

Consumer Financial Protection Bureau

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# The CFPB Can Improve Its Controls for Exercising Contract Options



**Office of Inspector General**

Board of Governors of the Federal Reserve System  
Consumer Financial Protection Bureau



Executive Summary, 2023-FMIC-C-012, September 18, 2023

## The CFPB Can Improve Its Controls for Exercising Contract Options

### Findings

The Consumer Financial Protection Bureau’s Office of Finance and Procurement can improve its controls for exercising contract options. Specifically, contracting officers (COs) did not consistently (1) document whether options met all *Federal Acquisition Regulation* (FAR) determination requirements before exercising them; (2) exercise options before the associated contracts expired, as required by the FAR; (3) provide the contractors notice within contract-required time frames that they planned to exercise options; or (4) complete required follow-up actions.

Officials explained that Procurement does not have a policy or procedure for exercising contract options because the FAR contains the relevant requirements; they considered a policy or procedure an optional best practice. In addition, Procurement management does not formally track contract option–related time frames and relies on COs to monitor pertinent time frames.

Implementing controls, such as creating a contract options policy or procedure and a tool for tracking contract option–related time frames, will help ensure that COs exercise contract options in accordance with FAR requirements and that option-related activities are completed within contract-specified time frames. Ensuring FAR compliance and timely completion of activities will further ensure that contract options are in the agency’s best interest, mitigate disruptions of supplies or services, and minimize the risk of incurring additional costs.

### Recommendations

Our report does not contain recommendations because Procurement created the *Exercising Option Periods* standard operating procedure, which outlines the key activities for exercising contract options and requires COs to perform the actions within the contract-required time frame. Procurement also began formally tracking contract option–related time frames to notify COs of contracts that are expiring and to identify modifications that occurred after the contract expiration date. In its response to our draft report, the CFPB states that it is committed to maintaining effective controls in the procurement program.

### Purpose

The objective of this audit was to assess Procurement’s controls for exercising contract options to ensure compliance with applicable laws, regulations, and internal policies and procedures.

Our scope focused on contract options exercised from July 2019 through June 2021 and included a judgmental sample of 30 contract options with an approximate obligated value of \$22.3 million, representing approximately 25 percent of the total value of options exercised during our scope period.

### Background

The FAR is the primary regulation guiding federal executive agencies in acquiring supplies and services. However, the CFPB has determined that it is not required to follow the FAR in its entirety. Nonetheless, the agency has voluntarily chosen to follow the FAR as a matter of policy.

The FAR affords federal agencies like the CFPB a unilateral right to exercise contract options to purchase additional supplies or services covered by a base contract. Procurement is responsible for overseeing purchasing activities and developing internal policies and procedures related to those activities. Procurement staff includes COs who are authorized to award and modify contracts and who work with the program offices to purchase supplies or services and exercise options.



Recommendations, 2023-FMIC-C-012, September 18, 2023

## The CFPB Can Improve Its Controls for Exercising Contract Options

### Finding 1: Procurement Should Develop a Policy or Procedure That Specifies Requirements for Exercising Contract Options

Number	Recommendation	Responsible office
No recommendations.		

### Finding 2: Procurement Should Better Track Required Contract Option Time Frames

Number	Recommendation	Responsible office
No recommendations.		



**Office of Inspector General**

Board of Governors of the Federal Reserve System  
Consumer Financial Protection Bureau

**MEMORANDUM**

**DATE:** September 18, 2023

**TO:** Joshua Galicki  
Deputy Assistant Director for Procurement  
Consumer Financial Protection Bureau

**FROM:** Cynthia Gray *Cynthia Gray*  
Deputy Associate Inspector General for Audits and Evaluations  
Office of Audits and Evaluations

**SUBJECT:** OIG Report 2023-FMIC-C-012: *The CFPB Can Improve Its Controls for Exercising Contract Options*

We have completed our report on the subject audit. We conducted this audit to assess the Consumer Financial Protection Bureau’s controls for exercising contract options to ensure compliance with applicable laws, regulations, and internal policies and procedures.

