

Awarding of U.S. Census Bureau Noncompetitive Contracts Did Not Consistently Follow Federal Acquisition Regulations and Commerce Acquisition Policies

FINAL REPORT NO. OIG-17-031-A

SEPTEMBER 25, 2017



U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation



September 25, 2017

MEMORANDUM FOR: Ron S. Jarmin
Performing the Non-Exclusive Functions
and Duties of the Director
U.S. Census Bureau

FROM: Mark Zabarsky
Assistant Inspector General for Acquisition
and Special Program Audits

SUBJECT: *Awarding of U.S. Census Bureau Noncompetitive Contracts Did Not
Consistently Follow Federal Acquisition Regulations and Commerce
Acquisition Policies*
Final Report No. OIG-17-031-A

Attached is our final audit report on the awarding of U.S. Census Bureau (the Bureau) noncompetitive contracts. Our objective was to determine whether the Bureau's contracting personnel properly awarded noncompetitive contracts.

Overall, we found that the Bureau's contracting personnel did not properly award 25 of the 28 noncompetitive contracts reviewed because they did not comply with at least one or more of the key Federal Acquisition Regulations, *Commerce Acquisition Manual*, and Bureau's pre-award requirements. Based on our review, we estimate the Bureau could have potentially saved 20 percent in acquisition costs, approximately \$9.3 million, which we consider to be questioned costs (see appendix C).

Specifically, we found the following:

- I. Sole source contracts were awarded without proper support documents and approval.
 - A. Statutory authorities were incorrectly used to justify awarding noncompetitive contracts.
 - B. Market research was not sufficient to support noncompetitive justification.
 - C. Price reasonableness determination documentation was missing or lacked rationale.
 - D. Sole source justifications were missing required content.
 - E. Justifications did not have proper approval authority.
 - F. There was insufficient evidence of contract review board decisions.
- II. Contract files were not properly maintained.

Based on the Bureau's review of the draft and subsequent discussions, the agency concurs with all of our recommendations and has already initiated steps to address our recommendations.

In accordance with Department Administrative Order 213-5, please provide us your action plan within 60 days of this final report. The plan should outline the actions you propose to take to address each recommendation. The final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978 (5 U.S.C. App., §§ 4 & 8M), as amended.

We appreciate the cooperation and courtesies extended to us by your staff during our audit. If you have any questions or concerns about this report, please contact me at (202) 482-3884 or Cheryl Henderson, Director, Acquisition Audits, at (202) 482-4350.

cc: Joanne Buenzli Crane, Associate Director, Administration and Chief Financial Officer
Michael L. Palensky, Chief, Acquisition Division
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Report in Brief

September 25, 2017

Background

A March 2009 Presidential Memorandum on government contracting directed all federal agencies to reduce the use of noncompetitive contracts.

Noncompetitive procurements are those that the government purchasing authority has decided can only be performed by one company. However, these types of contracts are considered high-risk and can result in wasted financial resources, poor contractor results, and inadequate accountability.

Why We Did This Review

Competition is a critical tool for achieving the best return on the government's investment. While federal agencies are generally required to award contracts on the basis of full and open competition, they are permitted to award noncompetitive contracts in certain situations. We did this audit to determine whether the Census Bureau's (the Bureau's) contracting personnel properly awarded noncompetitive contracts.

U.S. CENSUS BUREAU

Awarding of U.S. Census Bureau Noncompetitive Contracts Did Not Consistently Follow Federal Acquisition Regulations and Commerce Acquisition Policies

OIG-17-031-A

WHAT WE FOUND

Overall, we found that the Bureau's contracting personnel did not properly award 25 of the 28 noncompetitive contracts reviewed because they did not comply with at least one or more of the key Federal Acquisition Regulations, *Commerce Acquisition Manual*, and Bureau's pre-award requirements. Based on our review, we estimate the Bureau could have potentially saved 20 percent in acquisition costs, approximately \$9.3 million, which we consider to be questioned costs (see appendix C). Specifically, we found the following:

- I. Sole source contracts were awarded without proper support documents and approval.
 - A. Statutory authorities were incorrectly used to justify awarding noncompetitive contracts.
 - B. Market research was not sufficient to support noncompetitive justification.
 - C. Price reasonableness determination documentation was missing or lacked rationale.
 - D. Sole source justifications were missing required content.
 - E. Justifications did not have proper approval authority.
 - F. There was insufficient evidence of contract review board decisions.
- II. Contract files were not properly maintained.

WHAT WE RECOMMEND

We recommend that the Bureau's Chief, Acquisition Division

1. strengthen controls to enforce FAR and CAM documentation policies and procedures for planning and justifying other than full and open competition acquisitions;
2. reemphasize to contracting officers the requirement to adequately justify sole source procurements when using the only one responsible source and unusual and compelling urgency statutory authorities in accordance with FAR requirements;
3. require contracting officers to maintain supporting documentation in the contract file describing the specific steps taken during market research and the results of the market research conducted;
4. require contracting officers to retain, as part of the contract file, all supporting documentation used to establish price reasonableness determinations;
5. require contracting officers to ensure that sole source justification documents are approved at the appropriate level and that the justification documents include all elements as required by the FAR;
6. enforce current policies and procedures regarding the Contract Review Board process to include maintaining evidence of board meetings, decisions and outcomes;
7. clarify how contracting officers should address and document Office of General Counsel's comments on non-competitive contracts;
8. improve controls to properly maintain and safeguard contract files; and
9. ensure training is provided for contracting personnel to correct identified deficiencies.

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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

Introduction

Competition is a cornerstone of the federal acquisition system and a critical tool for achieving the best possible return on investment for taxpayers. Some degree of noncompetitive contracting is unavoidable—such as when only one responsible source can perform the work—and, in some cases, competition is impractical due to the government’s previous reliance on specific contractors. However, competitive contracts help save money, conserve scarce resources, improve contractor performance, curb fraud, and promote accountability. Competition also discourages favoritism by leveling the playing field for contract competitors and curtailing opportunities for fraud and abuse.

A March 2009 Presidential Memorandum on government contracting directed all federal agencies to reduce the use of noncompetitive contracts.¹ Noncompetitive procurements are those that the government purchasing authority has decided can only be performed by one company. However, these types of contracts are considered high-risk and can result in wasted financial resources, poor contractor results, and inadequate accountability. The Presidential Memorandum also directed the Office of Management Budget (OMB) to issue government-wide guidance governing the use and oversight of government contracting. The guidance was issued in two phases: (1) July 2009, which required a review of existing contracts, and (2) October 2009, which created guidance on the appropriate use of government contracting, including noncompetitive contracts. The resulting October 2009 OMB Memorandum on government contracting directed executive agencies to reduce the use of high-risk contracts, which included noncompetitive contracts.²

Through a May 6, 2009, memorandum to all Census Bureau (the Bureau) contracting staff, the Census Chief of the Acquisition Division and Bureau Procurement Official established a contract review board process. The purpose of the review board process was to create a management control mechanism comprised of Census Acquisition senior management which perform reviews to help ensure acquisitions are accomplished in the most effective, economical, and timely manner.³ On June 2, 2015, OIG Office of Investigations issued a report⁴ that found that the Bureau failed to adhere to several rules and regulations related to federal contracting and recruitment. Specifically, the Bureau did not comply with Competition in Contracting Act of 1984 (CICA)⁵ and the Federal Acquisition Regulations (FAR) when it awarded a noncompetitive contract to one particular headhunter firm without properly supporting its justification for using other than full and open competition.

