

Office of Inspector General
U.S. Government Accountability Office

Non-Competed Contracts

Actions Are Needed to Improve Internal Control

September 2020
OIG-20-2



Office of Inspector General U.S. Government Accountability Office Report Highlights

September 18, 2020

NON-COMPETED CONTRACTS

Actions Are Needed to Improve Internal Control

Objective

This report assesses the extent to which GAO maintained adequate internal control over non-competed contracts.

What OIG Found

While federal statute and acquisition regulations generally require that contracts be awarded on the basis of competition, they also permit federal agencies to award non-competed contracts in certain circumstances. GAO has generally established policy and procedures to promote and provide for competition in accordance with the Federal Acquisition Regulation (FAR) when awarding contracts. However; GAO needs to define, document and fully implement the roles and responsibilities for the Competition Advocate and the Senior Procurement Executive. We identified errors in competition data recorded by GAO in the Federal Procurement Data System-Next Generation (FPDS-NG) and found instances where contract documentation did not demonstrate the performance of key control activities. Gaps in policy and procedures led to deficiencies in acquisition planning documentation, and in publicizing non-competed contract justifications. Insufficient monitoring resulted in missing documentation to support price reviews of contractors' proposals—including one contract where GAO could not provide evidence to support that it did not overpay \$181,500 for equipment, incomplete offering letters to the Small Business Administration (SBA) under the 8(a) program, and missing Recommendations for Awards. These deficiencies increase the risk of GAO not receiving the best value for contracted goods and services.

What OIG Recommends

OIG is making five recommendations related to the award of non-competitive contracts. GAO should (1) document the roles and responsibilities for the Competition Advocate and Senior Procurement Executive to address the required reviews and related annual reports; (2) incorporate GAO's contract competition data into its quality review process to help ensure that data reported into FPDS-NG is accurate; (3) update procurement standard operating procedures to document the requirements for acquisition plans and the publicizing of justifications for non-competition; (4) develop and implement steps to ensure that proposal price reviews are adequately performed and documented, Recommendation for Awards are completed and that GAO offering letters to SBA contain all the required information; and (5) follow-up on one contract we reviewed to confirm that required discounts were applied or that GAO was overcharged and seek reimbursement as appropriate. In its written comments, GAO did not state whether it concurred or did not concur with OIG recommendations. GAO indicated that it had completed corrective action for three recommendations, and considered no action necessary for the remaining two recommendations. When received, the OIG will review documentation supporting the agency's statement of actions taken in response to OIG recommendations, which GAO is required to submit within 60 calendar days of the report's issuance date.



O I G

Office of Inspector General

United States Government Accountability Office

September 18, 2020

To: Gene L. Dodaro
Comptroller General of the United States

From: Adam R. Trzeciak
Inspector General

Subject: Transmittal of Office of Inspector General's (OIG) Audit Report

Attached for your information is our report, *Non-Competed Contracts: Actions Are Needed to Improve Internal Control* (OIG-20-2). The audit objective was to assess the extent to which GAO maintained adequate internal control over non-competed contracts.

The report contains five recommendations related to the award of non-competed contracts. In its written comments, GAO did not state whether it concurred or did not concur with OIG recommendations. GAO stated that it had completed corrective action in response to three recommendations and considered no action necessary with regards to two recommendations. When received, the OIG will review documentation supporting the agency's statement of actions taken in response to OIG recommendations, which GAO is required to submit within 60 calendar days of the report's issuance date. Management comments are included in Appendix II of our report.

We are sending copies of this report to the other members of GAO's Executive Committee, GAO's Congressional Oversight Committees, GAO's Audit Advisory Committee, and other GAO managers, as appropriate. The report is also available at <https://www.gao.gov/ig/> and <https://www.oversight.gov/reports>.

If you have questions about this report, please contact me at (202) 512-5748 or trzeciaka@gao.gov.

Attachment

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Abbreviations

AMPO	Acquisition Management Procurement Operations
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
LBFMS	Legislative Branch Financial Management System
OIG	Office of Inspector General
RFA	Recommendation for Award
SBA	Small Business Administration
SOP	Standard Operating Procedures

Introduction

GAO spent over \$300 million dollars on contracting for goods and services from fiscal years 2015 through 2019. GAO follows federal statute and acquisition regulations generally requiring that contracts be awarded on the basis of full and open competition in order to achieve the best possible return on investment for federal agencies, and thereby taxpayers. However, federal agencies, including GAO, can award non-competed contracts in certain circumstances, including instances when only one responsible source, and no other supplies or services, will satisfy the agency requirement. Effective acquisition controls specific to the contracting process are critical to ensuring that non-competed contracts are achieving the best possible results for GAO and taxpayers.

Objective, Scope, and Methodology

This report assesses the extent to which GAO maintained adequate internal control over non-competed contracts. To achieve our audit objective, we identified GAO policy, procedures, and guidance related to contracts awarded non-competitively and compared them to applicable laws, regulations, and best practices to assess consistency and identify key controls. We interviewed the Acquisition Management Procurement Operations (AMPO) Director and the Controller/Deputy Chief Financial Officer (DCFO) to learn about their roles and responsibilities for the review and approval of non-competed contracts. To determine the extent to which GAO used non-competed contracts, we analyzed the government-wide Federal Procurement Data System-Next Generation (FPDS-NG) data from fiscal years 2015 through 2019. We calculated trends in GAO's use of non-competed contracts for that period. For the purposes of our report, we are considering non-competed contracts as those reported by GAO into FPDS-NG as "not competed," "not available for competition," "not competed under simplified acquisition procedures," "non-competitive delivery order," "follow on to competed action" and all orders coded as an exception to "subject to fair opportunity."

To assess the reliability of the competition data, we looked at contracts recorded by GAO in FPDS-NG for fiscal years 2018 and 2019, with a total contract value over \$150,000. We reviewed all non-competed contracts and a selected sample of competed contracts meeting those criteria. We assessed the reliability of our test population, and determined that the data was sufficiently reliable for the purposes of our review.

To assess key controls, we selected and reviewed the contract documentation for all non-competed contracts and included an additional non-competed contract from fiscal year 2017, based on a related concern reported to our office, and our risk assessment. Additional information on our scope and methodology is presented in appendix I.

