency need on time and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.




To meet the FAR Subpart 4.8 contract file requirements, the BOP Acquisition Policy (BPAP) established an electronic storage program used by the BOP Procurement Executive Office — as the mandatory mode for storing and maintaining contract files for all local contracting offices, effective January 1, 2016. The BOP Chief of the Contracting Office must approve exceptions. To further guide contracting officials in fulfilling the FAR and BPAP requirements, the BOP developed a Request for Contract Action (RCA) Transmittal Sheet (see Appendix 2). The Procurement Section Chief, Requesting Official, and Cost Center Manager must sign this transmittal to certify that all mandatory acquisition planning has been completed for the procurement to proceed.



Despite these requirements, as shown in Table 3 and in Appendix 3, BOP contracting officials did not always apply or document well-established acquisition planning tenets, such as market research, written acquisition plans, Quality Assurance Surveillance Plans (QASP), Independent Government Cost Estimates (IGCE), and justifications to support the decision to limit competition.

¹⁷ As recently as [February 2021](#), GAO has reported that the BOP has not assessed the risks associated with its increasing reliance on overtime and augmentation despite longstanding concerns on the risks posed to security of staff, inmates, and the institutions, 22-26. U.S. Government Accountability Office, *Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*, GAO-21-123 (February 2021).

Table 3

Compliance of Contract Files for 14 Sampled Contract Actions with Acquisition Planning Tenets

Contract File Requirement	Criteria	What We Found
 <p>Market Research is the process that the acquisition planning team uses to inform decision-making by gathering and analyzing data on product characteristics, contractors' capabilities, and the surrounding business practices.</p>	<p>FAR Part 10 prescribes how to perform market research to acquire, distribute, and support products and services. FAR Subpart 10.001 requires agencies to: (1) identify legitimate needs and evaluate trade-offs to acquire items that meet those needs and (2) conduct market research appropriate to the circumstances.</p>	<p>9 of 14 contract files did not include market research.</p> <p>5 of 14 contract files included market research and of those 5, 1 included sufficient detail (e.g., one insufficient file included only a print-out of the selected sole-source vendor's website).</p>
 <p>Written Acquisition Plans documents the specific actions that the acquisition planning team needs to execute the approved acquisition strategy and guide contractual implementation.</p>	<p>FAR Subpart 7.102 requires the CO to develop an acquisition plan, before making an award, to detail the overall strategy for contract management, including how responsible agency personnel will fulfill agency needs on time and at a reasonable price. FAR Subpart 7.105 advises that while acquisition plan contents may vary depending on circumstances, each plan must include the: statement of need, decision-making milestones, and all technical, business, management, and other significant considerations, such as the acquisition background and objectives, sources, contract type, service descriptions, contractor versus government performance, and contract administration practices.</p>	<p>4 of 14 contract files did not include written Acquisition Plans</p> <p>10 of 14 contract files included written acquisition plans and of those 10, 5 did not include sufficient detail (e.g., RCA Transmittals accompanying two acquisition plans incorrectly stated that contracting officials had received programming office statements of need).^a</p>
 <p>Quality Assurance Surveillance Plans (QASP) (or equivalent documents) connect contractual expectations to desired results to guide contracting officials' and task monitor equivalents' assessment of contractor performance. These plans incorporate contract requirements (e.g., goals and tasks from the Statement of Work (SOW)) to link each performance objective to a post-award method of inspection (i.e., what will be inspected, how it will be inspected, and who will do the inspecting).</p>	<p>FAR Subpart 46.401 states that a QASP prepared with the SOW specifies all activity requiring surveillance (i.e., monitoring and evaluation) and the method of surveillance. A well-designed QASP specifies the timing, location, and extent of surveillance activities to guide government oversight personnel in performing their contract monitoring roles and responsibilities.</p>	<p>None of the 14 contract files included QASPs or equivalent documents (e.g., a missing QASP for emerging technology).^b</p>

Contract File Requirement	Criteria	What We Found
 <p>Independent Government Cost Estimate (IGCE) is developed by program office personnel (e.g., the COR) that covers all costs of the program lifecycle, including costs of development, procurement, operations and support, disposal, and training to support the program or subprogram upon full operational deployment.</p>	<p>FAR Subpart 15.404-1 prescribes multiple techniques and procedures, including cost and price analysis, that the CO may use to ensure that the contractor-offered price is fair and reasonable. FAR Subpart 15.405(a) advises that properly performed cost or price analysis helps to develop a negotiation position that gives the CO and contractor an opportunity to agree on a fair and reasonable price.</p>	<p>7 of 14 contract files did not include IGCEs.</p> <p>7 of 14 contract files included IGCEs. Of those, 3 lacked underlying data or input to support the CO's fair and reasonable price assessment or only included the service labor hours with no hourly rate calculations or rationale for escalating subsequent year service costs.</p>
 <p>Limited Competition Justifications The documents that contracting officials use to justify and obtain approval for contract solicitations that use other than full and open competition.</p>	<p>FAR Subpart 6.303 prohibits COs from negotiating a sole-source contract or contract that results from an unsolicited proposal or awarding any other contract using other than full and open competition without properly justifying the facts and rationale for the use of the specific authority cited.</p>	<p>4 of 14 non-exempt contract files included justifications with sufficient detail.^c</p>

^a The current contracting official for the software procurement that lacked a statement of need informed us that the program office initially wanted the BOP to award a 5-year sole-source contract to fulfill the need, but the original lead contracting official had refused this request due to the rushed acquisition planning that would have been necessary to accommodate it. Instead, the contracting official suggested the 1-year sole-source contract action that the BOP ultimately awarded. This procurement decision had not been captured in the contract files.

^b A COR of an award for a Counter Unmanned Aircraft System (CUAS) or more commonly, a drone detection system told us that the BOP had not developed a QASP because the technology's technical requirements made it difficult to tie contract terms to something that contracting officials could monitor. As a result, the BOP had not established metrics or evaluation techniques beyond the ability of the system to detect objects to appraise the contractor's performance. In the only performance evaluation completed to date, the CO rated the contractor "exceptional," stating that the contractor "met or exceeded contractual requirements...to the Government's benefit." The lack of metrics and this evaluation is concerning given that: (1) a September 2020 OIG report found BOP faces significant challenges to protect its facilities from drone threats (<https://oig.justice.gov/sites/default/files/reports/20-104.pdf>) and (2) the contractor is behind schedule, having only installed the CUAS in 2 of the 22 institutions required by the contract.

^c 9 of 14 contract files were for actions that did not require justifications due to regulatory exceptions. Specifically: (1) 7 applied small business preferences that do not require justifications unless the award amount exceeded certain statutory thresholds; (2) 1 used special General Services Administration provisions that do not require justifications; and (3) 1 action was issued under an active competitively awarded BPA. Of the 5 remaining contract actions, 3 files required justifications using FAR provisions for unusual and compelling circumstances. We discuss our concerns with the BOP's application of this provision in the previous report section.

Source: OIG analysis of BOP contract files and FAR

When the BOP does not document its actions to satisfy established acquisition planning tenets, it misses an opportunity to preserve procurement history for present and future decision-makers who have a duty to responsibly oversee contract dollars that fund mission-critical programs. Moreover, without historic procurement information, BOP contract files do not: (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.¹⁸

We sought to ascertain what BOP contracting officials could do to ensure that contract files included documents necessary to meet the aforementioned acquisition planning tenets. Current contracting officials informed us that their predecessors had left the BOP without uploading critical information, such as acquisition plans, to its electronic storage program. While we do not know why these contracting officials did not preserve the information, we believe this may be a result of information not always flowing from FAO to the contracting officials in the various BOP institutions. For instance, although the BPAP states that its Procurement System Support Team can provide BOP personnel with instructions for accessing its electronic storage program, multiple contracting officials told us that they do not have access to the system while BOP Headquarters officials stated that access is available to all contracting officials upon request. Later, another group of BOP Headquarters officials told us that to limit disclosure of proprietary information, only COs and Contract Specialists (not CORs or task monitor equivalents) are permitted access to the system. While we understand the need to safeguard sensitive information, we believe that BOP personnel responsible for the administration and oversight of contracts must have access to current and historical contract documents to inform their decisions.