¹ Presidential Memorandum, “Memorandum for the Heads of Executive Departments and Agencies—Subject: Government Contracting,” March 4, 2009.

² Office of Management and Budget, October 27, 2009. “Memorandum for Chief Acquisition Officers Senior Procurement Executives: Increasing Competition and Structuring Contracts for the Best Results.”

³ Board members include the Chief of the Acquisition Division, Assistant Chief of the Acquisition Division, Acquisition Branch Chiefs, Census Small Business Representative, and a representative from the Office of the General Counsel (OGC).

⁴ Department of Commerce Office of Inspector General Office of Investigations, Report Number 14-0408, “Review of Sole Source Awards for Executive Search Services,” June 2015. Washington, DC: OIG.

⁵ Competition in Contracting Act of 1984, 41 U.S.C. § 3301 et seq.

Objective, Findings, and Recommendations

Our objective was to determine whether the Bureau's contracting personnel properly awarded noncompetitive contracts. Overall, we found that the Bureau's contracting personnel did not properly award 25 of the 28 noncompetitive contracts reviewed because they did not comply with at least one or more of the key FAR, *Commerce Acquisition Manual (CAM)*, and the Bureau's pre-award requirements. Based on our review, the total estimated value of noncompetitive contracts that did not fully comply with these key pre-award requirements is approximately \$61.1 million. Specifically we found:

- Incorrect use of statutory authorities to justify awarding noncompetitive contracts.
- Market research was not sufficient to support the sole source justifications, and that using competitive rather than noncompetitive procedures could have potentially saved approximately \$9.3 million in acquisition costs.
- Price reasonableness determination documentation was missing or lacked rationale for price reasonableness determination decisions, resulting in \$27.9 million that could not be verified.
- Justifications for other than full and open competition (sole source justifications) did not always contain the required elements.
- Appropriate signature authorities were not obtained to approve the use of noncompetitive contracts.
- The Bureau's Contract Review Board (CRB) did not always provide sufficient evidence of contract review board decisions.
- Contract files were not properly maintained.

The Bureau's noncompliance with pre-award requirements is due to a weak control environment that allows contracting officials to use broad discretion in awarding noncompetitive contracts. Further, the Bureau's acquisition management did not provide effective oversight to ensure it properly awarded noncompetitive contracts.

While noncompetitive contracts may be necessary in certain cases when only one contractor is capable of delivering needed goods or services, competition is a critical tool for achieving the best return on investment for taxpayers. The Bureau may have missed opportunities to promote competition, obtain lower prices, support its noncompetitive decisions in the event of award protests, and ensure effective stewardship of taxpayer dollars by not fully complying with FAR, CAM, and its own requirements before awarding these high-risk contracts.

Appendix A further details the objective, scope, and methodology of our audit. Appendix B summarizes the findings.

I. Sole Source Contracts Were Awarded Without Proper Support Documents and Approval

FAR, CAM, and Bureau policies require contracting personnel to take a number of pre-award actions before awarding noncompetitive contracts. These pre-award actions—such as market analysis and *Independent Government Cost Estimates (IGCE)*—are intended to ensure that Bureau acquisitions are properly planned, noncompetitive awards are properly justified, and prices can be demonstrated to be fair and reasonable. We found that 25 of the 28 Bureau noncompetitive contracts reviewed did not fully comply with the following key pre-award requirements per FAR, CAM, and Bureau policy and guidance.

First, the Bureau incorrectly used statutory authorities to justify awarding noncompetitive contracts. Second, the Bureau did not conduct or adequately document market research to support noncompetitive justifications. Third, the Bureau could not demonstrate that price reasonableness was supported in price determination documentation. Fourth, sole source justifications were missing required content. Fifth, the Bureau did not obtain proper approval authorities for awarding noncompetitive contracts. Finally, the Bureau's CRB did not always provide sufficient evidence of contract review board decisions.

A. *Statutory authorities were incorrectly used to justify awarding noncompetitive contracts*

FAR⁶ requires each noncompetitive contract contain a reference to the specific statutory authority under which it was awarded. Statutory authorities must be supported by sufficient facts and rationale to justify the decision to award a noncompetitive contract. FAR section 6.302 lists seven statutory authorities that permit contracting without full and open competition. Two such statutory authorities are the following:

- only one responsible source and no other supplies or services will satisfy agency requirements, and
- unusual and compelling urgency.

We found that contracting officials improperly used the only one responsible source and the urgent and compelling need statutory authorities to justify awarding 4⁷ of the 28 noncompetitive contracts reviewed with a total award value of approximately \$2.4 million. The sole source justifications for all 4 contracts disclosed that the noncompetitive awards were made to either former Bureau employees or vendors that had a long standing relationship with the Bureau. Examples follow:

- The justification for a follow-on contract, valued at approximately \$1.6 million, for expert advisory and technical assistance cited only one responsible source as satisfying agency requirements. Although the incumbent contractor did not respond to the initial request for information, the Bureau received 11 responses

⁶ FAR subpart 6.3.

⁷ For 3 contracts, contracting personnel cited “only one responsible source and no other supplies or services will satisfy agency requirements,” and 1 contract cited “unusual and compelling urgency.”

from other potential sources. The Bureau determined that all 11 responses were too generic and subsequently issued a revised request for information with more restrictive requirements. The revised request for information now stated that the selected contractor should “possess successful in-depth knowledge and experience of the Business Research & Development Innovation Survey system.” As a result, the Bureau received only two responses, including one from the incumbent contractor. The Department of Commerce’s Office of the General Counsel (OGC) questioned why the other offeror was not qualified and expressed concerns over the uniqueness of the incumbent contractors’ qualifications. In response to OGC’s comments, contracting officials only made general edits to the sole source justification but did not change the outcome of the acquisition. Additionally, we found email correspondence in the contract file that indicated the incumbent contractor was selected prior to issuing the revised request for information because of the incumbent’s prior experience on the contract.

- One contract valued at \$595,136 was to procure training packages from a vendor who was a former Bureau employee. The justification cited for the sole source award was “unusual and compelling urgency.” The urgency was driven by program officials’ requirement to meet program milestones, rather than a truly unusual and compelling need for supplies or services. FAR section 6.301 explicitly states that noncompetitive contracts shall not be justified due to a lack of advance planning by the requiring activity. Further FAR section 6.302-2 requires contracts using this authority to show that a delay in award of a contract would result in serious injury, financial or other circumstances, to the government. However, neither the sole source justification nor explanations provided by contracting officials supported awarding this contract as unusual and compelling urgency. Furthermore, in its legal review, OGC expressed “reoccurring concerns” about contracting officials “awarding sole-source and time and material contracts with individuals that have previous experience working with Census programs.” However, contracting officials did not respond to OGC’s comments.