We conducted this performance audit from July 2019 through September 2020 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Background

According to FPDS-NG, GAO expended over \$300 million on contracts during fiscal years 2015 through 2019. Approximately 81 percent of these contract funds were associated with competed contracts, and 19 percent with non-competed contracts. The Federal Acquisition Regulation (FAR) and GAO's internal control process guide contract acquisitions through a series of steps, such as acquisition planning and market research, and additional provisions designed to ensure that non-competed contracts are adequately planned and justified.

The FAR contains rules, standards, and requirements related to the acquisition of goods and services by a federal agency through the use of appropriated funds. As a legislative branch agency, GAO is not required to follow the FAR. However, as a matter of policy, GAO has indicated that it generally follows the FAR. GAO's acquisition policy, processes, and procedures are outlined in several documents, including its Order 0625.1, Government Accountability Office Procurement Guidelines, and the Financial Management and Business Operations, Acquisition Management / Procurement Operations Standard Operating Procedures (AMPO SOP). It is GAO policy to promote and provide for competition in accordance with the FAR when soliciting offers and awarding contracts.

Competition is a critical tool for achieving the best possible return on investment for agencies and thereby taxpayers. Contracts awarded competitively ensure that all responsible sources—or prospective contractors that meet certain criteria—are permitted to submit proposals. The use of competition in contracting can help save money, improve contractor performance, curb fraud, and promote accountability for results. While federal statute and acquisition regulations generally require that contracts be awarded on the basis of competition, they also permit federal agencies to award non-competed contracts in certain circumstances, such as: when products or services required by the agency are available from only one source; when disclosure of the agency's need would compromise national security; or when the need for products and services is of such an unusual and compelling urgency that the federal government faces the risk of serious financial or other injury. GAO policy states that when awarding a contract based on competition is not possible, the procedures in FAR Part 6, *Competition Requirements*, for other than full and open competition are to be used.

For non-competed contracts, the documented acquisition plan and market research memo should include evidence that competition was sought to the maximum extent practicable. The acquisition plan should also cite the authority under which the contract is exempt from competition, and discuss why competition cannot be realized.

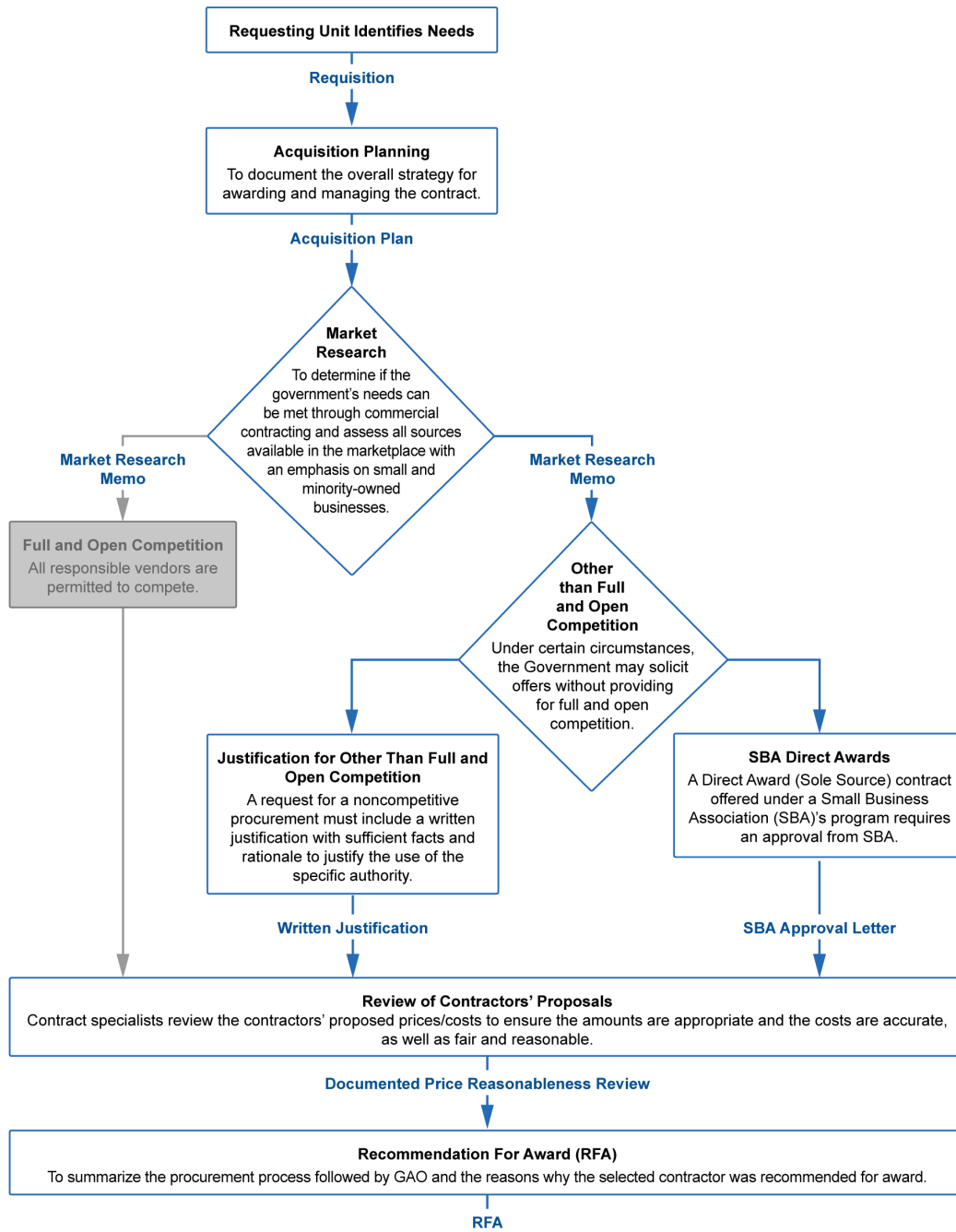
Generally, non-competed contracts must be supported by written justifications that contain sufficient facts and rationale for using the specific exception to full and open competition that is being applied to the contract procurement. The FAR requires these justifications to be publicized on the Government Point of Entry (GPE) for transparency purposes.¹ The FAR exempts contracts less than or equal to \$22 million awarded under the Small Business Administration (SBA) Section 8(a) Business Development program from a

¹Government wide point of entry (GPE)" is the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE was located at the Federal Business Opportunities (FBO) website (www.fbo.gov). Effective November 12, 2019, the FBO website moved to Beta.SAM.gov.

written justification. However, as required by FAR and GAO's Partnership Agreement with SBA, GAO is required to obtain an authorization from SBA for non-competed contracts awarded through the 8(a) program.

