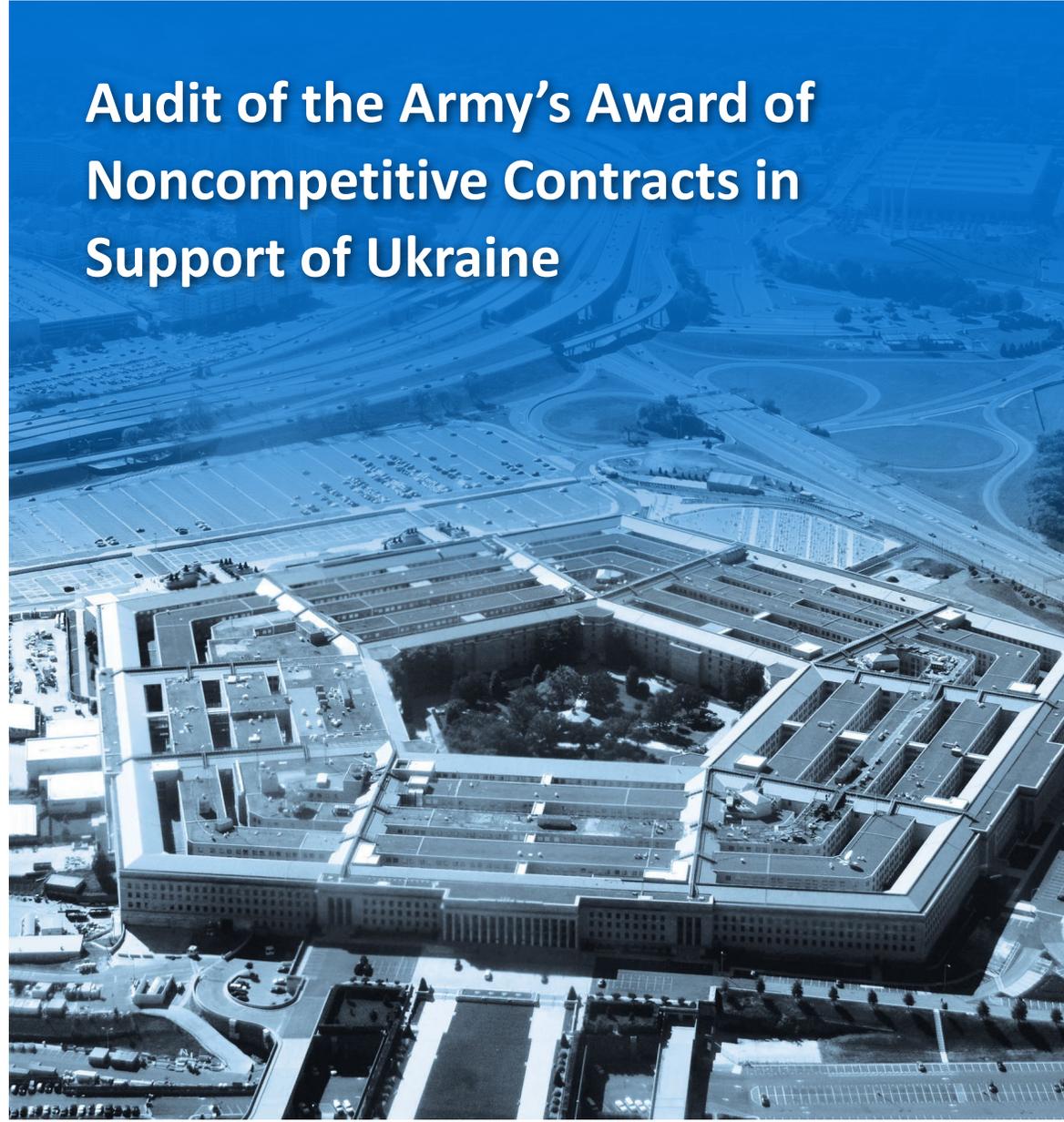


INSPECTOR GENERAL

U.S. Department of Defense

MAY 8, 2024



Audit of the Army's Award of Noncompetitive Contracts in Support of Ukraine

INDEPENDENCE ★ INTEGRITY ★ EXCELLENCE ★ TRANSPARENCY





Results in Brief

Audit of the Army's Award of Noncompetitive Contracts in Support of Ukraine

May 8, 2024

Objective

The objective of this audit was to determine whether Army contracting officials properly awarded noncompetitive contracts in support of the Ukraine response in accordance with Federal, DoD, and Army regulations and guidance.

This report is the first of two reports on the Army's award and administration of noncompetitive contracts in support of the Ukraine response. This report focuses on the award of the contracts; the second report will focus on the administration of the contracts.

Background

The United States has been a leading provider of security assistance to Ukraine, committing more than \$44 billion in security assistance since Russia launched its full-scale invasion of Ukraine on February 24, 2022.

The Federal Acquisition Regulation states that contracting officers can use other than full and open competition when the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

Finding

In general, Army contracting officials awarded noncompetitive contracts in accordance with Federal, DoD, and Army regulations and guidance. For the 13 contracts valued at \$1.3 billion we reviewed, we found that the contracting officers were justified in awarding a noncompetitive contract. However, we identified some administrative errors in the awarding of noncompetitive contracts.