B. Market research was not sufficient to support noncompetitive justification

Adequate market research is especially important to demonstrate that awarding a noncompetitive contract is necessary and in the best interest of the Bureau. The Government Accountability Office reported in October 2014 that documenting market research is an important step to help others understand how the acquisition team collected and analyzed market information.⁸ Market research should be conducted to determine if the Bureau’s needs can be satisfied in the commercial market place and is necessary to establish the best approach to acquiring supplies and services. The FAR and CAM require Bureau contracting personnel to conduct market research that is

⁸ U.S. Government Accountability Office, October 9, 2014, “Market Research: Better Documentation Needed to Inform Future Procurements at Selected Agencies,” GAO-15-8, Washington, DC: GAO.

proportionate to the complexity of the procurement and to document it appropriately.⁹ The FAR and CAM recommend techniques for conducting market research; however, they do not specify how the contracting officers are to perform these techniques and leave it to the contracting officers' discretion to determine the proportion, complexity, and appropriateness of the market research. The FAR¹⁰ states that sole source justifications must describe the market research conducted and the results, or the reason market research was not conducted.

Contracting officials did not adequately document market research for identifying other potential qualified vendors in 19 of the 28 (68 percent) contracts reviewed. Specifically, while market research was mentioned or summarized in the files,¹¹ contracting officials could not provide supporting documentation for those summaries or activities.

Examples include:

- A contract valued at \$9.6 million to procure enterprise transformation and integration services cited that market research was conducted. The contract file contained a memo stating market research was performed by leveraging historical acquisition information and performing research on industry and other sources. However, the contract file contained no supporting documentation to confirm that contracting officials reviewed historical information or performed industry research. When we requested supporting documentation for these activities, contracting officials admitted that they did not actually conduct market research because this procurement is routinely awarded to the same contractor.
- A contract valued at \$9.8 million for database and system support services included a market research report in the contract file. The market research report stated that contracting officials relied on techniques such as historical acquisition information and personal knowledge in procuring supplies and services of this type. However, the contract file contained no supporting documentation to confirm that contracting officials used these techniques to conduct market research. In addition, the contracting officer that awarded the contract is no longer employed at the Bureau and the contracting officials that inherited the contract file could not provide supporting documentation that substantiated the narrative contained in the file.

Insufficient market research could result in contracting personnel not making an informed decision—such as verifying if a proposed contractor is the only available or capable source—which could lead to questionable or inappropriate noncompetitive awards. Accordingly, the Bureau may not have received the best possible value on the services acquired for these 19 contracts, which had a total value of about \$46.7 million. To estimate a potential savings rate from using competitive rather than noncompetitive procedures, we analyzed government-wide studies identified during the audit. A 2014

⁹ FAR § 10.002(b)(1) and CAM 1307.1 § 1.6.

¹⁰ FAR § 6.303-2(b)(8).

¹¹ Contracting officials provided a summary of the market research techniques conducted in the Market Research Report, Acquisition Plan or the Sole Source Justification documents.

study indicates that using competitive rather than noncompetitive procedures to award contracts may result in estimated average savings rate of 20 percent.¹² Based on the 19 noncompetitive contracts value of approximately \$46.7 million, we estimate the Bureau could have potentially saved 20 percent in acquisition costs, approximately \$9.3 million, which the OIG considers to be questioned costs (see appendix C).

C. Price reasonableness determination documentation was missing or lacked rationale

Price reasonableness determinations, such as cost or price analyses, are important for acquisition planning because they provide an estimate of how much the Bureau could reasonably expect to pay for needed supplies or services. The FAR and CAM require that contracting personnel make price-reasonableness determinations prior to a noncompetitive award in the absence of adequate price competition.¹³ The CAM¹⁴ requires that contracting personnel ensure fair and reasonable pricing by obtaining the information and data needed, consistent with FAR subpart 15.4. In addition, FAR section 4.803¹⁵ provides examples of the records normally kept in the contract files. These records include the cost or price analysis.

We found that price reasonableness was not adequately determined in 18 of the 28 contracts reviewed. This occurred because contracting officials did not retain essential documentation, such as the methodology used to develop the analysis or documented sources for supporting information, as part of the contract file to support the price reasonableness determinations. Examples follow:

- For a contract valued at approximately \$4.3 million for expert advisory services, contracting officials explained in the sole source justification that the final price would be determined fair and reasonable by conducting a cost analysis in compliance with FAR subpart 15.4. However, we found that contracting officials prepared the *IGCE* for a total cost estimate of \$4,299,833, which is the exact same amount as the contractor's proposal. In addition, a memo in the file, prepared by a contracting official, also disclosed that the cost proposal was evaluated and determined to be in line with the *IGCE* but contracting officials could not provide certified cost pricing data and documentation that supported the cost analysis.
- For a contract valued at about \$1 million for server support services, contracting officials explained in the justification document the final contract price was determined to be fair and reasonable because of the price analysis that was conducted. To determine price reasonableness, the justification document stated that contracting officials compared available historical data from the preceding contract and reviewed the anticipated level of effort. However, the contract file

¹² Healy, P.A., et al., September 2014. *The Value of Competitive Contracting*. Monterey, CA: Naval Postgraduate School.

¹³ FAR §§ 15.402(a) and 6.303-2; CAM 1316.1 § 3.4(e) and 1306.70 § 3.2.

¹⁴ CAM 1316.1 § 3.4(e).

¹⁵ FAR § 4.803.

did not contain documentation that confirmed the cost analysis was actually performed. The original contracting officer is no longer a Bureau employee and contracting officials were unable to explain why the costs analysis documentation was not in the file.

As a result, the Bureau was unable to demonstrate that prices paid were reasonable and potentially paid more than it should have for services. In total, we were unable to verify the Bureau's price reasonableness determination decisions involving approximately \$27.9 million in contract prices.

D. Sole source justifications were missing required content

When limiting competition, the FAR¹⁶ requires federal agencies to justify the decision in writing. FAR section 6.303-2 prescribes the contents that should be included in the justification document, including 15 required elements (appendix D lists the required elements). The FAR also requires the contracting officer to finalize the justification document before negotiating and awarding a sole source contract. Written sole source justifications were required for 24¹⁷ of the 28 contracts reviewed; however the justifications for 20 contracts did not contain all the required elements such as

- a statement of actions the agency may take to remove any barriers to competition before any subsequent acquisition (13 occurrences);
- a description of efforts made to ensure that offers are solicited from as many potential sources as is practicable (5 occurrences);
- a listing of the sources that expressed, in writing, an interest in the acquisition (3 occurrences); and
- the contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief (7 occurrences).