We provided you with a draft report for review and comment. In your response, you state that you are pleased with our audit’s recognition of your efforts to fully address the report’s findings and that you are committed to maintaining effective controls in the procurement program. We have included your response as appendix B to our report.

We appreciate the cooperation that we received from CFPB personnel during our audit. Please contact me if you would like to discuss this report or any related issues.

cc: Jan Singelmann  
Adam Martinez  
Jean Chang  
Jafnar Gueye  
Dana James



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# Introduction

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## Objective

The objective of this audit was to assess the Consumer Financial Protection Bureau Office of Finance and Procurement's (OFP) controls for exercising contract options to ensure compliance with applicable laws, regulations, and internal policies and procedures. Our scope focused on contract options exercised from July 2019 through June 2021 and included a judgmental sample of 30 contract options with an approximate obligated value of \$22.3 million. The sample is from a population of 275 contract options with an approximate obligated value of \$88 million and represented approximately 25 percent of the total value of options exercised during our scope period. Appendix A describes our scope and methodology in greater detail.

## Background

The *Federal Acquisition Regulation* (FAR) is the primary regulation guiding federal executive agencies in acquiring supplies and services with appropriated funds. The CFPB has determined that it is not required to follow the FAR in its entirety.<sup>1</sup> Nonetheless, the CFPB has voluntarily chosen to follow the FAR for all acquisitions as a matter of policy.

The FAR allows base contracts to include contract options, which provide the agency the unilateral right to purchase additional supplies or services covered by the contract or to extend the term of the contract for a specified time.<sup>2</sup> The FAR describes four types of options:<sup>3</sup>

1. increasing the quantity of a base contract item
2. receiving an additional contract item priced separately from a base contract item
3. extending the term of a contract for services for up to 6 months
4. extending the term of a contract for services, typically resulting in one or more annual extensions

The Procurement section within OFP is responsible for overseeing purchasing activities and developing internal policies and procedures related to those activities.<sup>4</sup> Procurement staff includes contracting officers (COs) who are authorized to obligate the government by awarding and modifying contracts,

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<sup>1</sup> The majority of the CFPB's procurements use nonappropriated funds. The CFPB determined that the agency must follow the FAR for procurements when (1) using appropriated funds, such as those from the Civil Penalty Fund or from congressional appropriations received, and (2) the regulation is restating portions of a statutory requirement applicable to the CFPB, such as the Competition in Contracting Act.

<sup>2</sup> FAR 17.202(a); *option* is defined in FAR 2.101.

<sup>3</sup> FAR 52.217-6, 52.217-7, 52.217-8, and 52.217-9.

<sup>4</sup> The deputy assistant director for procurement oversees the Procurement section within OFP and also holds the title of head of contracting activity and senior procurement executive.

including exercising options. COs work with the program offices to purchase supplies or services and exercise contract options.

## Key Activities Related to Contract Options

The following are key activities for awarding contract options:

- COs may only exercise options after documenting that certain requirements are met, including but not limited to the contractor's performance being acceptable and the option being the lowest price or most advantageous offer (see the table in finding 1 for the full list of required FAR determinations).
- For all four types of contract options, COs provide written notice to the contractor—typically through a unilateral contract modification, which is an amendment to the terms of a contract—to exercise an option. COs must do so before the contract expiration date and within the time frame specified by the contract to provide the contractor adequate lead time to ensure continuous supplies or services.
  - In addition, for options extending the term of a service contract, which typically results in one or more annual extensions, COs must provide preliminary notice to the contractor of the intent to extend the term of the contract no later than 60 days before the end of the contract, unless a different time frame is specified in the contract. This preliminary notice does not obligate the CFPB to extend the contract.
- A CO loses the authority to exercise options when the contract expires; the exercise of an option after contract expiration results in an unauthorized commitment, or a nonbinding agreement. The head of contracting activity may choose to ratify and fund the unauthorized commitment.
- If a CO does not provide preliminary or written notice within the contract's specified time frame, the CFPB cannot award the option unilaterally and must obtain the contractor's agreement to extend the supplies or services through a bilateral modification. If a CO does not obtain agreement through a bilateral modification, then the contractor is not required to provide supplies or perform services according to the original contract terms.