For all contracts, after proposals are received from contractors, GAO reviews them to ensure that the proposed price is reasonable. When contracts are competed, GAO can leverage the market in determining the reasonableness of the price proposed by contractors. However, when contracts are not competed, GAO cannot rely on the market as part of its price reasonableness determination, and therefore has to perform a more in-depth review of the contractor's proposal to obtain that assurance. At the end of the award process, GAO's Recommendation for Award (RFA) documents all business decisions and rationale leading to the contract award, including whether the contract was competed, and the process followed for soliciting and reviewing proposals. Figure 1 on the following page describes GAO's internal control process for awarding contracts and ensuring compliance with management directives and federal requirements.

Figure 1: GAO’s Internal Control Process for Contract Awards



Source: OIG analysis of the FAR and GAO acquisition policy and procedures. | OIG-20-02

After awarding a contract, GAO reports its contract data to FPDS-NG. FPDS-NG is the central repository for U.S. government procurement data, and provides public access to unclassified federal award data. Executive agencies are required to submit detailed contract information to FPDS-NG for contract actions over the micro-purchase threshold.² Although not required to do so, GAO reports its contract data into FPDS-NG, as a matter

²GAO’s micro-purchase threshold at the time of this audit was \$3,500.

of policy. FPDS-NG includes information about the product or service, agency and vendor, contract start and estimated completion dates, and location of performance, among other elements. It also includes multiple fields pertaining to the various aspects of competition, including “Extent Competed.”

The FAR describes some key monitoring positions specific to federal agency acquisitions to help ensure compliance with related laws, regulations, policies and procedures. For example, the FAR states that the agency’s Senior Procurement Executive is responsible for managing the acquisition system, including implementation of the acquisition policies, regulations, and standards. In coordination with the head of the contracting activity, the Senior Procurement Executive is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS-NG, and provides leadership in monitoring the agency’s compliance with the contract competition requirements.

The FAR also requires each agency head to designate a Competition Advocate, to promote contract competition, and identify and address obstacles to competition. The Competition Advocate is responsible for challenging barriers to competition such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses. According to the FAR, the Competition Advocate is to review the contract operations of the agency and report to the Senior Procurement Executive on an annual basis regarding the challenges identified and actions taken to increase the use of full and open competition in the contracting operations.

Actions Are Needed to Improve Internal Control for Non-Competed Contracts

GAO has generally established policy and procedures to promote and provide for competition in accordance with the FAR when soliciting offers and awarding contracts. However, GAO needs to define, document and fully implement the roles and responsibilities for the Senior Procurement Executive and Competition Advocate. Further, we identified errors in the competition data recorded by GAO in FPDS-NG. In addition, we found instances where contract documentation did not demonstrate the performance of key control activities. Gaps in policy and procedures led to deficiencies in acquisition planning documentation, and in publicizing non-competed contract justifications. Insufficient monitoring resulted in missing documentation to support price reviews of contractors’ proposals, incomplete offering letters to the SBA under the 8(a) Business Development program, and missing Recommendations for Awards. These deficiencies increase the risk of GAO not receiving the best value for contracted goods and services.

Essential Responsibilities for Two Key Roles Need to be Defined, Documented, and Implemented

Adequate monitoring is key to ensuring that GAO complies with laws and regulations in promoting the use of competition, and in reviewing and approving the use of non-competitive approaches when competition is not possible. The FAR requires each agency head to designate a Competition Advocate to promote competition and challenge barriers to competition. The intent of the FAR is for the Competition Advocate to identify obstacles to competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses. As part of these oversight activities, the Competition Advocate reviews the contract operations of the agency and reports to the

Senior Procurement Executive on an annual basis regarding the challenges identified and actions taken to increase the use of competition in the contracting operations. The Senior Procurement Executive should be responsible for managing the acquisition system, including implementation of the acquisition policies, regulations, and standards. These two key roles—Competition Advocate and Senior Procurement Executive—are to be segregated according the FAR.³

GAO's documented policy and procedures do not address the respective roles and responsibilities for the Competition Advocate and Senior Procurement Executive. Further, GAO officials indicated that the Controller/DCFO is serving as both the Competition Advocate and Senior Procurement Executive.⁴ GAO's Controller/DCFO, told us that, in his role as Competition Advocate, he reviews and approves the justification requests for non-competed contracts following the review of GAO Procurement Counsel. Additionally, in his role as the Senior Procurement Executive, the Controller/DCFO uses FPDS-NG to track the trends of contracts awarded competitively and non-competitively, which he provides to GAO's Chief Administrative Officer/Chief Financial Officer on a biannual basis. These activities, aimed at promoting competition, are not documented in GAO's policies and procedures.

In addition, the procedures currently performed by the Controller/DCFO do not fully address the intent and best practices prescribed by the FAR. Specifically, these procedures do not address the continuous monitoring and review of the agency's contracting operations to identify opportunities for enhancing the use of competition or any conditions that have the effect of unnecessarily restricting the use of competition. Through this review process, the Competition Advocate can establish goals and plans for increasing competition, design a system of personal and organizational accountability for competition, and report results of oversight activities and strategic planning to the Senior Procurement Executive. The Controller/DCFO acknowledged that he does not conduct all the required reviews, and given that he serves in both roles, the reporting requirement is also not being followed.

We recognize that, despite GAO's objective to follow the intent of the FAR and promote full and open completion, it may not be practical to fully segregate these duties. In such cases, alternative control activities should be designed, documented, and implemented to address the risk of potentially incompatible duties. Without clearly defined roles and responsibilities for the Competition Advocate and the Senior Procurement Executive, and full implementation of the Competition Advocate's required reviews and annual report to the Senior Procurement Executive, GAO's oversight over the award of non-competed contracts may be limited.

Quality Control Steps Needed to Prevent Inaccuracies in GAO's Competition Data Recorded in FPDS-NG

The Federal Funding Accountability and Transparency Act of 2006 requires agencies to publicize unclassified Federal award data. To comply with this requirement, agencies use FPDS-NG, which is a comprehensive web-based tool for reporting contract transactions that provides managers a mechanism for determining where contract dollars are being

³FAR § 6.501(a) states that the Competition Advocate shall be in a position other than the Senior Procurement Executive.