These elements were missing because contracting officials told us that not all elements were required for a written sole source justification. Justification documents establish the case for limiting competition and therefore should be comprehensive. If the documents do not contain all required elements, the rationale for awarding sole source contracts is incomplete and may not support the sole source award.

E. Justifications did not have proper approval authority

The FAR¹⁸ and CAM¹⁹ require approvals of justifications at various levels of authority based on the dollar value of the contract as shown below in table I.

¹⁶ FAR § 6.303-2.

¹⁷ The other 4 contracts were exempt because FAR § 6.302-5(c)(2)(ii) exempts contracts awarded when a statute expressly requires that the procurement be made from a specific source, which under FAR § 6.302-5(b)(2) includes qualified nonprofit agencies for the blind or other severely disabled.

¹⁸ FAR § 6.304.

Table I. Contract Limits and Required Approval Authority

Contract Amount	Required Approval Authority
Less than \$650,000	Contracting officer
Over \$650,000 but less than \$12.5 million	Advocate for competition
Over \$12.5 million but less than \$62.5 million	Head of procuring activity or designee above GS-15
Over \$62.5 million	Senior procurement executive

Source: FAR § 6.304.

We found that justifications for 13 of the 24 contracts were not signed or approved at the appropriate levels required by the FAR. Four of these 13 justifications were for procurements less than \$650,000 and should have contained the contracting officer certifications that the justification is accurate and complete to the best of the contracting officer's knowledge and belief. For example, a contract valued at \$540,000, for access to medical claims data software, was awarded without an approved justification. The justification should have been certified by the contracting officer. Since the original contracting officer was no longer employed at the Bureau, contracting officials could not explain why no certification was provided.

The 9 remaining justifications were for procurements valued at over \$650,000 and should have been approved by the competition advocate. One example of this is for a contract valued at approximately \$2.2 million for the creation of an information technology architectural system located at the National Processing Center (NPC), the contracting officer, instead of the competition advocate, approved the justification. According to Bureau contracting officials, the Department of Commerce Office of Acquisition Management (DOC OAM) did not require the competition advocate's signature for contracts awarded at NPC. However, a subsequent discussion with the DOC OAM officials confirmed that the competition advocate should have signed the justification. Without the required approvals for the justifications, the Bureau increases the risk that inappropriate noncompetitive procurements are awarded.

F. There was insufficient evidence of contract review board decisions

In May 2009, the Bureau issued a policy memorandum establishing the CRB to ensure that acquisitions were accomplished in the most effective, economical, and timely manner while complying with applicable laws, regulations, policies and procedures. Originally, the policy memo required CRB reviews be conducted on contract actions greater than \$500,000. However, in May 2015, the Bureau updated its CRB policy requiring review of all noncompetitive contracts regardless of the dollar value. In addition, the policy requires contracting officials to place the original CRB documentation in the contract file which includes the completed and signed contract review board form (see appendix E).

¹⁹ CAM 1306.70 § 1.5.5.

We found that 13 of the 28 contract files reviewed either did not contain evidence that CRB reviews were conducted or CRB recommendations were addressed prior to awarding noncompetitive contracts. For example, the contract file for a contract awarded at NPC for network expert consultant, valued at \$599,990 did not contain any evidence of CRB documentation. When asked why the contract file did not contain any CRB documentation, the Bureau's acquisition management at Headquarters informed us that CRB reviews were only being conducted at Headquarters. However, this contradicts the CRB policy that states CRB reviews apply to all procurement actions originating at the Bureau's headquarters and NPC. Without effective oversight of the CRB review process, the Bureau may not award contracts in the most effective, economical, and timely manner—thus negating the intent of the added management control.

II. Contract Files Were Not Properly Maintained

Contracting officials did not follow government-established best practices for maintaining comprehensive contract files. We found 24 out of 28 contract files lacked key documentation such as acquisition plans, market research, and price determination documents. The FAR²⁰ requires that documentation in contract files be sufficient to constitute a complete history of the contract transactions to provide a complete background as a basis for informed decisions at each step in the acquisition process, support actions taken, provide information for reviews and investigations, and furnish essential facts in the event of litigation or congressional inquiries. In addition, FAR section 4.803 provides examples of records normally contained in the contract files. The need for well-maintained and complete contract files is important, not only for day-to-day contract administration but also for when the Department experiences turnover with its contracting staff. Complete contract files help ensure proper transfer of responsibilities among staff and continuity of operations. Missing documentation indicates questionable contract management and oversight practices.

Recommendations

We recommend that the Bureau's Chief, Acquisition Division

1. strengthen controls to enforce FAR and CAM documentation policies and procedures for planning and justifying other than full and open competition acquisitions;
2. reemphasize to contracting officers the requirement to adequately justify sole source procurements when using the only one responsible source and unusual and compelling urgency statutory authorities in accordance with FAR requirements;
3. require contracting officers to maintain supporting documentation in the contract file describing the specific steps taken during market research and the results of the market research conducted;

²⁰ FAR § 4.801(b).

4. require contracting officers to retain, as part of the contract file, all supporting documentation used to establish price reasonableness determinations;
5. require contracting officers to ensure that sole source justification documents are approved at the appropriate level and that the justification documents include all elements as required by the FAR;
6. enforce current policies and procedures regarding the CRB process to include maintaining evidence of board meetings, decisions and outcomes;
7. clarify how contracting officers should address and document OGC's comments on non-competitive contracts;
8. improve controls to properly maintain and safeguard contract files; and
9. ensure training is provided for contracting personnel to correct identified deficiencies.

Summary of Agency Response and OIG Comments

In responding to our draft report, the Bureau concurred with all of our recommendations. We are encouraged that steps have already been initiated to address our recommendations, and we look forward to the bureau's action plan that will provide details on the corrective actions to be taken. See appendix F for the complete response. In it, the Bureau also provided technical comments and suggested revisions to our report, which have been addressed in the report as appropriate. Despite concurring with our recommendations, the Bureau raised several concerns about our findings:

1. The Bureau noted that 20 of the 28 (71 percent) of the contracts identified in the report utilized a fixed-price contracting type and that it avoided the use of "high risk" time and materials (T&M) contracts unless it was determined that no other contract type was suitable. However, our audit did not focus on the contract type, but instead addressed whether the Bureau properly awarded noncompetitive contracts. Noncompetitive contracts can apply to all types of contracts, whether they are T&M, cost reimbursable, or fixed price.
2. The Bureau noted that the FAR and the CAM do not specify how the contracting officers are to perform the market research, and leave it to the Contracting Officers' discretion to determine the proportion, complexity and appropriateness of the market research. Therefore, the Bureau contends that as long as market research was conducted and documented in the file that it was not in violation of any CAM policy or FAR regulation. The Bureau also noted that neither the FAR, nor the CAM, define a standard for "adequate" or "sufficient." We note that the FAR does define "adequate evidence" as information sufficient to support the reasonable belief that a particular act or omission has occurred.²¹ We agree with the Bureau that FAR and the CAM leave it to the contracting officers' discretion to determine the proportion, complexity and appropriateness of the market research. Our report also makes reference to that fact. However, as noted in our report, we found that although market research was mentioned or summarized in the files, the contracting officials could not provide documentation supporting that market research was performed. Also, as stated in our report, the Government Accountability Office reported in October 2014 that documenting market research is an important step to help others understand how the acquisition team collected and analyzed market information.
3. The Bureau acknowledged that a copy of the CRB decision may not have been in the individual contract file; however, they stated that copies of all CRB decisions were maintained by the Assistant Division Chief of Acquisitions Division. We appreciate the Bureau's acknowledgement that CRB decisions were not always in the individual contract files in accordance with the internal policy. Nevertheless, FAR subpart 4.8 states that sufficient documentation must be maintained in the contract files in order to

²¹ FAR subpart 2.101.

keep a complete history of the transaction for a variety of reasons, including providing a complete background as a basis for informed decisions at each step in the acquisition process. Additionally, CRB policy requires contracting officials to place the original CRB documentation in the contract file. Documenting decisions provides support for actions taken, provides essential facts in the event of litigation, and serves as proof of management's due diligence as stewards of taxpayers' money. Furthermore, we followed up in writing on several occasions requesting contracting officials to provide us copies of CRB documentation. Ultimately, as noted in our report, for 13 of the 28 contracts we reviewed, contracting personnel did not provide evidence that CRB reviews were conducted or CRB recommendations were addressed prior to awarding noncompetitive contracts.

4. The Bureau asserted that OIG used a flawed methodology to calculate a "questioned cost" based on the total award value of the 19 contracts. The Bureau provided the following reasons as to why it believe the methodology was flawed:
 - a. The OIG chose to utilize the "average cost savings" identified in a Naval Post Graduate School thesis paper as opposed to the more specific estimated cost savings for commodities (35 percent) or services (17 percent).
 - b. It is based on a standard market research not present in the FAR or CAM to determine that the market research was "inadequate" or "not sufficient."
 - c. It substitutes the judgement of the auditor that these actions could have been competed when it had already been determined by Census Bureau Subject Matter Experts and Contracting personnel that it was not possible to compete these actions.
 - d. It is based on a thesis paper that focused exclusively on the analysis of "full and open competitive information technology contracts."

We acknowledge that the thesis paper showed commodities yielded a higher cost savings than services; however, the thesis paper concluded that the federal government achieves an average of a 20 percent cost savings for competed contracts. Ultimately, the thesis paper's team concluded that mandating and expecting organizations to average a 20 percent cost savings through competition is a reasonable and realistic goal. We are in agreement with the thesis paper's conclusions; therefore, we stand behind the methodology used.

Additionally, market research serves several purposes, such as identifying sources capable of meeting the government's need and promoting competition. As noted in our report, contracting officials could not provide documentation supporting that market research was performed. Insufficient market research could result in questionable or inappropriate noncompetitive awards.

5. The Bureau asserted that the sample reviewed by the OIG only included one contract that was subject to a revised CRB policy that was issued on May 8, 2015. We disagree

with the Bureau that the sample included only one contract that was subject to the revised CRB policy. Of the 28 contracts we reviewed, 5 contracts were subject to the provisions of the revised CRB policy. We found that the contract files for four of the five contracts did not contain evidence that CRB reviews were conducted and the remaining contract file did not contain the supporting documentation associated with the CRB decision.

Appendix A: Objectives, Scope, and Methodology

The objective of our audit was to determine whether the Bureau's contracting personnel properly awarded noncompetitive contracts. To accomplish our objective, we:

- *Evaluated the Bureau's practices against relevant policies and guidance, including OMB and OFPP memoranda, the FAR, the CAM, and Bureau policies and procedures to ensure effective justification and approval of noncompetitive contracts.*
- *Identified the total number of contracts and net obligations reported as noncompetitive contracts for FY 2014 and the third-quarter of FY 2015 using the Federal Procurement Data System–Next Generation (FPDS–NG). The net obligations for 159 noncompetitive contracts were \$53.6 million.*
- *Judgmentally selected a sample of 34 contracts from a total population of 159 noncompetitive contracts. Of the 34, we reviewed 28 contracts with total negotiated contract value of approximately \$63.4 million. We could not review 6 stand-alone contracts because they were miscoded in FPDS-NG as noncompetitive contracts.*
- *Tested the reliability of FPDS-NG data by comparing information from the contract file with information gained in interviewing contracting officials. Although prior GAO and OIG reports noted problems with data quality in FPDS-NG, we found the data sufficient for generalizing issues found in the contracts we reviewed.*
- *Reviewed acquisition documentation. This included contract award documents; acquisition plans; market research; sole source justifications; price determination documents; and training, certification and appointment requirements for contracting personnel.*

Further, we obtained an understanding of the internal controls used to award non-competitive contracts by interviewing the acquisition personnel at the Bureau. While we identified and reported on internal control deficiencies; any appearance of illegal acts, violations or abuse were reported to the Department of Commerce OIG Office of Investigations for further investigation. We identified weaknesses in the controls related to the processes and procedures used to award non-competitive contracts. We relied on computer-processed data from the FPDS-NG to perform this audit. We conducted the audit fieldwork between September 2015 and May 2017. We conducted our fieldwork at the U.S. Census Bureau Headquarters in Suitland, Maryland, and the National Processing Center in Jeffersonville, Indiana. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our work under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organizational Order 10-13, dated April 26, 2013.

Appendix B: Summary of Findings by Contract

Contract No.		Contract Type	Specific Product or Service	Total Award Amount	Market Research Not Sufficient	Price Determination Not sufficient	Justifications Did Not Have Proper Approval Authority	Justifications Missing Content
1	YB132314 CN0021	Firm Fixed Price	Creation of System Development Life Cycle Architectural	\$2,190,000	x		x	x
2	YA132315 NC0037	Cost Plus Fixed Fee	Enterprise Transformation and Integration Services	9,634,420	x	x		x
3	YA132312 CN0037	Firm Fixed Price	Educational Services in Survey Methodology	12,956,076	x		x	
4	YA132311 CN0034	Firm Fixed Price	Support databases from Oracle technologies	9,887,621	x			x
5	YA132312 CN0021	Time and Material	Transportation subsidies	3,821,939	x		x	
6	YA132313 CN0011	Firm Fixed Price	Access to database of personal identifiable information	2,824,000			x	x
7	YA132314 CN0033	Cost Reimbursement	Independent review by statistical and methodological experts	4,300,000		x	x	x
8	YA132314 CN0034	Time and Material	Surveyor Instrument Design Support	4,229,208		x	x	x
9	YA132314 CN0008	Time and Material	Server support services	1,039,494		x	x	x
10	YA132313 CN0017	Time and Material	Support for software maintenance	1,706,250	x	x	x	x
11	YA132314 CQ0003	Firm Fixed Price	Mailroom support services	1,917,470		x		
12	YA132310 CN0034	Labor Hour	Expert advice and technical assistance	1,554,899	x	x	x	x
13	YA132314 CN0002	Firm Fixed Price	Child Development Center	800,000	x	x		x
14	YA132114 CN0014	Firm Fixed Price	Access to medical claims data software	540,000	x	x	x	x
15	YA132113 CN0009	Firm Fixed Price	Automotive Statistical Data	534,300	x	x	x	x
16	YA132314 SE0050	Firm Fixed Price	Training materials	147,056	x	x	x	x
17	YA132315 CN0015	Firm Fixed Price	Advisory service	70,700	x	x		x
18	YA132315 SE0119	Firm Fixed Price	Research in current population survey	65,248		x	x	x