# Finding 1: Procurement Should Develop a Policy or Procedure That Specifies Requirements for Exercising Contract Options

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COs did not consistently document that all required FAR determinations were met before exercising contract options. OFP officials stated that Procurement has not created a policy or procedure for exercising contract options and that COs follow the FAR when exercising options. Developing and communicating a policy or procedure that specifies the requirements for exercising contract options will help Procurement to ensure that contract options are in the CFPB's best interest and are exercised in accordance with FAR requirements.

## COs Did Not Consistently Document That Contract Options Met All Required FAR Determinations

For 12 of the 30 contract options in our sample, COs documented that the contract option met all required FAR determinations. For the remaining 18 contract options, COs did not consistently document the required determinations. The FAR states that COs may exercise contract options only after determining and documenting that the exercise is in accordance with the terms of the option and that certain requirements are met.<sup>5</sup> The table below provides an overview of the required FAR determinations and the number of contract options in our sample that omitted each of the determinations.

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<sup>5</sup> FAR 17.207.

**Table. FAR Determinations Missing From 18 of the 30 Contract Options in Our Sample**

FAR determination	Number of options missing the determination
Funds are available.	5
The option fulfills an existing government need.	5
The option is the most advantageous method of fulfilling the government’s need, price, and other factors considered.	4
The option was summarized, if applicable. <sup>a</sup>	13 <sup>b</sup>
The contractor does not have an active exclusion. <sup>c</sup>	6
The contractor’s past performance evaluations on other contracts have been considered.	14
The contractor’s performance on the contract has been acceptable.	9
The option was evaluated as part of the initial competition and exercised at an amount specified in or reasonably determined from the base contract.	6

Source: OIG analysis of the CFPB’s compliance with FAR 17.207.

<sup>a</sup> The FAR requires a synopsis or a publicized notice of proposed contract solicitations for acquisitions of supplies and services. A contract option does not have to be resummarized if an exception from the FAR applies; for example, if the synopsis requirement had already been addressed under the original contract solicitation. FAR 17.207(c)(4); FAR 5.201(a); and FAR 5.202(a).

<sup>b</sup> For 17 contract options, the COs documented whether the contract option was synopsisized or exempted from a synopsis. The remaining 13 contract options did not document whether a synopsis was required. Procurement management noted that if an exemption applied, they did not expect the determination to be documented.

<sup>c</sup> An *exclusion record* identifies parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and nonfinancial assistance and benefits. Exclusions are also referred to as *suspensions and debarments*. FAR 9.404 and the U.S. General Services Administration’s SAM.gov website.

OFP officials explained that Procurement did not establish a policy or procedure governing the exercise of contract options because the FAR contains the relevant requirements; they considered a policy an optional best practice. An official further noted that although Procurement has a template that COs can use to document all required FAR determinations, COs are not required to use that template when exercising contract options. In addition, some COs noted that they were not aware of the template.

Developing and communicating option-related requirements in a policy or procedure will help ensure that COs exercise contract options in accordance with FAR requirements and that exercising the option is in the CFPB’s best interest.

## Management Actions

After we presented our draft findings, Procurement management developed the *Exercising Option Periods* standard operating procedure (SOP) and communicated it to the COs. The SOP addresses the key activities that must be completed when exercising contract options, including documenting all required FAR determinations, and requires COs to use a new standardized template that addresses all the determination requirements. Based on our review of the SOP, we are not making a related recommendation.

## Management Response

In response to our draft report, the deputy assistant director for procurement states that the OFP is pleased with our audit's recognition of their efforts to fully address the report's findings and that it is committed to maintaining effective controls in the procurement program.



## Finding 2: Procurement Should Better Track Required Contract Option Time Frames

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COs did not consistently perform some contract option–related activities within the relevant FAR–required and contract–required time frames. Specifically, COs did not consistently exercise options before the associated contract expired, provide the contractor notice within the contract–specified time frame that the option will be exercised, or perform follow–up activities. Procurement management has not created a policy or procedure that specifies required activities and does not formally track contract option–related time frames to ensure that appropriate follow–up actions are taken. Developing a contract options policy or procedure and formally tracking contract option–related time frames will help to ensure that COs perform option–related activities within required time frames. Improved timeliness will help to mitigate possible supply or service disruptions and minimize the potential for additional costs.