⁴FAR § 6.501(a).

spent. As part of this process, agencies report on whether the award was made competitively or non-competitively for each contract action. The accuracy of the reported competition data is key to assessing the effects of policies and management initiatives, and determining whether the agency is achieving its competition objectives.

While GAO, as a legislative branch agency, is not subject to the Federal Funding Accountability and Transparency Act, as a matter of policy, it has indicated that it generally follows the act, and reports its contract actions into FPDS-NG. FPDS-NG is also where GAO tracks and reports its performance measurement goals and results with regards to competition.

Our review found errors in the competition information GAO recorded in FPDS-NG. To assess the reliability of the competition data recorded by GAO in FPDS-NG, we selected a random sample of 32 of the 41 contracts actions with a value over \$150,000 that GAO recorded as competitively awarded in FPDS-NG during fiscal years 2018 and 2019 and found three non-competed contracts that GAO had miscoded as competed. Based on the test results, we estimate that 9.4 percent of contracts recorded by GAO in FPDS-NG as competitively awarded during fiscal years 2018 and 2019 were miscoded. We communicated the test results to the AMPO Director. He agreed with our test results and corrected the identified errors in FPDS-NG.

In addition, we reviewed all 18 contracts with a contract value over \$150,000 that GAO reported as non-competed in FPDS-NG during fiscal years 2018 and 2019. We found that four contracts, or 22 percent, were erroneously reported as non-competed. We communicated our test results to the AMPO Director. He agreed with our test results and indicated that he is planning to address the identified errors in FPDS-NG.

These recording errors appear to stem from limitations in GAO's financial management system, Legislative Branch Financial Management System (LBFMS)-Momentum, and deficiencies in GAO's oversight. There are a number of data fields in FPDS-NG that are used to determine whether the contracts are competitively awarded (e.g., Level of Competition, Fair Opportunity/Limited Sources, etc.). GAO generally does not record contract competition data in LBFMS-Momentum because these fields are not required. However, these fields are required in FPDS-NG, so contracting officers generally enter the competition data manually as part of recording the awards in FPDS-NG. This manual interaction into the FPDS-NG reporting process has led to recording errors for competition data.

The FAR requires the Senior Procurement Executive to coordinate with the head of the contracting activity to ensure timely and accurate reporting of contractual actions. Both GAO's Controller/DCFO and AMPO's Director told us that they rely on GAO's DATA Act procedures to ensure that the information in FPDS-NG is accurate. However, the steps performed by GAO for DATA Act are limited to ensure that all contracts awarded by GAO are reported to FPDS-NG, and that the information recorded in LBFMS-Momentum matches the information recorded in FPDS-NG. Because GAO does not regularly record the competition data in LBFMS-Momentum, this information is not included in GAO's DATA Act reconciliations.

FPDS-NG data is used in a variety of ways, including assessing the effects of policies and management initiatives. As described above, GAO's Controller/DCFO uses this data to track and monitor performance measurement goals as well as the trends of GAO's competed and non-competed awards. Without addressing the data reliability deficiencies

in the competition data recorded by GAO in FPDS-NG, GAO is at risk of using inaccurate information to assess whether it is achieving its competition objectives.

Key Control Activities Over Non-Competed Contracts Need to be Strengthened

To assess the effectiveness of GAO's internal control over the award of non-competed contracts, we selected and reviewed all 18 contracts with a value over \$150,000 that were reported by GAO to FPDS-NG during fiscal years 2018 and 2019. We also selected and reviewed an additional contract awarded in fiscal year 2017 based on our initial risk assessment. As explained above, we found that four of these contracts were miscoded as non-competed. We reviewed the files for the 15 remaining contracts that we were able to validate as non-competed and found that GAO performed and documented market research and justifications for most of the non-competed awards we reviewed. However, we found instances where contract documentation did not substantiate the performance of other key control activities due to gaps in GAO policy and procedures, or insufficient monitoring.

Gaps in Policy and Procedures Led to Deficiencies in Acquisition Planning Documentation and in Publicizing Justifications for Non-Competed Contracts

Acquisition Planning: According to the FAR,⁵ GAO's AMPO Director, and as demonstrated by GAO's acquisition plan templates, all acquisitions should involve some level of planning to ensure effective, economical, and timely purchases of goods and services. However, six of the 15 non-competed contracts we reviewed did not have acquisition plans on file. Proper authorizations and approvals in acquisition planning are key control activities designed to address identified risk and achieve GAO's objective of promoting competition. While the remaining nine contract files contained an acquisition plan, four of these acquisition plans did not include evidence of management's review and approval, and two acquisition plans did not contain all the required signatures in the acquisition plan template.

GAO's guidance regarding when an acquisition plan is required was unclear. While GAO has three acquisition plan templates for varying circumstances,⁶ it has not documented in the GAO Order 0625.1 or the AMPO SOP that a documented and approved plan is required. Inadequate acquisition planning increases the risk of acquisitions not meeting GAO's needs in the most effective, economical, and timely manner.

Publicizing Justifications for Non-Competed Contracts: Generally, non-competed contracts must also be supported by written justifications and approvals that contain sufficient facts and rationale to justify such awards. After the justifications are completed and approved, the FAR requires agencies to publicize the justifications on the Federal Business Opportunities (FBO) website,⁷ generally within 14 days of contract award, and must remain posted for a minimum of 30 days.⁸ This increases

⁵FAR § 7.102.

⁶The three acquisition plan templates are (1) informal acquisition plan, (2) formal acquisition plan and (3) acquisition plan for procurements over \$1 million.

⁷Effective November 12, 2019, the FBO website moved to [Beta.SAM.gov](https://beta.sam.gov).

⁸FAR § 6.305.

transparency of the contracting process by providing the opportunity for public review of justifications for non-competed contracts.

While GAO policy and procedures are silent about this requirement, the AMPO Director indicated that GAO follows this requirement in its contracting process. However, seven of the eight non-competed contract files we looked at containing justifications did not contain evidence to support that the justification was publicized.

Posting non-competition justifications is designed to keep the public informed when competition is not used. Potentially, a contractor could challenge GAO's award of a non-competed contract through a bid protest process. If non-competitive justifications are not publicized, GAO's accountability and transparency to the public about its contract awards may be limited.