Contract No.	Contract Type	Specific Product or Service	Total Award Amount	Market Research Not Sufficient	Price Determination Not sufficient	Justifications Did Not Have Proper Approval Authority	Justifications Missing Content	
19	YA132309 CN0091	Time and Material	Survey training packets	600,463	x	x	x	
20	YA132309 CQ0005	Firm Fixed Price	Mailroom services	2,277,501				
21	YA132314 SE0223	Firm Fixed Price	Copy of 836 death certificates	12,540				
22	YA132310 CN0050	Firm Fixed Price	2010 DVD Software	1,395,000	x			
23	YB132314 CN0009	Firm Fixed Price	Grounds Maintenance Service	99,789	x			
24	YB132314 CN0011	Firm Fixed Price	Refurbish seven print heads	17,524	x	x	x	
25	YB132314 CN0022	Firm Fixed Price	Architecture bundle	63,126	x	x	x	
26	YB132314 SE0091	Firm Fixed Price	Technical assistance	4,800			x	
27	YB132315 CN0013	Firm Fixed Price	Grounds Maintenance Service	124,383	x	x		
28	YB132315 CN0014	Firm Fixed Price	Network expert/specialist consultant	599,990	x	x	x	
			Totals	\$63,413,797	19	18	13	20

Source: OIG review of contract files.

Appendix C: Potential Monetary Benefits

	Questioned Costs	Unsupported Costs	Funds to Be Put to Better Use
Finding I.B	\$9,348,707		

Appendix D: Sole Source Justification Required Content

	Required Content Elements
1	Name of the agency and contracting activity
2	Document identified as “Justification for other than full and open competition”
3	Nature and/or description of the action being approved
4	Description of the supplies or services required to meet the agency’s needs
5	The estimated value of the contract action
6	Statutory authority permitting other than full and open competition
7	Demonstration of the proposed contractor’s unique qualifications (i.e. resume, or reason clearly documented in the file)
8	Description of efforts made to ensure that offers are solicited from potential sources
9	Notice publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR section 5.202 applies
10	Determination by the contracting officer that the anticipated cost to the government will be fair and reasonable
11	Description of the market research conducted and the results or a statement of the reason market research was not conducted
12	Any other facts supporting the use of other than full and open competition
13	A listing of the sources, if any, that expressed, in writing, an interest in the acquisition
14	A statement of the actions, if any, the agency may take to remove any barriers to competition before any subsequent acquisition
15	Contracting officer certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief

Source: FAR § 6.303-2.

Appendix E: Contract Review Board Form

Attachment A Case Number: _____

**Contract Review Board
Review Form**

Requisition # _____ RFP/Contract # _____
 Requisitioner _____ Ready Date of Requisition _____
 Program Office _____
 Requisition Dollar Amount _____
 Date Requisition Received _____
 Award Amount _____
 Contract Term _____

Action Type: Acquisition Plan Solicitation
 Award Modification
 Claim/Dispute CO Final Decision Delivery/Task Order
 Termination Unusual/Sensitive Situation
 Contract Administration Review

Competitive? Yes No
 Set Aside: 100% Small Business 8(a) Unrestricted
 Award Based on: Low Price Best Value Other (describe) _____

Contract Type: _____
 Proposed Awardee: _____
 Delivery Requirements: _____
 Comments: _____

 Contract Specialist's Signature & Date Concur: _____
 Contracting Officer's Signature & Date

 Board Member's Signature & Date Board Member's Signature & Date

 Board Member's Signature & Date Board Member's Signature & Date

Approved Date: _____ Disapproved Date: _____
 Conditional Approval Date: _____

Comments: Recommended Mandatory

Disposition comments may be documented on a separate attached sheet.

Appendix F: Agency Response



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

AUG 01 2017

MEMORANDUM FOR: Mark Zabarsky
Assistant Inspector General for Acquisition
and Special Program Audits

FROM: Ron S. Jarmin *RJ*
Performing the Non-Exclusive Functions
and Duties of the Director

SUBJECT: DRAFT AUDIT REPORT: Awarding of U.S. Census Bureau
Noncompetitive Contracts Did Not Consistently Follow Federal
Acquisition Regulations and Commerce Acquisition Policies

Thank you for the opportunity to submit comments to the Office of Inspector's General (OIG) draft report titled "Awarding of U.S. Census Bureau Noncompetitive Contracts Did Not Consistently Follow Federal Acquisition Regulations and Commerce Acquisition Policies." The U.S. Census Bureau respectfully requests that the OIG consider these comments as the report is finalized. Broadly, the Census Bureau would appreciate the opportunity to review the findings associated with all the contracts classified as non-compliant because the examples provided in the report do not provide sufficient detail to comment appropriately.

General Comments

The Census Bureau is committed to award and administer contract actions in accordance with all applicable Federal Acquisition Regulations (FAR) and U.S. Department of Commerce (DOC) policies. We are also committed to reducing the time and cost to acquire the goods and services that our programs require while utilizing the flexibilities allowed with the FAR.

While the draft report focuses on a sample of non-competitive contracts, we would also like to note that these contracts represent a small percentage of the actions that the Census Bureau awards on an annual basis. The Census Bureau is committed to utilizing competition to the maximum extent possible and has significantly increased the percentage of competed contracts from 63 percent in Fiscal Year (FY) 2014 to 84 percent in FY16 and will exceed 84 percent in FY17. In acquisitions where Census utilized noncompetitive contracting methods, the Census Bureau made the determination that it was the only option for satisfying the requirements. Accordingly, the Census Bureau will continue to utilize non-competitive contracting methods in accordance with all applicable regulations and policies when it is determined that it will result in efficiencies or support the mission of the Census Bureau.



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The Census Bureau also notes that 20 of the 28 (71 percent) of the contracts identified in the report utilized a fixed-price contracting type. In accordance with the FAR, and with Office of Management and Budget (OMB) and DOC guidance, the Census Bureau is avoiding the use of "high risk" time and materials (T&M) contracts unless it is determined that no other contract type is suitable.