### COs Did Not Consistently Perform Option-Related Activities Within Required Time Frames

For 19 of the 30 contract options in our sample, the COs exercised the contract options before the contract expiration and either (1) provided notice to the contractor within the contract–specified time frame and unilaterally executed the contract option (10 instances) or (2) executed a bilateral modification when a CO did not provide notice as required (9 instances).

For 2 of the remaining 11 contract options, the COs exercised the options 6 days and 83 days after the contracts expired. In these two instances, the COs were not authorized to exercise the options because the contracts had expired, resulting in an unauthorized commitment. Procurement management identified and ratified one of the unauthorized commitments 162 days after the award date and did not identify and ratify the other commitment until we brought it to management’s attention. According to the FAR and Procurement’s *Unauthorized Commitments and Ratifications* SOP, entering into an unauthorized commitment may be classified as serious misconduct and such instances must be avoided to the maximum extent possible.

For the other 9 of the remaining 11 contract options, the COs exercised the contract option before the contract expiration but did not provide the contractor notice of the exercise within the contract–specified time frame and did not obtain the contractor’s agreement through a bilateral modification. Because the COs did not provide the contractors with the required notice or obtain agreement, the contractors could have refused to provide the supplies or services according to the original contract terms. Procurement management noted that once a contractor begins performance, the contractor has accepted the contract terms.<sup>6</sup> In each of these 9 cases, the contractor fulfilled the option as specified in the contract.

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<sup>6</sup> This statement is consistent with the rule of acceptance by performance in contract law and the definition of *contract* in FAR 2.101.

The FAR allows the CFPB to modify an existing contract, including by exercising an option, before the contract's expiration.<sup>7</sup> Procurement's *Unauthorized Commitments and Ratifications* SOP states that any government official who enters into a contract while lacking the proper authority and who deliberately or unintentionally directs a contractor to provide supplies or services to the government that is not within the scope of its contract creates an unauthorized commitment. The SOP outlines procedures by which the head of contracting activity can ratify and fund an unauthorized commitment. The FAR also affords the CFPB the unilateral right to exercise the option if a CO sends notice to the contractor within the contract-specified time frame, which allows the contractor adequate lead time to ensure continuous supplies and services.<sup>8</sup> If a CO does not provide such notice, they must obtain agreement from the contractor through a bilateral modification.

The COs who exercised the options after the contracts expired are no longer with the CFPB; therefore, we do not know the circumstances surrounding those unauthorized commitments. Further, the majority of the COs who did not obtain the contractor's agreement through a bilateral modification when required are no longer with the agency. One of the currently employed COs who was also with the CFPB during the scoping period explained that they did not provide notice to the contractor timely because they did not know the contract-required time frame and they did not obtain a bilateral modification because they were not diligent in ensuring options were exercised bilaterally. As noted in finding 1, Procurement does not have a policy or procedure specifying the requirements for exercising options, including requirements to provide the contractor notice to exercise the option within the contract-specified time frame; to exercise the option before contract expiration; and to take appropriate follow-up actions when dates are missed, such as executing contract ratifications or bilateral modifications.

In addition, Procurement management can track upcoming deadlines and send reminder emails to COs through its internal routing system; however, Procurement management does not consistently perform such activities because the process is manual and time consuming, and staff availability is limited. Rather, Procurement management relies on COs to monitor pertinent time frames.

Developing a contract options policy or procedure and formally tracking contract option-related time frames will help to ensure that COs exercise options timely and that appropriate follow-up actions are taken if contract-specified time frames are not met. Further, completing these contract option-related tasks timely mitigates the risk of a possible supply or service disruption and minimizes the risk of incurring additional costs.

## Management Actions

After we presented our draft findings, Procurement management

- ratified the previously identified unauthorized commitment
- created and communicated to COs the *Exercising Option Periods* SOP, which states that COs must (1) send notice to the contractor within the contract-specified time frame, (2) exercise the

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<sup>7</sup> FAR 17.207, *contract modification* is defined in FAR 2.101 as any written change in the terms of a contract.