Insufficient Monitoring Led to Deficiencies with the Price Review of Contractors' Proposals, GAO's Offering Letters to SBA, and Recommendation for Awards

Price Review of Contractor's Proposals: An evaluation of prospective contractors' proposals is a key control activity to ensure that the proposed price is appropriate, accurate, fair, and reasonable. AMPO SOP states that the contract specialist is responsible for the concurrent review of price/cost proposals in accordance with FAR 15.404, *Contract Pricing*. The SOP states that the contract specialist can perform comparisons against current market conditions, prior or existing contracts, as well as information from auditors. In essence, the contract specialist is required to analyze the elements of cost (cost basis) for all performance periods of the contract. However, 11 of the 15 non-competed contract files we reviewed did not contain evidence to support that the contract specialist reviewed the contractors' proposed costs for accuracy and reasonableness, as required.

For example, one non-competed contract we reviewed involved an order GAO issued against another Legislative Agency's Blanket Purchase Agreement (BPA)⁹ for information technology (IT) equipment. The BPA provided a list of different equipment models and their respective prices. It also contained a clause indicating that if the agency procures equipment under this contract that is not included on the price list, the agency is entitled to a discount ranging from 28 to 45 percent, depending on the type of equipment procured by the agency. GAO issued two orders to this contractor under the BPA, totaling over \$509,000.¹⁰ The IT equipment procured by GAO under these two orders did not match the configurations and prices listed in the BPA, and therefore should have been subject to a discount of 40 percent. However, the contractor's quote did not show that the required discount was applied. The contractor proposal did not include the necessary information to facilitate GAO's price review for ensuring its reasonableness and compliance with the BPA terms. GAO issued the two orders based on the contractor's proposed prices, without properly ensuring that the pricing was in compliance with the BPA. We followed up with GAO and the contractor but did not receive adequate evidence to support that the required discount was applied to the price of these two orders. Given this missing documentation, we could not determine

⁹A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified vendors.

¹⁰One of the orders was initially miscoded by GAO in FPDS-NG as competitively awarded, and was included in our sample referred to earlier, but was actually non-competed.

whether the contractor overcharged GAO, by as much as \$181,500, on these two orders.

On a different procurement, GAO concluded that the proposed pricing for two contracts in our sample was reasonable based upon an estimated hourly rate between \$1,000 and \$2,000 for professional services. However, the contract files did not include evidence to support that assessment. In response to our inquiries, the agency told us that it determined the hourly rate range was reasonable based on interviews conducted with three contractors. However, GAO did not provide information to substantiate the contractor discussions or related pricing details obtained during the interviews. Absent such information, it is unclear whether GAO performed a proper review of the contractor's proposed pricing.

Deficiencies in GAO's contract documentation substantiating performance of price reviews indicate a need for more effective oversight and monitoring on the part of acquisition managers. It also indicates that for some contracts, information is missing to support an independent review of GAO's contract decisions. Lack of documentation to support price reviews potentially increases GAO's risk regarding the accuracy and reasonableness of the prices it has agreed to pay contractors, and may lead to increased costs for GAO.

GAO's Offering Letters to SBA: GAO Order 0625.1 and the AMPO SOP state that although not subject to the Small Business Act,¹¹ GAO encourages and promotes the participation of small businesses, including disadvantaged, women-owned, and veteran-owned small businesses, to compete for requirements for which they qualify, and state that women-owned and minority-owned small businesses shall be afforded an equitable opportunity to compete for all contracts they can perform to the extent consistent with the government's interest.

Further, GAO established a Partnership Agreement with the SBA for the award of contracts under the Section 8(a) Business Development program. This partnership agreement provides for the award of contracts under section 8(a) of the Small Business Act, as implemented by the FAR Subpart 19.8. The FAR Subpart 19.8 and this partnership agreement require GAO to submit the offering letter for non-competed contracts under the 8(a) program with a value over the simplified acquisition threshold¹² to the SBA for approval. The purpose of this letter is to notify the SBA that the agency plans to utilize a section 8(a) contract, and to nominate a specific section 8(a) contractor. SBA reviews this offering letter and determines whether to accept and approve the agency's request. The FAR provides a list of information to include in these SBA offering letters, such as (1) a description of the work to be performed or items to be delivered,¹³ (2) the estimated period of performance,¹⁴ (3) the anticipated dollar value of the requirement, including option years,¹⁵ and (4) the acquisition history,

¹¹Public Law 85-536, as amended.

¹²GAO's simplified acquisition threshold at the time of this audit was \$150,000.

¹³FAR § 19.804-2(a)(1).

¹⁴FAR § 19.804-2(a)(2).

¹⁵FAR § 19.804-2(a)(4).

if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.¹⁶

Five of the non-competed contracts we reviewed were awarded under the SBA 8(a) program. Although GAO submitted the required offering letter to SBA for review and approval on all five contracts, four of the offering letters did not include all the required information.

For example, GAO planned an IT project that was scheduled to take 5-years, with a total estimated cost over \$7 million. GAO submitted an offering letter to SBA to award this contract non-competitively under the 8(a) program to a specific contractor. However, GAO's offering letter did not include complete information about this IT project. Specifically, GAO's offering letter included information about the base year, for \$3.9 million, but omitted information related to the option years, estimated to be at least an additional \$3.2 million, for this procurement. We also identified email correspondence between a GAO official and the contractor during the pre-award phase reflecting the need to make changes to the contractor's proposal to ensure that the proposed price was below the \$4 million 8(a) competition threshold in order for GAO to proceed non-competitively with the award. SBA has a threshold requiring awards over \$4 million to be competed among small businesses.¹⁷

In addition, we found that GAO omitted key information about the acquisition history for the three remaining offering letters, pertaining to information about small business contractors having previously performed similar requirements. For example, GAO had initially awarded a contract to one particular contractor as an SBA set-a-side contract.¹⁸ GAO subsequently learned that it had obligated funds on the initial contract in excess of the established contract ceiling. Specifically, GAO established a ceiling for this contract of \$750,000 but obligated over \$1.5 million. GAO proceeded to modify the contract to cover the obligations made in excess of the contract ceiling, then canceled this initial contract and shifted the remaining services to a new contract. Despite the fact that GAO's market research identified 34 contractors under SBA 8(a) that could potentially satisfy the requirements of the new contract, the agency pursued a non-competed contract using SBA's direct award authority. Based on this approach, GAO awarded the new contract to the original contractor that had benefitted from the over-obligations. However, GAO's offering letter to SBA did not include any information about the previous work performed by the same contractor.