Well-maintained contract files that incorporate acquisition planning tenets, such as market research, written acquisition plans, QASPs (and equivalent documents), IGCEs, and limited competition justifications preserve the factors, approaches, assumptions, and decisions that will help contracting officials to oversee the government's investment in the post-award phase and in future related procurements. To facilitate better application and documentation of acquisition planning tenets, we recommend that the BOP: (1) ensure that certifying officials (i.e., Procurement Section Chief, Requesting Official, and Cost Center Manager) verify that all mandatory elements—as identified on the RCA Transmittal—have been completed prior to approving a procurement to proceed; (2) design and implement a process or control to ensure that contracting officials have access to contract documents and information pertinent to their contract-related responsibilities, and provide any necessary training and guidance on accessing and using this information; and (3) retrain its contracting officials and BOP personnel who assist them on FAR and internal policies and procedures related to acquisition planning and contract file maintenance.

Compiling Complete and Accurate Small Business Offer Letters

The federal government sets aside 23 percent of its prime contracting dollars for small and disadvantaged businesses via SBA preference-based programs, such as the 8(a) Program. 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.¹⁹ 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. If the SBA does not reply to the proposing agency, the agency can assume that the SBA has accepted its proposed procurement.

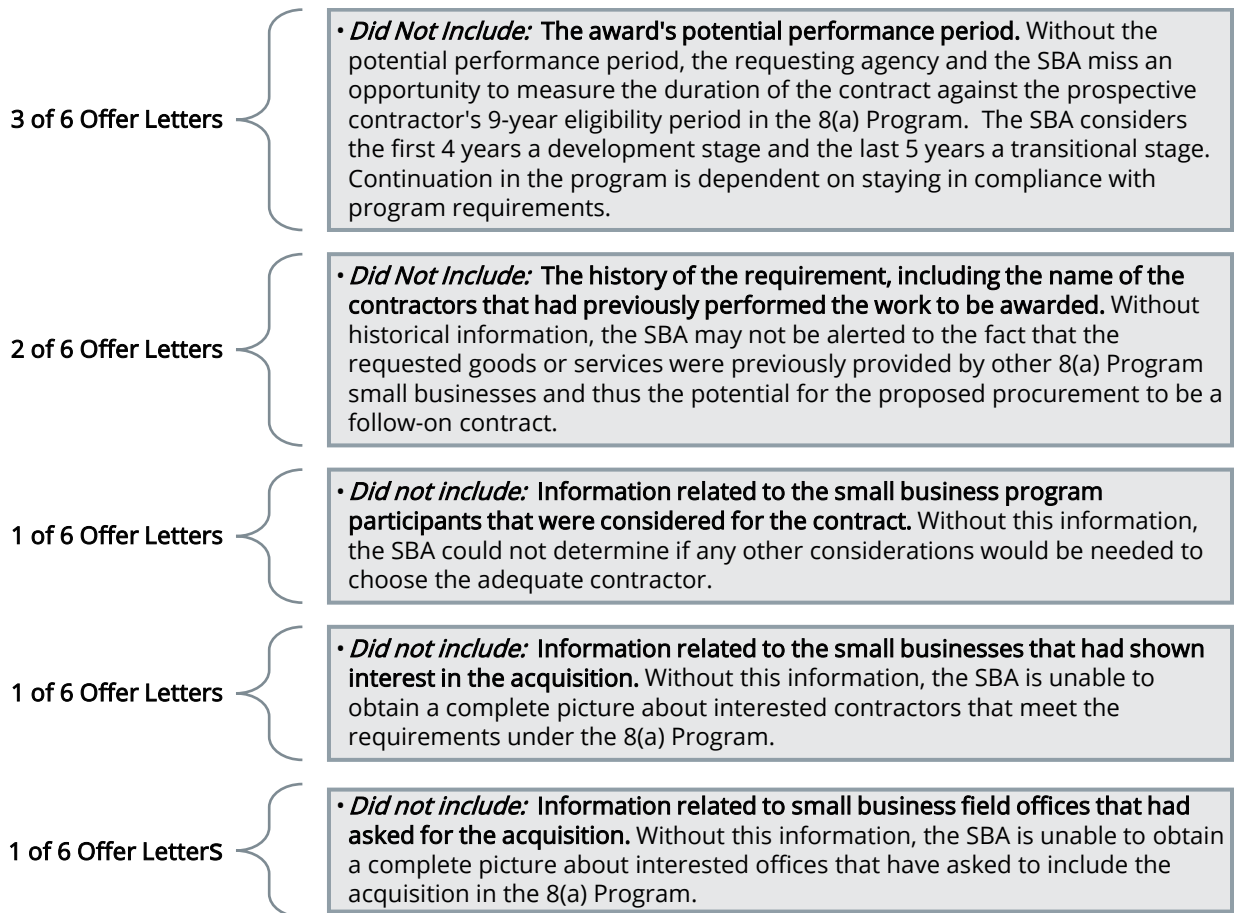
¹⁸ FAR Subparts 1.603-3, 1.604, and 4.801.

¹⁹ FAR Subpart 19.804-2, *Agency Offering*.

The BOP awarded 6 of the 14 contract actions included in this audit using the 8(a) Program and these 6 thus required offer letters. FAR Subpart 19.804-2(a) lists the information that awarding agencies must include in offer letters sent to the SBA. As detailed in Figure 1 below, we examined the 6 offer letters to determine whether the BOP included the required items, where applicable, and identified multiple deficiencies.

Figure 1

Analysis of FAR Requirements for 8(a) Program Offer Letters to SBA



Note: Some offer letters lacked multiple elements.

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

Accurate and complete offer letters assist the SBA in maintaining current and accurate records to fulfill its mission of enhancing the viability of small businesses. Conversely, offer letters that omit or contain inaccurate information negatively affect the SBA's ability to review and approve requested 8(a) Program contract actions. Nevertheless, although the BPAP references the FAR, it does 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 and BOP practices. We therefore recommend that the BOP design and implement a process or control to confirm that BOP COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a). For example, the BOP could provide relevant training to all

personnel who prepare offer letters and subsequently review a sample of offer letters for a defined period to assess compliance with the FAR.

Section 2: Award Selection

FAR Part 13 establishes Simplified Acquisition Procedures (SAP) as one of three purchase methods based on specific conditions (such as size, value, and complexity) of the contract action. SAPs are steps to streamline the purchase of relatively simple supply and service requirements, characterized by a total value not exceeding the Simplified Acquisition Threshold (SAT—i.e., \$250,000). According to FAR Subpart 13.002, the purposes of SAP are to: (1) reduce administrative costs, (2) improve small business government contract opportunities, (3) promote efficient and economic contracting, and (4) avoid unnecessary burdens for agencies and contractors.

Further, FAR Subpart 13.003(a) requires COs to employ the SAP to the maximum extent practicable; however, because it allows an agency to award sole-source contract actions, the FAR restricts SAP use for more complex acquisitions with little exception. Specifically, agencies can use SAP to obtain products and services via sole-source Purchase Orders (PO) and BPAs.²⁰ Unless certain conditions are met, the SAP may only be applied to procurement actions below the SAT subject to limitations, as outlined in Figure 2 below.

Figure 2

Prohibitions on Simplified Acquisition Procedures

SAP is prohibited if:



1. An agency can meet its requirement using: (a) required sources under FAR Part 8 (e.g., Federal Prison Industries, etc.); (b) existing indefinite delivery/indefinite quantity contracts; or (c) other established contracts (FAR Subpart 13.003, Policy) or



2. the anticipated award will exceed the SAT or \$7.5 million (\$15 million for acquisitions as described in FAR Subpart 13.500(c), including options, for acquisitions of commercial items using FAR Subpart 13.5 (See FAR Subpart 13.003(c)).

Source: FAR and OIG Analysis

Despite these limitations, the BOP awarded 9 of the 14 selected contract actions, ranging from \$250,000 to \$9.9 million, using POs, as detailed in Table 4.

²⁰ Unlike POs, the FAR (via Subpart 8.405-3) permits BPAs that exceed the SAT under certain conditions.