Specifically, for the 13 contracts we reviewed, contracting officers did not:

- include the previous justification for consideration for follow-on acquisitions for 3 contracts;
- specify the authority for the noncompetitive award in the contract for 4 contracts;
- publicize the justification for the noncompetitive award for 10 contracts; or
- obtain justification approval before issuing a solicitation or awarding a contract for 3 contracts.

While these administrative errors did not affect the validity of the noncompetitive award of the contracts, Army contracting officers can improve in meeting Federal, DoD, and Army regulations and guidance when awarding noncompetitive contracts. Officials cited administrative oversight and a lack of awareness as two of the reasons why the contracting errors occurred.

Recommendation

We recommend that the Commanding General, Army Contracting Command, develop and implement a quality control tool and train contracting officials to ensure proper documentation and adherence to Federal, DoD, and Army regulations when awarding noncompetitive contracts.



Results in Brief

Audit of the Army's Award of Noncompetitive Contracts in Support of Ukraine

Management Comments and Our Response

The Deputy Assistant Secretary of the Army (Procurement), responding for the Commanding General, Army Contracting Command, partially agreed with our recommendation. The Deputy Assistant Secretary noted that the Army already requires Paperless Contract Files and the Army Cabinet Index folder structure to be used and that this index has the list of everything needed in a noncompetitive action. The Deputy Assistant Secretary added that Paperless Contract Files training is already routinely provided and will continue to be provided on a routine basis. However, the Deputy Assistant Secretary's comments do not address the fact that the current processes did not prevent the deficiencies identified during the audit. Furthermore, the comments do not explain what additional control mechanism the Army will put in place to ensure the current guidance is followed, nor do the comments make clear whether the training would prevent the deficiencies identified during the audit. Therefore, the recommendation is unresolved. We request that the Army provide comments on the unresolved recommendation within 30 days.

Please see the Recommendation Table on the next page for the status of the recommendation.

Recommendation Table

Management	Recommendation Unresolved	Recommendation Resolved	Recommendation Closed
Commanding General, Army Contracting Command	1	None	None

Please provide Management Comments by June 7, 2024.

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – The DoD OIG verified that the agreed-upon corrective actions were implemented.





OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

May 8, 2024

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit of the Army's Award of Noncompetitive Contracts in Support of Ukraine
(Report No. DODIG-2024-078)

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendation. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains a recommendation that is considered unresolved because the Deputy Assistant Secretary of the Army (Procurement), responding for the Commanding General, Army Contracting Command, did not fully address the recommendation presented in the report.

Therefore, the recommendation remains open. We will track the recommendation until management has agreed to take actions that we determine to be sufficient to meet the intent of the recommendation and management officials submit adequate documentation showing that all agreed-upon actions are completed.

DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendation. Send your response to audrgo@dodig.mil.

We appreciate the cooperation and assistance received during the audit. If you have any questions, please contact me at [REDACTED]

FOR THE INSPECTOR GENERAL:

A handwritten signature in blue ink, reading "Richard B. Vasquez", is positioned above the printed name.

Richard B. Vasquez
Assistant Inspector General for Audit
Readiness and Global Operations

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Introduction

Objective

The objective of this audit was to determine whether Army contracting officials properly awarded noncompetitive contracts in support of the Ukraine response in accordance with Federal, DoD, and Army regulations and guidance.

This report is the first of two reports on the Army's award and administration of noncompetitive contracts in support of the Ukraine response. This report focuses on the award of the contracts; the second report will focus on the administration of the contracts.

Background

The United States has been a leading provider of security assistance to Ukraine, committing more than \$44 billion in security assistance since Russia launched its full-scale invasion of Ukraine on February 24, 2022. In FY 2022 and FY 2023 appropriations, the United States funded \$48.7 billion in security assistance packages. This amount includes:

- \$25.9 billion to replenish DoD equipment stocks sent to Ukraine through presidential drawdown authority;
- \$18 billion for the DoD's Ukraine Security Assistance Initiative; and
- \$4.7 billion in Foreign Military Financing for Ukraine and other countries impacted by the situation in Ukraine.

The Federal Acquisition Regulation (FAR) states that contracting officers can use other than full and open competition when the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.¹ Furthermore, section 1244(a) of the National Defense Authorization Act for FY 2023 allows the DoD to use noncompetitive award processes for contracts that provide materiel and related services to foreign allies and partners in support of the Ukraine government.² Due to the urgency of the Ukraine conflict, the DoD may award noncompetitive contracts to provide Ukrainian forces with resources and to replenish equipment taken from the U.S. military stocks to support Ukraine.

¹ FAR Part 6, "Competition Requirements," Subpart 6.3, "Other Than Full and Open Competition," Section 6.302-2, "Unusual and Compelling Urgency," Subsection 6.302-2(a), "Authority."

² Public Law 117-263, "James M. Inhofe National Defense Authorization Act for Fiscal Year 2023," Section 1244, "Temporary Authorizations Related to Ukraine and Other Matters," December 23, 2022.