Another offering letter we reviewed pertained to services that were previously performed by a subsidiary of the selected contractor under an SBA 8(a) non-competed contract. GAO attempted to renew a contract with the original (subsidiary) contractor; however, the contractor had graduated out of the SBA 8(a) program, and was no longer eligible for an 8(a) direct award. Officials from this contractor referred GAO's contracting officer to its parent company that was still certified under the SBA 8(a) program, indicating it would need to transfer its staff, currently working at GAO, to the

¹⁶FAR § 19.804-2(a)(8).

¹⁷FAR § 19.805-1. The SBA competitive threshold amount for Section 8(a) is \$7 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$4 million for all other acquisitions.

¹⁸FAR § 19.501(a). A "set-aside for small business" is the reserving of an acquisition exclusively for participation by small business concerns.

parent company. Thus, GAO would change contractors from the subsidiary company to the parent company but keep the same contracted staff. GAO submitted an offering letter to SBA for the contractor's parent company, yet it did not include any information about the previous non-competed 8(a) contract performed by the subsidiary company. Further, based on the documentation we reviewed, GAO excluded needed services in describing the contract requirements, which, if included would have exceeded the SBA 8(a) \$4 million threshold for competition.

GAO may not be fully achieving its goal to meet the SBA 8(a) program objectives when the SBA makes award decisions based on offering letters that omit key information. Further, the two instances we found in which GAO officials made changes to the requirements to ensure that non-competed contracts were awarded to specific contractors increases the risk of fraud, waste, and abuse in GAO contracts.

Recommendation for Award Form: The AMPO SOP requires the contract specialist to complete a Recommendation for Award (RFA) form to document the procurement process followed, and the evaluation undertaken and related results that led to the recommendation to award the contract to a particular source. Specifically, the contract specialist documents in the RFA whether the award is going to be made with or without competition. The FAR requires agencies to document the rationale and all business decisions leading to the award recommendation.¹⁹ However, eight of the 15 non-competed contracts we reviewed did not have a completed RFA on file. In addition to requiring the RFA, GAO policy requires that it be signed by the contract specialist, reviewed and signed by the contracting officer, general counsel, AMPO Director, and contracting officer's representative. The RFA provides the contracting officer with a sufficient basis for reviewing and approving the recommendation as part of their governance and accountability responsibilities. Without complete RFAs, GAO may not have sufficient assurance that it is achieving its goal to obtain the best acquisition value, and is challenged to support and document supervisory and independent reviews.

Conclusions

GAO has generally established policies and procedures to promote and provide for competition in accordance with the FAR when soliciting offers and awarding contracts, and to follow FAR Part 6 when competition is not possible. However, we noted that GAO's policy could be enhanced by defining and documenting the roles and responsibilities for key oversight roles in this area. Further, steps are necessary in order to make sure that contracts are being classified correctly in FPDS-NG. These deficiencies may negatively impact the effectiveness of GAO's internal control over the award of non-competed contracts. Our testing found several key controls that need to be reviewed to ensure that they are taking place and documentation exists to support non-competed contracts. Improvements in these areas could strengthen internal control in GAO's overall contracting process and specifically for non-competed contracts that need to be adequately planned, justified, and executed.

¹⁹FAR § 15.308.

Recommendations for Executive Action

To strengthen GAO's processes, and controls related to the award of non-competitive contracts, we recommend the Comptroller General direct the Controller/Deputy Chief Financial Officer to take the following actions:

1. Update acquisition management policy and procedures to define and document the roles and responsibilities of the Competition Advocate and Senior Procurement Executive to address the required reviews, and related annual reports.
2. Incorporate GAO's contract competition data into its quality review process to help ensure that data reported into FPDS-NG is accurate.
3. Update the AMPO SOP to document the requirements for acquisition plans, and the publicizing of non-competitive justifications.
4. Develop and implement steps to ensure that proposal price reviews are adequately performed and documented, Recommendation for Award forms are completed, and offering letters to SBA contain all the required information.
5. Obtain adequate evidence to support the listed price of the IT equipment GAO acquired through another Legislative Agency's BPA. Confirm that required discounts were applied, or that GAO was overcharged and seek reimbursement, as appropriate.

Agency Comments and Our Evaluation

The Inspector General provided GAO with a draft of this report for review and comment. GAO's written comments are reprinted in Appendix II. In its written comments, GAO did not state whether it concurred or did not concur with OIG recommendations. GAO indicated that no action is necessary on two recommendations, and that it has completed action on the remaining three recommendations. When received, the OIG will review documentation supporting the agency's statement of actions taken in response to OIG recommendations, which GAO is required to submit within 60 calendar days of the report's issuance date. In its written response, GAO also commented on findings that underlie our recommendations, which we address below.

Both GAO and the OIG agree that while GAO is not subject to the FAR, the agency follows it as a matter of policy. In its response, GAO pointed out that policy permits the Controller to deviate from the FAR when "adherence to the FAR is not appropriate and would hinder (its) ability through contracting to support GAO functions." This language allows the Controller, the agency's Senior Procurement Official, to arbitrarily select when and what FAR requirements to follow without having to document the deviation from the FAR. This potential lack of consistency and documentation makes the agency vulnerable to potential legal challenges should vendors question differences in how proposals are solicited and managed for similar requirements. Further, this recent policy revision is inconsistent with AMPO SOP, Chapter 6, which clearly states GAO will follow the FAR, Part 6, in awarding competed and non-competed contracts.

We do not take issue with GAO's flexibility to make decisions in the best interest of the agency, but deviations from the FAR should be documented to ensure transparency and accountability. In its response, management did not indicate deviations would be documented.

Management also took issue with our finding that documentation to support pricing reviews for two large contract proposals was not in the respective contract files. As we state in the report, an evaluation of prospective contractors' proposals is a key control activity to ensure that the proposed price is appropriate, accurate, fair, and reasonable. These reviews should be documented as proof that this review occurred and the results available to address potential challenges. During our fieldwork, and again at the exit conference, the OIG requested documentation that management indicated it had, but none has been provided to-date. Once provided, we can review the documentation reviewed by the Controller, and evaluate it in the context of the recommendations.

GAO also indicated that the OIG did not contact its Procurement Policy and Oversight Division (PPOD) as part of its audit, and that the PPOD team activities are consistent with the role of the competition advocate. Throughout the audit, the Controller told the OIG that he was the Competition Advocate and the Senior Procurement Executive. Further, PPOD performs post-award reviews to determine whether key documents are maintained in the contract file. Key steps the competition advocate should be involved in are related to the pre-award process, such as participating in the acquisition planning, promoting competition, challenging barriers to competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses prior to the award. As described in the objectives, scope, and methodology section of this report, our review involved a detailed documentation and assessment of the internal control process specific to awarding non-competed contracts, which does not involve PPOD.