Table 4

Unattached Sole-Source Purchase Orders At or Above the Simplified Acquisition Threshold

Contract Action	Product or Service Purchased	Performance Period	Total Dollars Obligated	Is Contract Action Attached to Parent Vehicle (Yes/No)?	Is Total Value of Contract Action Greater Than or Equal to the SAT (Yes/No)?
2	Engineering Services	9/10/2021 - 9/10/2023	\$9,895,914	No	Yes
3	Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing	8/1/2021 - 7/31/2022	4,499,998	No	Yes
5	Telecommunications Resellers	8/1/2021 - 7/31/2022	2,824,000	No	Yes
7	Other Aircraft Parts and Auxiliary Equipment Manufacturing	9/25/2020 - 6/30/2022	2,000,000	No	Yes
8	General Medical and Surgical Hospitals	11/1/2021 - 1/31/2022	677,230	No	Yes
9	Administrative and Management Consulting Services	8/26/2021 - 8/25/2022	651,010	No	Yes
11	General Medical and Surgical Hospitals	8/1/2021 - 1/3/2022	409,672	No	Yes
13	Software Publishing	10/1/2021 - 9/30/2022	259,016	No	Yes
14	Offices of Physicians (Except Mental Health Specialists)	10/1/2021 - 1/3/2022	250,000	No	Yes

Source: OIG analysis of BOP-provided information and data from USAspending.gov and the Federal Procurement Data System-Next Generation

Specifically, we determined that the BOP used the 9 standalone POs (unattached to a larger procurement vehicle, such as an Indefinite Delivery/Indefinite Quantity Vehicle or BPA) to compensate for poor planning and as a “bridge” between expired predecessor and follow-on contracts. As a result, the POs and accompanying statements of work lacked over a dozen references to provisions, clauses, and laws that would have been included in a procurement vehicle better suited for larger purchases because FAR Subparts 13.005 and 13.006 exempt procurements at or below the SAT from certain inclusions.²¹

²¹ Similarly, in its February 2022 [Audit of the Federal Bureau of Investigation’s Biometric Algorithm PO Awarded to Idemia National Security Solutions](#), the OIG determined that the procurement process was largely rushed and driven by expediency rather than the size and complexity of the acquisition, as the FAR requires. The FBI improperly cited this expediency, as a part of the reason to award the PO using noncompetitive SAP even though the procurement’s estimated total value exceeded the SAT and the FAR prohibits agencies from using lack of planning to justify the use of noncompetitive awards. As a result, the FBI’s purchase documents lacked multiple required clauses designed to mitigate the government’s legal and financial exposure by ensuring accountability for performance, privacy, worker protections, and intellectual property. These clauses would have been included in a different type of procurement vehicle more appropriate for the complex IT scenarios intrinsic to the FBI biometric algorithms. DOJ OIG, [Audit of the](#)

Continued

Additionally, a contracting official who awarded one of these POs for outside medical care to inmates at United States Penitentiary and Satellite Camp (USP) Canaan informed us that FAO had instructed the institution's contracting officials to continue to issue POs that cited unusual and compelling circumstances until the BOP would be able to renew its award of the Comprehensive Medical Services (CMS) contract. The contracting official explained that the CMS contract had expired in April 2019 and the institution had since issued 74 POs (at least 2 per month) to continue the comprehensive medical care inside and outside the BOP facility, which this official described as "extremely violent." Since the parent contract expired and the BOP contracting officials did not reassess pricing fairness and reasonableness, this contracting official continued to rely on rates negotiated over 3 years ago, potentially causing the BOP to pay out-of-date prices for these services. The FAR requires COs to determine whether prices paid for contracts are fair and reasonable and expresses a preference for comparison of prices obtained through competition.²² While we understand that the BOP must ensure that the institution continues to provide adequate healthcare to inmates, we believe that the current exigent situation is a byproduct of the BOP's lack of acquisition planning for its CMS contracts.²³

The BOP contracting officials for the eight other sampled POs seemed unaware of the FAR's prohibitions on using this type of procurement vehicle for more complex purchases, informing us that they had used the POs because they did not have enough time to plan the procurements. Some of the purchases made via the POs included: smartphone tracking solutions, electrical grid inspections and assessments for 29 institutions, installation of a CUAS for 22 institutions, and web-based food service management software.

To disincentivize rushed acquisitions that lead to unintended outcomes, such as missing contract parts and potential overpayments for products and services, we believe that the BOP could benefit from enhanced policies to better guide Procurement Administrative Lead Times (PALT). As seen in Table 5 below, the BPAP provides acquisition planning teams the minimum number of days anticipated for several types of procurements from planning to award, but the policies do not divide each acquisition phase into smaller milestones.

[Federal Bureau of Investigation's Biometric Algorithm Purchase Order Awarded to Idemia National Security Solutions, LLC](https://www.oig.justice.gov/reports/audit-federal-bureauinvestigations-biometric-algorithm-purchase-order-awarded-idemia-llc), Audit Report 22-045 (February 2022), [www.oig.justice.gov/reports/audit-federal-bureauinvestigations-biometric-algorithm-purchase-order-awarded-idemia](https://www.oig.justice.gov/reports/audit-federal-bureauinvestigations-biometric-algorithm-purchase-order-awarded-idemia-llc)

²² FAR Subpart 15.404-2 lists several methods that could help contracting officials to establish price reasonableness in the absence of competition, such as conducting market research or comparing pricing to historical price data.

²³ In a March 2022 report, the OIG found that the BOP did not always complete its acquisition planning and awarding of follow-on CMS contracts in a timely manner. U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [Audit of the BOP's Comprehensive Medical Services Contracts Awarded to the University of Massachusetts Medical School](https://www.oig.justice.gov/sites/default/files/reports/22-052.pdf), Audit Report 22-052 (March 2022), <https://www.oig.justice.gov/sites/default/files/reports/22-052.pdf>

Additionally, in a September 2022, the OIG found the BOP's inadequate acquisition planning and market research resulted in the BOP paying for medical services that were not always cost effective for the government. U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), [Audit of the BOP's Procurements Awarded to NaphCare, Inc. for Medical Services Provided to Residential Reentry Management Branch Inmates](https://www.oig.justice.gov/sites/default/files/reports/22-111.pdf), Audit Report 22-111 (September 2022), <https://www.oig.justice.gov/sites/default/files/reports/22-111.pdf>

Table 5

BOP Procurement Administrative Lead Times

Acquisition Type	Est. Value (\$)	Minimum Days	Acquisition Type	Est. Value (\$)	Minimum Days
Simplified Acquisition	\$25,000 or less	15	Information Technology (IT)	\$25,000 or less	30
Commercial Items	\$25,000 to the SAT	45	Sealed Bid - Supplies	Exceeding SAT	90
Negotiated Procurements	Exceeding SAT	180	Reimbursable Agreements	Any Value	120
Community Treatment	Exceeding SAT	120	IT - Telecom	Exceeding SAT	180
Medical Contracts	Exceeding SAT	365	Privatized Corrections	Exceeding SAT	540
Residential Reentry	Exceeding SAT	540	Contract Option Renewals	Any Value	75
Sealed Bid	Exceeding SAT	95	Architect/Engineering	Any Value	180
Construction/Services			Privatized Corrections and Residential Reentry Center Option Renewals	Any Value	120
Interagency and Intergovernmental Agreements	Any Value	120			

Source: BPAP Section 7.102-70

The BOP could leverage historical experience on similar procurements to establish these milestone baselines in addition to incorporating best practices from a January 2021 OMB memorandum on monitoring and reducing PALT using modern business practices.²⁴

We recommend that the BOP design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that POs are not used in inappropriate situations), and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP’s historical experience on similar procurements as well as the best practices outlined in OMB’s January 2021 memorandum on PALT for all contract actions that exceed the SAT.

Section 3: Performance Monitoring

CORs assist COs with specific technical and administrative contract functions, such as monitoring and oversight; therefore, the FAR and BPAP require COs to document the appointment of a COR in writing, including responsibilities and limitations on their authority, and to preserve a copy in the contract files.²⁵ However, we sought to review the appointment letters for the 11 CORs assigned to the sampled contract actions and determined that: (1) BOP COs did not develop or issue appointment letters to 4 of these CORs; and (2) 1 of the 7 completed letters did not explain that CORs may be personally liable for unauthorized acts, which is required by FAR Subpart 1.602-2(d)(7).