<sup>8</sup> *Option* is defined in FAR 2.101, 17.207(a), and 17.204(c).

contract option bilaterally if the notice is not provided timely, (3) exercise the option before contract expiration, and (4) perform a ratification if an unauthorized commitment is identified

- began formally tracking contract option–related time frames to (1) notify COs of contracts that are expiring within the next 5 months and (2) identify modifications that occurred after the contract expiration date and ratify the resulting unauthorized commitments; Procurement documented this process in the SOP

Based on our review of these actions, we are not making any related recommendations.

## Management Response

In response to our draft report, the deputy assistant director for procurement states that the OFP is pleased with our audit’s recognition of their efforts to fully address the report’s findings and that it is committed to maintaining effective controls in the procurement program.



# Appendix A: Scope and Methodology

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Our objective was to assess Procurement’s controls for exercising contract options to ensure compliance with applicable laws, regulations, and internal policies and procedures. The scope of this audit included contract options awarded from July 2019 through June 2021.

Our scope for this audit included a judgmental sample of 30 contract options that have an approximate obligated value of \$22.3 million, representing approximately 25 percent of the total value of options exercised during our scope period and spanning all 19 program offices. The sample is from a population of 275 contract options with an approximate obligated value of \$88 million. Our population of contract options excluded construction contracts and interagency agreements because we have conducted audits in those areas.<sup>9</sup> We also excluded contracts awarded by the U.S. Department of the Treasury’s Bureau of the Fiscal Service on behalf of the CFPB because we focused on assessing Procurement’s activities. The results from our sample cannot be projected to the entire population of CFPB contract options.

To accomplish our objective, we reviewed sections of the FAR related to exercising options; CFPB guidance, including the *Unauthorized Commitments and Ratifications* SOP; and contract documents. Further, we performed walk-throughs to understand key processes for exercising contract options and conducted interviews with CFPB Procurement management and staff.

For the 30 contracts in our sample, we tested controls to assess whether the COs (1) documented the required FAR determinations in the file; (2) exercised the contract option before the expiration of the contract and, if not, whether Procurement management ratified the unauthorized commitment; and (3) provided the contractor notice within the contract-specified time frame that the option will be exercised, and if not, whether the COs obtained the contractor’s agreement to modify the contract.

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 objective. We conducted our work from December 2021 to July 2023.

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<sup>9</sup> Office of Inspector General, *CFPB Headquarters Construction Costs Appear Reasonable and Controls Are Designed Appropriately*, [OIG Report 2015-FMIC-C-012](#), July 31, 2015; Office of Inspector General, *The Bureau Can Improve Its Controls for Issuing and Managing Interagency Agreements*, [OIG Report 2021-FMIC-C-009](#), July 21, 2021.

# Appendix B: Management Response



1700 G Street NW, Washington, D.C. 20552

September 5, 2023

Ms. Cynthia Gray  
Deputy Associate Inspector General for Audits and Evaluations  
Office of Audits and Evaluations  
20<sup>th</sup> Street & Constitution Ave, NW  
Washington, DC 20551

Dear Ms. Gray:

Thank you for the opportunity to review and comment on the Office of Inspector General's draft report, titled *The CFPB Can Improve Its Controls for Exercising Contract Options*. We appreciate your continued partnership with the Bureau's Office of Finance and Procurement over the course of this audit.

We are pleased that your audit recognized our recent efforts to immediately address the report's two findings and therefore contained no recommendations. Further, we are thankful for your team's efforts in helping us continually improve our robust processes. The Office of Finance and Procurement works hard and strives to run a procurement program with effective controls, and we remain committed to continuing an effective controls environment combined with best practices.

Thank you for your review.

Sincerely,

JOSHUA  
GALICKI

Digitally signed by JOSHUA  
GALICKI  
Date: 2023.09.05 16:25:07  
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Joshua Galicki

Deputy Assistant Director for Procurement

[consumerfinance.gov](https://consumerfinance.gov)



# Abbreviations

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CO	contracting officer
FAR	<i>Federal Acquisition Regulation</i>
OFPP	Office of Finance and Procurement
SOP	standard operating procedure

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