Formal comments with supporting documentation for the five OIG recommendations are due on or before November 17, 2020.

Appendix I: Objective, Scope, and Methodology

This report assesses the extent to which GAO maintained adequate internal control over non-competed contracts. To achieve our audit objective, we identified GAO policy, procedures, and guidance related to contracts awarded non-competitively. GAO documented its acquisition policy and procedures in its Order 0625.1, Government Accountability Office Procurement Guidelines, and the Financial Management and Business Operations, Acquisition Management / Procurement Operations Standard Operating Procedures (AMPO SOP). We compared these policy and procedures to applicable laws, regulations, such as the Federal Acquisition Regulation (FAR), and best practices to assess consistency and identify key controls.

We interviewed the Acquisition Management Procurement Operations (AMPO) Director, and the Controller/Deputy Chief Financial Officer to learn about their acquisition roles and responsibilities, including the review and approval of non-competed contracts. GAO reports its contract awards to the Federal Procurement Data System-Next Generation (FPDS-NG), the federal government's primary database for information on procurement actions, as required by the Federal Funding Accountability and Transparency Act of 2006.²⁰ While GAO, as a legislative branch agency, is not subject to the Federal Funding Accountability and Transparency Act, as a matter of policy, it has indicated that it will generally follow the act.

GAO utilizes its financial management/procurement system, Legislative Branch Financial Management System (LBFMS)-Momentum to award, administer, and report its contracts.²¹ However, GAO generally does not record contract competition data in LBFMS-Momentum. The system's fields related to contract competition are not required in Momentum, and for the most part, GAO's contracting officers manually record contract competition data directly into FPDS-NG. As a result, LBFMS-Momentum does not contain sufficient data to identify what contracts were competitively or non-competitively awarded by GAO. Because of this, we used FPDS-NG to obtain GAO's contract competition data. We calculated trends in GAO's use of non-competed contracts for fiscal years 2015 through 2019.

To determine the extent to which GAO used non-competed contracts, we analyzed the government-wide FPDS-NG data from fiscal years 2015 through 2019. For the purposes of our report, we are considering as non-competed, contracts reported by into FPDS-NG as "not competed," "not available for competition," "not competed under simplified acquisition procedures," "non-competitive delivery order", and "follow on to competed action." We also considered orders coded as an exception to "subject to fair opportunity", including "urgency," "only one source," "minimum guarantee," "follow-on action following competitive initial action," "other statutory authority," and "sole source."

To ensure the reliability of GAO's acquisition data in LBFMS-Momentum and its report to FPDS-NG for the purposes of our engagement, we interviewed the LBFMS-Momentum Program Manager, and AMPO Director to gain an understanding of GAO's processes and controls for the acquisition data recorded in Momentum, and its reporting processes into FPDS-NG. We also reviewed the results of the latest Statement on Standards for Attestation Engagements (SSAE) No. 18 examination reports on the service provider that hosts and operates LBFMS-Momentum to determine whether there were any reported

²⁰Pub. L. No. 109-282, 120 Stat. 1186 (Sept. 26, 2006), codified at 31 U.S.C. § 6101 note.

²¹GAO implemented LBFMS-Momentum in October 2017.

deficiencies that may affect the reliability of the information. In addition, we reviewed our test population for outliers or other obvious errors, and independently generated reports from FPDS-NG of GAO's contract awards.

To assess the reliability of the competition data, we looked at contracts recorded by GAO in FPDS-NG, for fiscal years 2018 and 2019, with a total contract value over \$150,000. We reviewed all 18 non-competed contract files and selected a sample of 32 from a population of 41 competed contracts meeting our criteria. With our random sample, each transaction in the population had a nonzero probability of being included, and that probability could be computed for any transaction. Each sample element was subsequently weighted in the analysis to account statistically for all the transactions in the population, including those that were not selected. Since each sample could have provided different estimate, we express our confidence in the precision of our particular sample's results as a margin of error for a 95 percent interval (i.e., plus or minus 5 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that the confidence interval in this report includes the true values in the population. We determined the data we obtained were sufficiently reliable for the purposes of our review.

Based on our understanding of GAO's policy and procedures, and the FAR, we identified and compiled a list of controls that are key for the award of non-competed contracts. To assess these key controls, we selected and reviewed contract documentation for all 18 contracts reported by GAO to FPDS-NG as non-competed during fiscal years 2018 and 2019, with a total contract value over \$150,000. In addition, we included an additional non-competed contract for review that was awarded in fiscal year 2017, based on a related concern reported to our office, and our risk assessment.

We conducted this performance audit from July 2019 through September 2020 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix II: Comments from the U.S. Government Accountability Office



Memorandum

Date: September 7, 2020

To: Inspector General – Adam Trzeciak

From: Controller – William Anderson *William Anderson*

Subject: Report on GAO's Non-Competed Contracts (OIG-20-02)

Thank you for the opportunity to comment on the draft report of your review of GAO's Non-Competed Contracts. As the report correctly notes, GAO is not subject to the Federal Acquisition Regulation (FAR) but has established policies and standard operating procedures (SOPs) to govern its contract actions, including awards to a sole source, consistent with the FAR. According to OIG's report, OIG reviewed the award of all sole source contracts made in 2018 and 2019 and one contract awarded in 2017. During this period, GAO's goal was to award at least 75 percent of its contract dollars competitively, a goal that it consistently exceeded each year, averaging over 80 percent. The report also did not find that any sole source award was inappropriate. All of the awards had been reviewed by the Office of General Counsel and approved by the Controller.

The report did note several actions that Acquisition Management could take to improve contract file documentation and completeness, which is consistent with GAO's own internal reviews. However, the report incorrectly describes GAO's internal contract review process and other aspects of GAO's contract operations as described below.

While the report notes that the FAR does not apply to GAO, it cites FAR criteria, rather than citing GAO's order and SOPs. GAO's acquisition policy, which covers the acquisition, solicitation, award, and administration of delivery orders, purchase orders, and contracts necessary to support the functions of GAO and its responsibilities to the Congress, states that the authority to determine contracting methods and sources necessary to support the functions for GAO procurements has been delegated to the Controller. This authority is similar to that of a senior procurement official, but is broader. It specifically states that the Controller is not required to follow the FAR if he determines that adherence to the FAR is not appropriate and would hinder his ability through contracting to support GAO functions. Use of this authority generally results in sole source contracts.