²⁴ While the memorandum became effective after the BOP awarded some of the contract actions, we believe that the BOP needs to consider these guidelines during acquisition planning for future iterations of the contract actions. See OMB [Memorandum on Reducing Procurement Administrative Lead Time Using Modern Business Practices](#) (January 2021).

²⁵ FAR Subpart 1.602-2, *Contracting Officers Responsibilities* and BPAP Section 1.604(g).

While the development, maintenance, and issuance of compliant written COR appointments may seem purely administrative, we believe that not receiving formalized expectations contributed to the deficiencies discussed in the Contract Performance Monitoring and Oversight of Contractor Billing sections that follow.

Contract Performance Monitoring

Performance Evaluations

Because historical information on a contractor’s experience and ability to successfully perform similar work is a critical tool for agencies to consider when performing market research to decide how to meet their needs optimally, the FAR requires contracting officials to prepare annual and final contractor performance evaluations and submit them to the government-wide Contractor Performance Assessment Reporting System (CPARS), which is maintained by the Department of Defense (DOD).²⁶ To effectuate this requirement, the BPAP references FAR Subpart 42.15 and states that “contract monitoring reports will be prepared by the COR and maintained in the contract file.”

For various reasons, not all the 14 contract actions we reviewed required performance evaluations in FYs 2018 through January 2022.²⁷ Based on the dollar amount and performance periods of the contract actions, we expected the BOP to have submitted 18 evaluations as of December 2022. However, as detailed in Table 6, the BOP contracting officials only submitted 12, which were often untimely, incomplete, or inaccurate (e.g., did not reflect known performance issues or cover the correct evaluation periods).

Table 6

Contractor Performance Assessment Reporting System Compliance

	FY 2018 through 2020		FY 2021		FY 2022	
	CPARS Required	CPARS Completed	CPARS Required	CPARS Completed	CPARS Required	CPARS Completed
Totals	3	1 ^a	3	2 ^b	12	9 ^c

^a This evaluation was due in April 2019 and the BOP submitted it to CPARS over 3 years later in June 2022 after we requested it.

^b This includes an evaluation that was due in January 2022 and the BOP submitted it to CPARS in August 2022 after we requested it. This also includes an evaluation that did not cover the correct rating period. In this instance, the BOP mistakenly omitted July 1, 2021, through September 10, 2021.

^c This includes 4 performance evaluations that the BOP submitted late. For example, the BOP submitted an evaluation to CPARS in November 2022 that was due in September 2022. This also includes the evaluation for the CUAS contract action mentioned in the notes to Table 3 that did not reflect the performance shortfalls noted by the COR.

Source: OIG analysis of the BOP’s contractor performance evaluation records.

²⁶ FAR Subpart 42.1502, *Contractor Performance Information* and 42.1503, *Procedures*.

²⁷ The performance evaluations for two of the contract actions awarded in FY 2021 were not due until December 2022 and January 2023, respectively. For the 5 contract actions awarded in FY 2022, the latest evaluation was not due until January 2023. The contracting agencies have a 120-day grace period to submit the evaluations to CPARS.

Regarding the required performance evaluations that the BOP had not completed, a BOP official told us that the initial total award amounts did not exceed the SAT, which made them exempt under FAR Subpart 42.1502(b). We believe that this was a misinterpretation of FAR Subpart 42.1502(b), which applies to contracts as well as purchase orders. The BOP also did not leverage the supplemental instructions within the DOD Guidance for the Contractor Performance Assessment Reporting System (CPARS Guide). As a result, some BOP contracting officials have not monitored for later funding modifications that cause contract actions to meet or exceed the SAT, thus triggering the interim and final evaluation requirement.

To ensure that BOP contracting officials as well as other agencies can rely on the BOP's contractor performance evaluations, we recommend that the BOP: train contracting officials and other designees who complete contractor performance evaluations on the FAR Subpart 42.15 requirements as well as CPARS Guide. Additionally, design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by the training is sustained and helps ensure that the BOP contract officials are adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and BPAP. .

Oversight of Contractor Billing

Late Payments to Contractors

We sought to test the timeliness of the BOP's payment of a judgmental sample of 14 invoices, one for each sampled contract action. The sampled invoices totaled over \$3 million and had been submitted by contractors between July 31, 2021, and June 10, 2022.

The BOP could not find one of the 14 sampled invoices. In addition, the BOP did not provide payment verification for one invoice and its financial system did not contain this information. Consequently, we could not verify whether the BOP paid on time or properly recorded these invoices. As shown in Table 7, we determined that the BOP paid 5 of the remaining 12 invoices late, resulting in \$2,453 in interest charges.

Table 7

Late Contractor Invoice Payments and Interest Incurred

Contract Action Number	Invoice Number	Invoice Date	Due Date	Accomplished Date	Number of Days Late	Invoice Amount	Interest Charges
3	2367	6/10/2022	7/10/2022	7/22/2022	12	\$400,000	\$533
4	20023-1	7/31/2021	8/31/2021	12/06/2021	97	764,546	573
5	1147	11/01/2021	12/01/2021	1/12/2022	42	287,500	377
7	DOJBOP8	1/5/2022	2/4/2022	2/15/2022	11	90,384	45
13	24390	10/1/2021	10/31/2021	3/18/2022	138	259,016	924
Total Interest Charges Incurred (rounded up to the nearest dollar)							\$2,453

Source: OIG Analysis of Information Provided by the BOP and Extracted from UFMS

We determined that BOP contracting officials experienced difficulties with tracking contract budgets and processing invoices within the financial system, which hindered the BOP's overall ability to pay contractors

on time.²⁸ When the BOP pays its bills late, it erodes trust with stakeholders, such as the: (1) taxpayers and contractors, who support mission-critical procurements that facilitate BOP initiatives; (2) inmates who depend on many of the procured services and products while in the care and custody of the BOP; and (3) BOP personnel who risk their personal safety while executing the duties of inmate care and custody. To ensure that contracting officials and BOP personnel who assist contracting officials, such as task monitor equivalents, can competently fulfill their duties to administer and oversee the procurements, we recommend that the BOP design, document, and implement a process or control to: (a) monitor payment deadlines within its financial system, and (b) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.

Invoices Missing Required Elements

The FAR requires contracting officials to review invoices to ensure that certain mandatory information is included prior to accepting and paying for the services billed. Contractors must include this information on their invoices to receive payment. As detailed in Table 8, we tested the same 13 previously discussed invoices for the selected contract actions and determined that 12 of the invoices did not include mandatory elements of a proper invoice.

Table 8

Compliance of 13 Test Invoices with Requirements for a Proper Invoice

	Required Information	Criteria	Tested Invoices Complied?	Number of Exceptions
1	Contractor Name and Address	FAR Subpart 32.905(b)	Yes	0
2	Invoice Date and Number	FAR Subpart 32.905(b)	No	1
3	Contract Number or Other Authorization for Products/Services	FAR Subpart 32.905(b)	No	4
4	Description, Quantity, Unit of Measure, Unit Price, and Extended Price of Products/Services	FAR Subpart 32.905(b)	Yes	0
5	Shipping and Payment Terms	FAR Subpart 32.905(b)	No	2
6	Name and Address of Contractor Payment Recipient	FAR Subpart 32.905(b)	No	1
7	Name (where practicable), title, phone, and address of person to notify in the event of a defective invoice	FAR Subpart 32.905(b)	No	8
8	Taxpayer Identification Number	FAR Subpart 32.905(b)	No	8
9	Electronic Funds Transfer Banking Information	FAR Subpart 32.905(b)	No	7
10	Contract-Specific Required Information or Documents	FAR Subpart 32.905(b)	No	9
11	Service Start and End Dates	FAR Subpart 52.213-2	No	4
12	Submitted before payment made (i.e., invoice states that either orders have been or will be placed in effect upon receipt of payment.)	FAR Subpart 52.213-2	No	1

Source: OIG analysis, FAR, and BOP

²⁸ In at least one instance, a contracting official stated that BOP personnel did not receive financial system user roles or training prior to system deployment. In the FY 2022 Audit of the DOJ Annual Financial Statements, the OIG identified a material weakness that involved the BOP. Specifically, internal controls over financial reporting were not executed by employees with sufficient training to ensure transactions were properly recorded. As a result, certain transactions were not recorded timely and accurately at the BOP. See OIG Report Number 23-037.