Finally, we are pleased to report that we have already made many pro-active improvements since the fieldwork for this report began in September 2015.

Responses to Specific Findings & Appendices:

A. Statutory authorities incorrectly used to justify awarding noncompetitive contracts.

The Census Bureau cannot comment in detail on this finding at this time as the data presented in the draft report is not complete. Specifically, the text in section I.A of the draft report refers to a total of four contracts in this category, but only explicitly addresses two contracts. Appendix B did not include a column to identify the other two specific contracts with findings in this category.

B. Market research was not sufficient to support noncompetitive justification (resulting in approximately \$9.3 million in questioned costs).

The Census Bureau cannot comment in detail on this finding at this time as the data presented in the draft report was not complete. The draft report indicates this finding applies to 19 contracts; however, the text in section I.B only addresses 2 of the 19 contracts in detail. Appendix B does not provide any more granular information about the remaining 17 contracts in this category. For one of the two contracts addressed in the text of section I.B, it appears to the Census Bureau that the auditors have set a standard with respect to the adequacy and sufficiency of market research that does not appear in the FAR or the Commerce Acquisition Manual (CAM).

The Census Bureau agrees with the following statements in the draft report, "*The FAR and the CAM require Bureau contracting personnel to conduct market research that is proportionate to the complexity of the procurement and to document it appropriately. The FAR and CAM recommend techniques for conducting market research; however, they do not specify how the contracting officers are to perform these techniques and leave it to the contracting officers' discretion to determine the proportion, complexity, and appropriateness of the market research. The FAR states that sole source justifications must describe the market research conducted, and the results, or the reason market research was not conducted.*"

As noted in the excerpt above, the FAR and the CAM do not specify how the contracting officers are to perform the market research, and leave it to the Contracting Officers' discretion to determine the proportion, complexity and appropriateness of the market research. Therefore, the

Census Bureau contends that as long as market research was conducted and documented in the file that it was not in violation of any CAM policy or FAR regulation. Neither the FAR, nor the CAM, define a standard for “adequate” or “sufficient.”

Finally, the Census Bureau disagrees with the assertion of “\$9.3 million in questioned costs” in Section I.B and Appendix C of the report. Please see our detailed response below to Appendix C.

C. Price reasonableness determination documentation was missing or lacked rationale.

The Census Bureau cannot comment in detail on this finding at this time, as the data presented in the draft report is not complete and is inconsistent. The text in section I.C of the draft report states that this finding applied to 18 contracts, but only provides specifics for two contracts. Appendix B is inconsistent with the text in Section I.C and indicates this finding applies to 16 contracts. Further, the text in Section I.C of the contract only provides specifics for two contracts and Appendix B does not provide any more granular information about the remaining contracts in this category. The Census Bureau also notes that the text in the second bullet of Section I.C inconsistently refers to “cost analysis” and “price analysis.”

D. Sole source justifications were missing required content.

The Census Bureau cannot comment in detail on this finding at this time as the data presented in the draft report is not complete. The text in section I.D states that this finding applied to 20 contracts. However, Appendix B did not include a column to identify the specific contracts with findings in this category.

E. Justifications did not have proper approval authority.

The Census Bureau cannot comment in detail on this finding at this time as the data presented in the draft report is not complete. The text in section I.E of the draft report states that this finding applied to 13 contracts but only provides specifics for two contracts. Appendix B does not provide any more granular information about the remaining 11 contracts in this category.

F. There was insufficient evidence of contract review board decisions.

The Census Bureau cannot comment in detail on this finding at this time as the data presented in the draft report is not complete. The text in section I.F of the draft report states that this finding applied to 15 contracts, but Appendix B did not include a column to identify the specific contracts with findings in this category.

The Census Bureau requests that the title of the finding be changed to better describe the issue. While the Census Bureau acknowledges that a copy of the Contract Review Board (CRB) decision may not have been in the individual contract file, copies of all CRB decisions were maintained by the Assistant Division Chief of Acquisitions Division. In addition, this is an internal Census Bureau policy (not a FAR or a Commerce Acquisition Policy), and missing documentation of the contract review board decision in the contract file should not be included in a report titled *“Awarding of U.S. Census Bureau Noncompetitive Contracts Did Not Consistently Follow Federal Acquisition Regulations and Commerce Acquisition Policies - Draft Report”*.

Appendix A – Objectives, Scope and Methodology

The Census Bureau was unable to understand the methodology utilized to select the sample of contracts, and therefore, questions the final universe of contracts that the OIG reviewed. Specifically:

1. Appendix A states, *“Identified the total number of contracts and net obligations reported as noncompetitive contracts for FY 2014 and the third quarter of FY 2015 using the Federal Procurement Data System-Next Generation (FPDS-NG). The net obligations for 159 noncompetitive contracts were \$53.6 million.”* and *“Judgmentally selected a sample of 34 contracts from a total population of 104 contracts. Of the 34, we reviewed 28 contracts with a total negotiated contract value of approximately \$63.4 million. We could not review 6 stand-alone contracts because they were mis-coded in FPDS-NG as noncompetitive contracts.”*

It is unclear to the Census Bureau whether the total universe originally examined was 159 or 104, and the report does not explain this difference in the universe.

Appendix B – Summary of Findings by Contract

Appendix B is incomplete and does not agree with information contained in the text of the report. Specifically:

1. Section I of the draft report identifies six categories of findings while the table in Appendix B only includes three categories of findings. In some cases, the table in Appendix B includes contracts where there are no findings indicated (rows 20, 21 and 26).
2. The *“Price Determination Not sufficient”* column of the table in Appendix B includes indications (an “x”) for 16 contracts, and indicates a total of 16 occurrences at the bottom of the column in the table. However, Section I.C of the draft report states, *“We found that price reasonableness was not adequately determined in 18 of the 28 contracts reviewed.”*

Appendix C – Potential Monetary Benefits

Appendix C and section I.B of the report depict a “questioned cost” of \$9,348,707. Per the footnote on page 6 the draft report, the OIG bases this calculation on conclusions in a thesis paper written by three Ph.D. students at the Naval Post Graduate School. The thesis paper concluded an average of 20 percent could be saved by utilizing competition. The OIG then utilized this number (20 percent) to calculate a “questioned cost” based on the total award value of the 19 contracts where they determined that “*Contracting officials did not adequately document market research for identifying other potential qualified vendors....*” This methodology is flawed for several reasons:

1. It is based on a standard for market research not present in the FAR or CAM to determine that the market research was “inadequate” or “not sufficient”. The FAR requires that market research is conducted and documented; however, it does not define a “minimum level of detail” nor does it define “adequate” or “sufficient.” Per FAR PART 10.002(e) – “Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. While the Census Bureau acknowledges that several of the contracts in the sample were over the Simplified Acquisition Threshold of \$150k, the Census Bureau did not determine these to be “complex” requirements requiring voluminous documentation. Please refer to our comments about market research in the previous section of this document.
2. It substitutes the judgement of the auditor that these actions could have been competed when it had already been determined by Census Bureau Subject Matter Experts and Contracting personnel that it was not possible to compete these actions.
3. It is based on a thesis paper that focused exclusively on the analysis of “*full and open competitive information technology contracts...*” The thesis paper did not address non-information technology services or commodities or highly specialized support and advisory services. Only 9 of the 19 contracts identified by the OIG in this category were for information technology commodities or services. The remaining 10 were for non-information technology commodities, other highly specialized support, or advisory services.
4. The OIG chose to utilize the “average cost savings” identified in the thesis paper as opposed to the more specific estimated cost savings for commodities or services. The thesis paper concludes that savings were estimated to be 17 percent for services and 35 percent for commodities. Of the nine contracts in the sample that were for information technology commodities or services (the only contracts that can be validly compared to the thesis paper), four of them were for services with a total award amount of \$14,383,861 and five of them were for commodities

with a total award amount of \$2,549,950. While the Census Bureau maintains that these could not have been competed, and therefore, any estimation of theoretical cost savings is irrelevant, a 17 percent savings calculated against the four services contracts would be \$2,445,256 and a 35 percent savings calculated against the five commodities contracts would be \$892,483. This is a grand total theoretical savings of \$3,337,739.

The Census Bureau also requests that the OIG reconsider the use of the phrase “questioned costs” in Appendix C and Section I.B of the draft report. The Census Bureau contends that the use of a standard for market research not present in the FAR and CAM (“market research not sufficient”) and the broad application of the calculations in the thesis paper are not in alignment with the definition of questioned costs contained in OMB Circular A-133. At best, the Census Bureau believes these are “theoretical savings, assuming that competition was possible.”

Analysis of Recommendations and Draft Corrective Action

We look forward to providing a formal corrective action plan to the OIG after the publication of the report. In the meantime, we have already analyzed the recommendations where the detail was available in the draft report. We have begun to design and put in place corrective action as specified below.

Response to Recommendations

1. **OIG Recommendation:** Strengthen controls to enforce FAR and CAM documentation policies and procedures for planning and justifying other than full and open competition acquisitions.

Census Bureau Response: The Census Bureau agrees with this recommendation. The Census Bureau has already implemented corrective action by conducting an additional training session, developing a “quick reference guide” for Contracting Officers and Contracts Specialists to utilize, modified the CRB Policy to include a review of all justifications for other than full and open competition as required by FAR 6.303. The Census Bureau has also hired two senior resources that reside in the Acquisitions Systems and Policy Branch to support the day-to-day operational contracting officers and actively participate on the CRB. As the sample reviewed by the OIG only included one contract that was subject to a revised CRB policy that was issued on May 8, 2015, we have determined that we must further test the sufficiency of the revised policy. The Census Bureau’s Compliance Officer (supported by senior staff from the Acquisitions Systems and Policy Branch) will select and review a sample of contracts to ensure compliance with procedures for planning and justifying other than full and open competition acquisitions, and specifically, the CRB policy requirements for review of these acquisitions. Finally, the Census Bureau will conduct annual training on CRB policy and procedures for all acquisition personnel in headquarters and the National Processing Center. The most recent training took place on April 6, 2017.

2. **OIG Recommendation – Reemphasize to contracting officers the requirement to adequately justify sole source procurements when using the only one responsible source and unusual and compelling urgency statutory authorities in accordance with FAR requirements.**

Census Bureau Response: The Census Bureau agrees with this recommendation and has already emphasized this in a supplemental training session. Additionally, all justifications for other than full and open competition as required by FAR 6.303 are required to come before the CRB.

3. **Recommendation – Require contracting officers to maintain supporting documentation in the contract file describing the specific steps taken during market research and the results of the market research conducted.**

Census Bureau Response: The Census Bureau agrees with the recommendation in general, but notes that the FAR requires that: “Agencies shall – conduct market research appropriate to the circumstances” and that “agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.” However, neither the FAR nor the CAM include explicit standard or requirements on the level of detail that must be documented in a market research report. Therefore, the level of detail and volume of information included in the market research report is at the discretion of the Contracting Officer and may vary significantly from action to action. Nevertheless, the CCRB is also applying additional scrutiny to the market research documentation for actions utilizing other than full and open competition.

4. **OIG Recommendation – Require contracting officers to retain, as part of the contract file, all supporting documentation used to establish price reasonableness determinations.**

Census Bureau Response: The Census Bureau agrees with this recommendation, and is planning to develop materials and conduct a training session for all acquisitions staff on establishing and documenting price reasonableness. The Census Bureau will ensure that the materials and training include clear guidelines relating to the use and applicability of certified cost and pricing data.

5. **OIG Recommendation – Require contracting officers to ensure that sole source justification documents are approved at the appropriate level and that the justification documents include all elements as required by the FAR.**

Census Bureau Response: The Census Bureau agrees with the recommendation. The CRB is now reviewing all justifications for other than full and open competition as required by FAR 6.303, and is ensuring that approvals and mandatory elements are in accordance with DOC and FAR requirements.

6. **OIG Recommendation – Enforce current policies and procedures regarding the CRB process to include maintaining evidence of board meetings, decisions and outcomes.**

Census Bureau Response: The Census Bureau agrees with this recommendation. The Census Bureau has modified the CRB policy to include a review of all justifications for other than full and open competition as required by FAR 6.303. The Census Bureau has also implemented an on-line repository where documentation submitted to the CRB, as well as, decisions and recommendations from the CRB are stored. Additionally, the Census Bureau has assigned an administrative support staff member to ensure that documentation is maintained within the new repository.

7. **OIG Recommendation – Clarify how contracting officers should address and document OGC's comments on non-competitive contracts.**

Census Bureau Response: The Census Bureau agrees with the recommendation, but notes that not all comments provided by OGC require action or modifications to justifications or other documents related to non-competitive contracts. Therefore, the Census Bureau is currently evaluating options for ensuring that OGC's comments on non-competitive contracts are addressed and documented appropriately.

8. **OIG Recommendation: Improve controls to properly maintain and safeguard contract files.**

Census Bureau Response: The Census Bureau agrees with this recommendation. The Acquisitions Systems and Policy Branch within the Acquisitions Division is developing an internal process for reviewing contract files at a regular interval to ensure they are maintained appropriately. Additionally, the Census Bureau is reviewing the practices of our Contracting Officers and Contract Specialists with the goal of identifying best practices and standardizing the approach for the electronic storage of documents.

9. **OIG Recommendation – Ensure training is provided for contracting personnel to correct identified deficiencies.**

Census Bureau Response: The Census Bureau agrees with this recommendation. The Census Bureau has already conducted an additional training session for all staff in the Acquisitions Division for actions that involve other than full and open competition. Additionally, the Acquisitions Division is in the process of revising their internal website and developing additional training materials to ensure that information is available and accessible to both contracting and program area personnel.

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