GAO's Office of Acquisition Management is comprised of two divisions – Procurement Operations (AMPO), which is responsible for the acquisition, solicitation, and award, of contracts and the Procurement Policy and Oversight Division (PPOD). PPOD oversees the management and development of policies and procedures for GAO's procurement process,

and is responsible for compliance and program audits of procurement operations. These activities are consistent with what OIG describes as the role of the competition advocate.

For example, to assure compliance with GAO's Procurement Order and SOPs, PPOD tests contracts files for, among other attributes, the contract type and the type of procurement process used. Any missing, unsigned or omitted documents found during the audit are documented on the compliance form and discussed with the Director, AMPO. PPOD notifies the cognizant contracting officer of any deficiencies and conducts random samples to ensure all corrected actions are completed. PPOD also facilitates the compilation of files and documentation for external audit. However, PPOD was not contacted during the thirteen months OIG conducted this audit.

In addition, GAO's Office of Internal Control (OIC) annually samples and tests end-to-end processing of requisitions, contracts/purchase orders, vendor invoice documents and other supporting documentation, and reviews specific attributes (e.g., budget and/or management approvals, lines of accounting, signed procurement actions, legal review, period of performance, invoice approvers, payment accuracy and timeliness). For Fiscal Year 2019, OIC found no significant deficiencies in AMPO operations, but did note instances where documents were not uploaded into Momentum in a timely manner, similar to the types of issues OIG noted. OIC also provides its results to AMPO for corrective action and makes recommendations to improve internal operations (OIC's preliminary results for Fiscal Year 2020 have shown improvement in this area).

While GAO is not subject to the FAR and does not always use the same terminology, such as "senior procurement official" or "competition advocate," GAO has structured its operations to ensure separation of duties, and performs compliance reviews and audits designed to follow the spirit of the FAR, without taking a cookie cutter approach to citing FAR requirements or adding positions that would be duplicative and wasteful. Moreover, with the Director of AMPO's additional guidance to staff as well as recent personnel changes, we expect to see continued improvement in this area.

Regarding the references to GAO's purchase of laptops through the House of Representatives Blanket Purchase Agreement (BPA) contract, I reviewed the documentation provided by AMPO and determined that it was adequate to substantiate that GAO received a discount in excess of the 40 percent required by the BPA. In addition, I independently confirmed the pricing from other publicly available sources.

Regarding the references that the review of proposed pricing for two contracts was not in the contract files, I approved the Office of General Counsel's (OGC) decision to interview several firm's ability to perform the work needed by OGC, in the timeframe needed, and within the approved funding level, as authorized in GAO's procurement order. OGC has contemporaneously prepared documentation of its discussions with these firms. As a legal work product the documentation is maintained outside of the contract file. At the exit conference on Wednesday, August 19, 2020, the Inspector General agreed to allow two

days to provide additional information from the legal files. However, the draft was issued prior to that deadline, therefore, I did not pursue the matter.

The report also incorrectly states that a small business set aside contract under the SBA 8a program was over-obligated. However, as noted in the report, the contract was awarded for \$3.9 million, below the \$4 million ceiling, therefore it was not over-obligated. The award did include option periods, which were not funded or exercised. Once the contracting officer became aware that the option periods should not have been included, the contracting officer appropriately revised the contract to remove the option periods.

Regarding the five recommendations made by OIG, AMPO has completed corrective action where appropriate and has closed the recommendations as follows.

Recommendation 1

“Update acquisition management policy and procedures to define and document the roles and responsibilities of the Competitive Advocate and Senior Procurement Executive to address the required reviews, and related annual reports.”

As noted above, GAO does not use all the FAR nomenclature in describing its procurement operations. However, the division of responsibilities between AMPO, which is responsible for awarding contracts, and PPOD, which is responsible for policy and compliance, adequately addresses the spirit of the FAR while respecting GAO’s independence. **No action is necessary.**

Recommendation 2

“Incorporate GAO’s contract competition data into its quality review process to help ensure that data reported into FPDS-NG is accurate.”

As noted above, PPOD is responsible for program compliance and program audits. PPOD has added a specific test to validate whether the “extent competed” type has been input into the Momentum and FPDS-NG. In addition, to facilitate PPOD’s review, the Office of Financial Management implemented a mandatory relationship edit in Momentum that will enforce selecting an “extent competed” value on all KAG contract documents. Both actions have been tested and are working as intended. **Corrective action is completed.**

Recommendation 3

“Update the AMPO SOP to document the requirements for acquisition plans and the publicizing of non-competitive justifications.”

AMPO has added the thresholds triggering when acquisition plans are required and to clarify the publicizing of non-competitive justifications to it's SOP. **Corrective action is completed.**

Recommendation 4

“Develop and implement steps to ensure that proposal price reviews are adequately performed and documented, recommendation for award forms are completed and offering letters to SBA contain all the required information.”

The Director of AMPO provided additional training to contract specialists on the requirements for documenting proposal price reviews, recommendation for award forms, and ensuring that offering letters to SBA include the information required by SBA for a particular award. **Corrective action is completed.**

Recommendation 5

“Obtain adequate evidence to support the listed price of the IT equipment GAO acquired through another Legislative Agency's BPA. Confirm that required discounts were applied, or that GAO was overcharged and seek reimbursement as appropriate.”

As noted above, I reviewed the documentation provided by AMPO and determined that it was adequate to substantiate that GAO received a discount in excess of the 40 percent required by the House of Representatives BPA. In addition, I independently confirmed the pricing from other publicly available sources. **No action is necessary.**

cc: Karl Maschino, CAO/CFO
Roderick Gaither, AMPO
Carmencita Jones, PPOD
Adebisi Adesina, FMBO
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Appendix III: OIG Contact and Staff Acknowledgments

OIG Contact

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Staff Acknowledgments

In addition to the contact named above, Mary Arnold Mohiyuddin (Assistant Inspector General for Audit), Omar V. Torres (Engagement Manager), and Adriana Pukalski (Legal Counsel) made major contributions to this report. Other key contributors include Gregory Borecki, Melanie H. P. Fallow, Julia Kennon, Cynthia Taylor, and Khristi Wilkins.

Appendix IV: Report Distribution

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