The FAR requirements for contract billing and payments were designed to prevent: (1) late payments to intended parties (i.e., legitimate contractors); and (2) improper payment to unintended parties. However, the contracting officials did not detect the invoice deficiencies. If these errors persist, the BOP risks paying more intended parties late or even paying unintended parties. For example, prior to approving payment, if BOP contracting officials do not ensure that submitted invoices contain valid payment recipient names and addresses, Taxpayer Identification Numbers, and electronic banking information, the BOP risks exacerbating the challenges related to the UFMS transition that contributed to intended parties being paid late or even worse, erroneously sending payments to malicious parties.

Further, while the FAR exempts POs from several additional requirements not listed in Table 5, considering our previously stated concerns about the BOP's decision to use the PO vehicle for 9 of the 14 sampled procurements at or above the SAT, we believe that the invoices should adhere to the level of detail required for a larger, more complex contract type.²⁹

We discussed the invoice review process with BOP contracting officials and some told us that they do not perform the invoice review. For example, a CO of a laboratory diagnostic award relies on medical professionals in the BOP's Health Services Division to review the contractor-submitted invoices because they understand the services and billing. These medical professionals have not been designated by the CO or trained as CORs. In such circumstances, the CO is still ultimately responsible for contract administration and oversight; however, if the CO enlists other government personnel in fulfillment of those duties, the CO must properly train and appoint them as a COR, task monitor or equivalent depending on which is most appropriate for their level of involvement.

Considering our concerns with the BOP's appointment letters and that FAR Subpart 1.602-2(d) explicitly states that a COR "shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedure" and the COR's "authority is not re-delegable," we recommend that the BOP design and implement a process or control for COR designations and train its acquisition workforce on: (a) designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations), and (b) reviewing and approving invoices to ensure that they comport with FAR requirements before payment.

²⁹ As stated in earlier sections of this report, FAR Subparts 13.005 and 13.006 list contract provisions, clauses, and laws inapplicable to contracts and subcontracts at or below the SAT.

Conclusion and Recommendations

The BOP relies on sole-source procurements for some needs related to utilities, security, maintenance and repairs, information technology, social rehabilitation, and medical services. However, we identified several concerns regarding the BOP's stewardship of the acquisition lifecycle for 14 sole-source contract actions that stem from insufficient acquisition planning, training, and oversight. The BOP's: (1) lack of acquisition workforce succession and contingency planning, and (2) practice of augmenting security functions with other staff, including acquisition staff, potentially impacted contract and facility maintenance oversight that left the BOP unable to avoid the "unusual and compelling" circumstances that required immediate repairs of electrical systems and plumbing in some of the sampled sole-source contract actions. While we make no recommendation in this report regarding the BOP's use of augmentation, based on the contracting and acquisition issues we identified in this audit, we believe that the BOP should consider the ramifications for its contracting function, particularly on efficiency and cost of operations, of augmenting security with acquisition personnel.

We also found that BOP COs did not consistently issue appointment documents to the CORs and as a result some did not understand their roles and responsibilities, which contributed to the contract file deficiencies that we identified. Specifically, the BOP's contracting files did not demonstrate that the acquisition planning teams applied well-established techniques, including market research, acquisition plans, QASPs (or equivalent documents), IGCEs, and limited competition justifications. Better acquisition planning would have prepared contracting officials for post-award responsibilities, such as monitoring contract performance and contractor billing.

We recommend that the BOP:

1. Consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions and incorporate their roles and contract surveillance responsibilities into meaningful monitoring plans, such as QASPs or equivalent documents.
2. Ensure that certifying officials (i.e., Procurement Section Chief, Requesting Official, and Cost Center Manager) verify that all mandatory elements—as identified on the RCA Transmittal—have been completed prior to approving a procurement to proceed.
3. Design and implement a process or control to ensure that contracting officials (e.g., COs, Contract Specialists, and CORs) have access to contract documents and information pertinent to their contract-related responsibilities and provide any necessary training and guidance on accessing and using this information.
4. Retrain its contracting officials (e.g., COs, Contract Specialists, and CORs) and BOP personnel who assist them (e.g., health services and facilities personnel in task monitor equivalent positions) on FAR and internal policies and procedures related to acquisition planning and contract file maintenance.
5. Design and implement a process or control to confirm that BOP COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a).

6. Design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that POs are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurements as well as the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions that exceed the SAT.
7. Train contracting officials (e.g., COs, Contract Specialists, and CORs) and other designees who complete contractor performance evaluations on the FAR Subpart 42.15 requirements as well as CPARS Guide. Additionally, design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by the training is sustained and helps ensure that the BOP contract officials are adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and BPAP.
8. Design, document, and implement a process or control to: (a) monitor payment deadlines within its financial system, and (b) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.
9. Design and implement a process or control for COR designations and train its acquisition workforce on: (a) designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations), and (b) reviewing and approving invoices to ensure that they comport with FAR requirements before payment.

APPENDIX 1: Objectives, Scope, and Methodology

Objectives

The objectives of our audit were to assess the Federal Bureau of Prisons' (BOP): (1) processes for planning and soliciting for contract opportunities, (2) procedures for selecting and awarding its sole-source contracts, and (3) performance monitoring. These objectives encompass the BOP's stewardship of the acquisition lifecycle for the auditor-selected sole-source contract actions detailed below.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 audit examined 14 judgmentally selected sole-source contract actions, totaling over \$58 million, awarded by the BOP via two standalone contracts, 9 standalone purchase orders, two delivery orders (one of which was issued under a General Services Administration Schedule), and an order issued under a Blanket Purchase Agreement. The contract actions consisted of procurements for utilities, security, maintenance and repairs, information technology, social rehabilitation, and medical services. This sample derived from a nearly \$4-billion universe of almost 20,000 BOP sole-source contract actions awarded between the beginning of fiscal year 2018 through January 24, 2022. From this universe, we selected contract actions: (1) at or above the Simplified Acquisition Threshold (i.e., \$250,000), (2) involving contractors that the OIG had not examined, and (3) with performance periods that we did not reasonably expect would conclude during our audit.

To accomplish our objectives, we reviewed and analyzed various documents to understand the history and plans for future iterations of the 14 contract actions. In addition to the executed contract actions, the documents examined included, but were not limited to the:

- Purchase Requests,
- Acquisition Plans,
- Independent Government Cost Estimates (IGCE),
- Pricing Analyses,
- Limited Competition Justifications,
- Correspondence with the Small Business Administration (SBA),
- Source Selection documents,
- Statements of Work,
- Performance Records, and
- Invoices.

We consulted, via interviews and other interactions, the 22 BOP personnel responsible for the acquisition lifecycle of the selected contract actions, to understand their experiences, roles, and responsibilities, as well as to gain further insight into events surrounding the contract actions not necessarily captured in the contract files. These individuals included: the current Chief of the Acquisitions Branch, the Acting Chief of the National Acquisitions Branch, the Competition Advocate, 8 Contracting Officers (CO), three Contract Specialists, 7 Contracting Officer's Representatives (COR), and the Chief of Financial Management.

We reviewed the Federal Acquisition Regulation and policies developed by the BOP, Office of Management and Budget, and the SBA. We used the aforementioned criteria to evaluate the contract file content and insights provided by BOP personnel. For example, we compared the applicable FAR to the BOP's IGCEs and pricing analyses to assess whether contracting officials adhered to requirements and considerations for determining the fairness and reasonableness of contractor pricing. Similarly, we analyzed the BOP's other written planning considerations, such as market research and acquisition plans to gain an understanding of post-award performance expectations.

In addition, we reviewed the SBA's Dynamic Small Business Search database for eligibility information on the 7 of 14 contract actions solicited using the SBA's 8(a) Business Development and Service-Disabled Veteran-Owned Small Business programs. We also reviewed the supporting documents for the small business contract actions to determine if the BOP complied with SBA rules for selection and award.

In light of the BOP's October 2021 transition to the Unified Financial Management System (UFMS), we also tested the timeliness of the BOP's payment of a sample of 14 invoices, which totaled over \$3 million, that the contractors submitted for each of the sampled contract actions between July 2021 and June 2022. We also reviewed the invoices for FAR-required elements. Additionally, we assessed the timeliness, completeness, and accuracy of the performance evaluations that BOP contracting officials prepared and submitted to the Contractor Performance Assessment Reporting System.

Internal Controls

In this audit we performed testing, as appropriate, of internal controls significant within the context of our audit objectives. We did not evaluate the BOP's internal controls to provide assurance on its internal control structure as a whole. The BOP's management is responsible for the establishment and maintenance of internal controls in accordance with OMB Circular A-123. Because we do not express an opinion on the BOP's internal control structure as a whole, we offer this statement solely for the information and use of the BOP.

We assessed the design, implementation, and operating effectiveness of these internal controls and identified deficiencies that we believe could affect the BOP's ability to ensure compliance with laws and regulations. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to those internal control components and underlying principles that we found significant to the objectives of this audit, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Compliance with Laws and Regulations

In this audit we also tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that the BOP's management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. Our audit included examining, on a test basis, the BOP's compliance with the following laws and regulations that could have a material effect on the BOP's operations:

- 13 C.F.R. § 124, 8(a) Business Development/Small Disadvantaged Business Status Determinations (2018),
- Small Business Act, 15 U.S.C. § 631 et seq.,
- Federal Acquisition Regulation (FAR), where applicable, including:
 - FAR Subpart 1.6, Career Development, Contracting Authority, and Responsibilities;
 - FAR Subpart 4.8, Government Contract Files;
 - FAR 6.204, Section 8(a) Competition;
 - FAR Subpart 6.3, Other Than Full and Open Competition;
 - FAR Subpart 7.1, Acquisition Plans;
 - FAR Part 10, Market Research;
 - FAR Part 13, Simplified Acquisition Procedures;
 - FAR Subpart 15.4, Contract Pricing;
 - FAR Subpart 19.8, Contracting with the SBA-8(a) Program;
 - FAR Subpart 32.905, Payment Documentation and Process;
 - FAR Subpart 42.15, Contractor Performance Information;
 - FAR Part 46, Quality Assurance;

This testing included analyzing contract files and related documents, interviewing BOP personnel, and reviewing invoices and supporting documents. As noted in the Audit Results section of this report, we found that the BOP did not comply with federal regulations related to various aspects of the acquisition lifecycle for the 14 judgmentally selected sole-source contract actions.

Sample-Based Testing

To accomplish our audit objectives, as described in the Scope and Methodology section, we judgmentally selected the 14 sole-source contract actions for this audit from USA Spending.gov by retrieving all BOP contract actions awarded between FY 2018 and January 24, 2022, which totaled nearly \$4 billion. Next, we filtered for contract actions that had total dollars obligated at or above the FAR's SAT and identified all the contract actions that the BOP awarded using limited competition or sole-source procedures, which USA Spending.gov categorizes as:

- Non-Competitive Delivery Order,
- Not Available for Competition,
- Not Competed, and
- Not Competed Under SAP

From this universe, we further excluded contract actions with recipients that the OIG had examined. Our rationale was to avoid making duplicate or overlapping recommendations to the BOP regarding the same contractors and cover more types of products and services. We also opted for contract actions that had performance periods that we did not reasonably expect would conclude during our audit because remedying questioned costs related to administratively closed contract actions would prove unproductive. Although this sample is small, because of our selection process, we believe the sample is representative of the BOP's universe of sole-source contract actions. However, this non-statistical sample design does not allow projection of the test results to the universe from which the samples were selected.

We also performed sample-based testing for BOP personnel and contractor invoices. We employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

We obtained information from the BOP Human Resource Management Division's Workforce Systems National Finance Center Master Database and DOJ's UFMS. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

APPENDIX 2: BOP Contract Request Action Transmittal Sheet

Mandatory elements must be included for ALL RCA packages. Review criteria for other elements and include as appropriate. Incomplete RCA packages will not be accepted or may be returned, potentially effecting delivery dates.

INCLUDED		N/A		DOCUMENT DESCRIPTION
				MANDATORY ELEMENTS
<input checked="" type="checkbox"/>				REQUEST FOR CONTRACT ACTION (RCA) <i>Per BRAP 7.103-70 – The requirement must contain a fund control number. Ensure "Date Required" is in accordance with BRAP 7.102.70</i>
<input checked="" type="checkbox"/>				FUNDS AVAILABILITY CERTIFICATION <i>Certification must be signed by the cost center manager.</i>
<input checked="" type="checkbox"/>				SIGNED PROCUREMENT INTEGRITY CERTIFICATIONS <i>Per BRAP 3.104-1 – For all BOP staff participating in the procurement. Contracting officers use a different form.</i>
<input checked="" type="checkbox"/>				DETAILED INDEPENDENT GOVERNMENT ESTIMATE (IGE) <i>The amounts indicated on the IGE must match the amounts in the funds availability memorandum and the RP exactly.</i>
<input checked="" type="checkbox"/>				STATEMENT OF WORK (SOW)/PERFORMANCE WORK STATEMENT (PWS)/ SPECIFICATIONS <i>Additionally, submit an electronic copy in an editable format</i>
<input checked="" type="checkbox"/>				CONTRACTING OFFICERS REPRESENTATIVE (COR) CERTIFICATE <i>COR should be registered in FAYAS</i>
<input checked="" type="checkbox"/>				RECOMMENDED SOURCES AND MARKET RESEARCH <i>A minimum of three valid sources which are able to perform/deliver the requirement should be submitted. Contact information for each should be included. A brief explanation of research conducted to find vendors to meet requirement.</i>
<input checked="" type="checkbox"/>				PERFORMANCE PERIOD/DELIVERY INFORMATION <i>Provide adequate supporting documentation of a realistic performance period/delivery schedule.</i>
				OTHER ELEMENTS
<input checked="" type="checkbox"/>	<input type="checkbox"/>			INDIVIDUAL ACQUISITION PLAN <i>Per BRAP 7.103-70 – Mandatory for all acquisitions expected to exceed \$750,000.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>			DETERMINATION OF NEED <i>Per BRAP 37-103.70 – Mandatory for all service requirements</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>			EVALUATION FACTORS <i>Required for negotiated (NOT lowest price technically acceptable). Non-price factors should be ranked in order of relative importance. Non-price factors, when combined, should be ranked relative to price.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>			FITARA/SA Approval
<input checked="" type="checkbox"/>	<input type="checkbox"/>			Section 508

Source: BOP Contract Files

APPENDIX 3: Written Considerations for Acquisition Planning

Contract Action	Product or Service Purchased	Market Research (FAR Part 10)		Written Acquisition Plan (FAR Subparts 7.103(e) and 7.105)		Quality Assurance Surveillance Plan Prepared with Statement of Work (FAR Subpart 46.401)		Independent Government Cost Estimate (FAR Subparts 19.806, 19.807, and 15.4)		Limited Competition Justification (FAR Subpart 6.3)	
		Completed	Sufficient Detail	Completed	Sufficient Detail	Completed	Sufficient Detail	Completed	Sufficient Detail	Completed	Sufficient Detail
1	Utilities - Electric	No	—	Yes	No	No	—	No	—	No	—
2	Engineering Services	Yes	No	Yes	No	No	—	Yes	Yes	No	—
3	Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing	Yes	No	Yes	Yes	No	—	Yes	No	No	—
4	Poured concrete foundation and structure contractors	No	—	Yes	No	No	—	Yes	Yes	No	—
5	Telecommunications Resellers	No	—	Yes	Yes	No	—	Yes	No	No	—
6	Other aircraft parts and auxiliary equipment manufacturing	Yes	No	Yes	Yes	No	—	Yes	No	No	—
7	Computer Systems Design Services	No	—	Yes	Yes	No	—	Yes	Yes	No	—
8	General Medical and Surgical Hospitals	No	—	No	—	No	—	No	—	Yes	Yes
9	Administrative and Management Consulting	Yes	Yes	Yes	Yes	No	—	Yes	Yes	No	—
10	Other Residential Care Facilities	No	—	Yes	No	No	—	No	—	Yes	Yes
11	General Medical and Surgical Hospitals	No	—	No	—	No	—	No	—	Yes	Yes
12	Medical Laboratory Services	No	—	No	—	No	—	No	—	No	—
13	Software Publishing	No	—	Yes	No	No	—	No	—	No	—
14	Offices of Physicians (Except Mental Health Specialists)	Yes	No	No	—	No	—	No	—	Yes	Yes

Source: FAR and OIG Analysis of BOP Contract Files

**APPENDIX 4: Basement Kitchen Damage at Metropolitan Correctional Center
San Diego, California**



Source: BOP

APPENDIX 5: The Federal Bureau of Prisons' Response to the Draft Audit Report



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

August 23, 2023

MEMORANDUM FOR JASON R. MALMSTROM
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

FROM: Colette S. Peters, Director

A handwritten signature in blue ink, which appears to be "Colette S. Peters", is written over the name in the "FROM:" field.

SUBJECT: Response to the Office of Inspector General's Draft Report: Audit of the
Federal Bureau of Prisons' Sole-Source Contract Actions

The Bureau of Prisons (BOP) appreciates the opportunity to formally respond to the Office of the Inspector General's (OIG) above-referenced draft report. BOP values OIG's careful review of the facts and will utilize this report to apply lessons learned where applicable to the broader BOP procurement landscape. In particular, the work conducted by OIG in connection with this report has helped BOP to identify several areas where additional training is needed for its contracting personnel. BOP believes that providing appropriate training to its employees regarding the existing regulatory and policy landscape governing federal acquisitions and developing controls to enhance accountability will serve to address the root causes identified in this report.

OIG indicates BOP's weaknesses in this area stem from insufficient acquisition planning, training, and oversight. BOP concurs that improvements are needed in this area and its executive team recently approved the reassignment of BOP's General Schedule 1102 contracting series occupations (Contracting Officers) to a centralized chain of command with a goal of improving planning, training, and oversight. This centralized system will also improve consistency of operations, decrease the impact of employee turnover, and eliminate Contracting Officer augmentation.

Recommendation One: Consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions and incorporate their roles and contract surveillance responsibilities into meaningful monitoring plans, such as QASPs or equivalent documents.

BOP's Response: The BOP agrees to consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions, and their roles and contract surveillance responsibilities.

Recommendation Two: Ensure that certifying officials (i.e., Procurement Section Chief, Requesting Official, and Cost Center Manager) verify that all mandatory elements—as identified on the RCA Transmittal—have been completed prior to approving a procurement to proceed.

BOP's Response: The BOP concurs with this recommendation and will assess potential methods to ensure that certifying officials verify that all mandatory elements have been completed prior to approving a procurement to proceed.

Recommendation Three: Design and implement a process or control to ensure that contracting officials (e.g., COs, Contract Specialists, and CORs) have access to contract documents and information pertinent to their contract-related responsibilities, and provide any necessary training and guidance on accessing and using this information.

BOP's Response: The BOP concurs with this recommendation and has already taken steps to address it by providing appropriate training to BOP's contracting officers regarding Content Manager, BOP's electronic contract filing system. Specifically, Content Manager training was provided virtually to BOP's Contracting Officers in April 2022 and during the BOP's Advanced Procurement Training (APT) in July 2023. Related training presentations are being provided to your office to facilitate resolution of this recommendation.

Recommendation Four: Retrain its contracting officials (e.g., COs, Contract Specialists, and CORs) and BOP personnel who assist them (e.g., health services and facilities personnel in task monitor equivalent positions) on FAR and internal policies and procedures related to acquisition planning and contract file maintenance.

BOP's Response: BOP concurs with this recommendation but notes it already has and will continue to provide a robust training program for its Contracting Officers. For example, BOP provided both acquisition planning and contract file maintenance training to its Contracting Officers during BOP's Advanced Procurement Training (APT) in July 2023. Related training presentations are being provided to your office to facilitate resolution of this recommendation.

Recommendation Five: Design and implement a process or control to confirm that BOP COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a).

BOP's Response: BOP concurs with this recommendation and will design and implement a control to confirm that BOP Contracting Officers prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a). BOP also separately identified a need to retrain contracting officers on the FAR requirements for the proper procurement of items or services via the SBA's 8(a) program. Training was provided directly from the SBA to BOP Contracting Officers in June 2023. Additional training was provided during the BOP's Advanced Procurement Training (APT) in July 2023. The training presentations are being provided to your office to facilitate resolution of this recommendation.

Recommendation Six: Design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that Pos are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurements as well as the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions that exceed the SAT.

BOP's Response: BOP concurs with this recommendation and will design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that Pos are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurements as well as the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions that exceed the SAT.

Recommendation Seven: Train contracting officials (e.g., COs, Contract Specialists, and CORs) and other designees who complete contractor performance evaluations on the FAR Subpart 42.15 requirements as well as CPARS Guide. Additionally, design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by the training is sustained and helps ensure that the BOP contract officials are adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and [Bureau of Prisons Acquisition Policy (BPAP)].

BOP's Response: BOP concurs insofar as this is consistent with the FAR and BPAP and will design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by its trainings are sustained and help ensure that BOP contract officials are adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and BPAP. Regarding adherence to a schedule, FAR 42.1502 requires that past performance evaluations be prepared "at least annually and at the time the work under a contract or order is completed." See FAR 42.1502(a). While the CPARS Guide may be a good resource for contracting personnel, FAR Subpart 42.15 details the requirements for a proper CPARS evaluation. Contracting Officer Representative Training was provided virtually to BOP's contracting officials in January 2023. CPARS Training was provided to its contracting officials virtually in November 2022. Additionally, CPARS training was provided during the BOP's Advanced Procurement Training (APT) in July 2023. All training presentations are being provided to your office to facilitate resolution of this recommendation.

Recommendation Eight: Design, document, and implement a process or control to: (a) monitor payment deadlines within its financial system; and (b) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.

BOP's Response: BOP concurs with this recommendation and will design, document, and implement a process or control to: (a) monitor payment deadlines within its financial system; and (b) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.

Recommendation Nine: Design and implement a process or control for COR designations and train its acquisition workforce on: (a) designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations) and (b) reviewing and approving invoices to ensure that they comport with FAR requirements before payment.

BOP's Response: BOP concurs with this recommendation. BOP has recently provided several trainings to its acquisition workforce regarding designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations) and (b) reviewing and approving invoices to ensure that they comport with FAR requirements before payment. Specifically, COR training was provided virtually November 2022, virtually January 2023, and at Annual Procurement Training in July 2023. The BOP's Procurement Executive (PE) also issued a memorandum in October 2022 to relevant BOP employees specifying invoice review and approval policies and procedures. The presentations and memo are being provided to your office to facilitate resolution of this recommendation.

Thank you for the opportunity to comment on this report.

APPENDIX 6: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Audit Report

The Office of the Inspector General (OIG) provided a draft of this audit report to the Federal Bureau of Prisons (BOP). The BOP's response is incorporated in Appendix 5 of this final report. In response to our audit report, the BOP concurred with all nine of our recommendations. As a result, the status of the report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to sustain the resolved status of and ultimately close this report.

Recommendations for the BOP:

- 1. Consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions and incorporate their roles and contract surveillance responsibilities into meaningful monitoring plans, such as Quality Assurance Surveillance Plans (QASP) or equivalent documents.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it agrees to consider the appropriate personnel needed to monitor and oversee its facilities-related contract actions, and their roles and contract surveillance responsibilities.

This recommendation can be closed when we receive evidence of the BOP's consideration of the appropriate personnel needed to monitor and oversee its facilities-related contract actions and incorporates their roles and contract surveillance responsibilities into meaningful monitoring plans (e.g., QASPs or equivalent documents).

- 2. Ensure that certifying officials (i.e., Procurement Section Chief, Requesting Official, and Cost Center Manager) verify that all mandatory elements—as identified on the Request for Contract Action (RCA) Transmittal—have been completed prior to approving a procurement to proceed.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will assess potential methods to ensure that certifying officials verify that all mandatory elements have been completed prior to approving a procurement to proceed.

This recommendation can be closed when we receive evidence that the BOP has implemented a control or process to ensure that all mandatory elements have been completed prior to approving a procurement to proceed.

- 3. Design and implement a process or control to ensure that contracting officials (e.g., Contracting Officers-COs, Contract Specialists, and Contracting Officer's Representatives-CORs) have access to contract documents and information pertinent to their contract-related responsibilities, and provide any necessary training and guidance on accessing and using this information.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it has taken steps to address our concerns by providing its COs virtual training in April 2022 and

during the BOP's July 2023 Advanced Procurement Training (APT). The BOP further stated that it will provide the OIG the materials for the aforementioned training.

Although the BOP has taken steps to ensure that its COs receive access to its electronic storage program and related training, the BOP's actions do not address other BOP personnel, such as CORs and task monitor equivalents (i.e., roles included in the OIG's definition of "contracting officials" as stated in the audit report), who assist the COs with administration and oversight of its contract actions. In multiple instances, the OIG found that the COs and CORs relied on BOP subject matter experts, such as healthcare professionals and facilities engineers, who did not have contracting authority (via a warrant or delegation), to assist with the contract actions in a manner similar to a task monitor. The OIG does not take issue with the BOP's use of such roles; however, those personnel must be properly trained, designated, and given access to the information necessary to exercise competent administration and oversight of the BOP's contract actions.

This recommendation can be closed when the BOP demonstrates that it has designed and implemented a process or control to ensure that COs, CORs, and task monitor equivalents have appropriate access to its electronic storage program or an appropriate source of contract information. The BOP also needs to provide documentation, such as attendance rosters and course materials, to substantiate that the aforementioned personnel have received training and guidance on how to use its electronic storage program or another source of contract information.

- 4. Retrain its contracting officials (e.g., COs, Contract Specialists, and CORs) and BOP personnel who assist them (e.g., health services and facilities personnel in task monitor equivalent positions) on Federal Acquisition Regulation (FAR) and internal policies and procedures related to acquisition planning and contract file maintenance.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it has and will continue to provide a robust training program for its COs, such as the July 2023 APT mentioned in response to recommendation 3.

Although the BOP has taken steps to ensure that its COs receive access to its electronic storage program and related training, the BOP's actions do not address the other BOP personnel, such as CORs and task monitor equivalents who assist the COs with administration and oversight of the contract actions, as described in our response to recommendation 3. The OIG does not take issue with the BOP's use of such roles; however, those personnel must be properly trained, designated, and given access to the information necessary to exercise competent administration and oversight of the BOP's contract actions.

This recommendation can be closed when the BOP demonstrates that: (1) COs as well as Contract Specialists, CORs and task monitor equivalents (e.g., health services and facilities personnel who assist COs and CORs) have been retrained on the FAR and internal policies and procedures on acquisition planning and contract file maintenance and (2) it has a plan to sustain the awareness intended by the training.

5. **Design and implement a process or control to confirm that BOP COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a).**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will design and implement a control to confirm that its COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a). The BOP also stated that, in addition to the aforementioned July 2023 APT, in June 2023 the BOP's COs received training from the Small Business Administration (SBA) on proper procurement of items and services using the 8(a) Program.

This recommendation can be closed when the BOP provides evidence (e.g., attendance rosters and course materials) to demonstrate that the current COs have received training on the SBA's 8(a) Program. The BOP must also provide evidence that it has designed and implemented a process or control to confirm that BOP COs prepare complete and accurate 8(a) Program offer letters as required by FAR Subpart 19.804-2(a). In developing the process or control, the BOP should consider the concerns regarding acquisition workforce contingency and succession planning highlighted in the report.

6. **Design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that Purchase Orders-POs are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurements as well as the best practices outlined in the Office of Management and Budget's (OMB) January 2021 memorandum on Procurement Administrative Lead Time (PALT) for all contract actions that exceed the Simplified Acquisition Threshold (SAT).**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will design and implement a control to help ensure that: (a) appropriate contract types and formats are used (e.g., that POs are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurement as well as the best practices outlined in OMB's January 2021 memorandum on PALT for all contract actions that exceed the SAT.

This recommendation can be closed when the BOP provides evidence that it has designed and implemented a process or control to ensure that: (a) appropriate contract types and formats are used (e.g., that Purchase Orders-POs are not used in inappropriate situations) and (b) acquisition planning team members, including contracting officials, understand how to apply the BOP's historical experience on similar procurements as well as the best practices outlined in the OMB January 2021 memorandum on PALT for all contract actions that exceed the SAT.

7. **Train contracting officials (e.g., COs, Contract Specialists, and CORs) and other designees who complete contractor performance evaluations on the FAR Subpart 42.15 requirements as well as Contractor Performance Assessment Reporting System (CPARS) Guide). Additionally, design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by the training is sustained and helps ensure that the BOP contract**

officials are adhering to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and Bureau of Prisons Acquisition Policy (BPAP).

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it provided its contracting officials CPARS training in November 2022, January 2023, and during the July 2023 APT. The BOP further stated that it will design and implement a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the: (1) awareness intended by its trainings is sustained and (2) BOP contracting officials adhere to the schedule for mandatory completion of contractor performance evaluations, via CPARS, as required by the FAR and BPAP. The BOP also stated that while the CPARS Guide may be a good resource for contracting personnel, FAR Subpart 42.15 details the requirements for a proper CPARS evaluation.

Although the BOP provided CPARS training on the related FAR and acknowledged the CPARS Guide as a good resource for contracting personnel, the BOP's recent training did not incorporate the CPARS Guide as the OIG recommended. The CPARS Guide further interprets the FAR's requirements, including the schedules and dollar thresholds, that the OIG found that BOP contracting officials had difficulty adhering to; therefore, we believe that this resource would further mitigate some of the risks associated with CPARS timeliness, accuracy, and completeness.

This recommendation can be closed when the BOP provides evidence that it has: (1) incorporated the CPARS Guide into its training for contracting personnel, and (2) designed and implemented a process or control (e.g., sampling CPARS to verify compliance with the FAR) to ensure that the awareness intended by the training is sustained.

- 8. Design, document, and implement a process or control to: (a) monitor payment deadlines within its financial system and (b) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will design, document, and implement a process or control to: (1) monitor payment deadlines within its financial system and (2) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.

This recommendation can be closed when the BOP provides evidence that it has designed, documented, and implemented a process or control to: (1) monitor payment deadlines within its financial system and (2) train contracting officials and other BOP personnel responsible for contract administration and oversight on the new process or control.

- 9. Design and implement a process or control for COR designations and train its acquisition workforce on: (a) designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations), and (b) reviewing and approving invoices to ensure that they comport with FAR requirements before payment.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it has recently provided several trainings to its acquisition workforce, including virtual COR training in

November 2022 and January 2023 as well as the July 2023 APT. The aforementioned training covered: (1) designating and appointing CORs (to include appointment records that memorialize delegations of contracting authority and limitations), and (2) reviewing and approving invoices to ensure that they comport with FAR requirements before payment. The BOP further stated that its Procurement Executive issued an October 2022 memorandum to relevant BOP employees specifying invoice review and approval policies and procedures. The BOP stated that it will provide the OIG the presentations and memorandum related to this recommendation.

Although the BOP trained its acquisition workforce on designating and appointing CORs, considering that the OIG found that BOP contracting officials had difficulty adhering to the BPAP and FAR, we believe that the October 2022 memorandum may help to further mitigate the risk of non-compliance if it is centralized, accessible, and accompanied by a process or control to sustain the awareness intended by the training for the BOP's current and future acquisition workforce.

This recommendation can be closed when the BOP provides: (1) documentation, such as attendance rosters and course materials, to substantiate that its acquisition workforce received the aforementioned training, (2) copies of the October 2022 memorandum, and (3) evidence that it has designed and implemented a process or control to sustain the awareness intended by the training and memorandum.