The Army Contracting Command

The U.S. Army Contracting Command (ACC) is a major subordinate command of the U.S. Army Materiel Command. As the Army's principal buying agent, the ACC supports Army readiness and modernization by providing Soldiers with contracting support. The ACC executes more than 165,000 contract actions each fiscal year, comprising on average 70 percent of the Army's contract dollars. The ACC has eight contracting support brigades, 13 contracting battalions, and 68 contracting teams stationed throughout the world.

Contingency Contracting Challenges

The DoD's operations in support of Ukraine and in response to Russia's full-scale invasion of Ukraine on February 24, 2022, fall within the scope of Operation Atlantic Resolve. On August 18, 2023, Operation Atlantic Resolve became a contingency operation. Overseas contingency operations are Secretary of Defense-designated activities that result in members of the Armed Forces becoming involved in military actions, operations, or hostilities against an enemy of the United States or opposing military force.³ Contingency operations often take place in harsh, remote, or dangerous areas outside well-established supply chains and oversight mechanisms. In contingency contracting environments, contracting officers award contracts to procure goods and services that are specific to the operating environment or are urgently needed.

Despite the challenges to providing oversight and surveillance of the contractor's performance in a contingency contracting environment, contracting officials are still required to award contracts in accordance with statutory requirements, including the FAR and the DoD and individual Military Service supplements to the FAR. However, in the contingency contracting environment, regulations and standard operating procedures designed to detect potential fraud, waste, abuse, or noncompliance may need to be supplemented with alternative procedures.

Criteria for Awarding Noncompetitive Contracts

Noncompetitive Contract Awards

As required by section 3201, title 10, United States Code, and section 3301, title 41, United States Code, contracting officers are required to promote and provide for full and open competition in soliciting offers and awarding Government contracts. Promoting competition in Federal contracting presents the opportunity for significant cost savings. In addition, competitive contracts can help improve contractor performance, prevent fraud, and promote accountability.

³ Operation Atlantic Resolve was designed to provide rotational deployments of combat forces to Europe to enhance countries' defenses.

However, contracting officers may award noncompetitive contracts under certain circumstances. FAR Subpart 6.302, "Circumstances Permitting Other than Full and Open Competition," provides statutory authorities that allow noncompetitive contracts when:

1. there is only one responsible source and no other supplies or services will satisfy agency requirements;
2. there is such an unusual and compelling urgency that the Government would be seriously injured;
3. it is necessary to maintain a supplier in case of a national emergency or to achieve industrial mobilization, to establish or maintain an essential engineering, developmental, or research capability, or to acquire expert services for a litigation or dispute;
4. the terms of an international agreement or treaty require a noncompetitive award;
5. authorized or required by statute;
6. the disclosure of the Government's needs would compromise national security; or
7. the agency head determines that full and open competition is not in the public interest.

Justifications for Awarding Noncompetitive Contracts

FAR Subpart 6.3, "Other than Full and Open Competition" provides policies and procedures for awarding a noncompetitive contract. Each contract awarded noncompetitively must contain a reference to the specific authority.⁴ Additionally, the contracting officer must justify the use in writing, certify the accuracy and completeness of the justification, and obtain approval from the appropriate level of authority.⁵ The FAR also requires the following elements to be included in the justification for awarding a noncompetitive contract.⁶

1. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires the use of the authority cited.
2. A description of efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a notice of the proposed contract action was or will be publicized and if not, which exception applies.
3. A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

⁴ FAR Section 6.301, "Policy."

⁵ FAR Section 6.303-1, "Requirements."

⁶ FAR Section 6.303-2, "Content."

4. A description of the market research conducted and the results.
5. A statement of actions the agency may take to remove or overcome any barriers to competition.
6. A certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

The contracting officer must make the justification publicly available at the Government point of entry (SAM.gov) unless disclosure of the agency's needs would compromise national security or create other security risks.⁷

Additionally, noncompetitive follow-on acquisitions previously awarded on a noncompetitive basis must include a copy of the previous justification to assist the approval authority in determining whether the planned actions to remove any barriers to competition were completed.⁸

The FAR requires that the agency justifies the use of a noncompetitive contract, certifies the accuracy and completeness of the justification, and obtains the appropriate approvals before beginning negotiations or issuing an award.⁹ However, for contracts awarded under "unusual and compelling urgency," FAR 6.303-1(e) provides that the justification may be prepared and approved within a reasonable time after the contract's award date.¹⁰ Additionally, the Army Federal Acquisition Regulation Supplement requires contracting officers to have an approved justification before releasing a noncompetitive solicitation.¹¹

Publicizing Contract Actions

FAR Part 5, "Publicizing Contract Actions," requires contracting officers to publicize contract actions to the Government point of entry to increase competition and broaden industry participation in meeting Government requirements. The FAR provides exceptions to publicizing the synopsis of a proposed contract action.¹² These exceptions include: (1) if a disclosure of the agency's needs would compromise national security, (2) if unusual and compelling urgency preclude competition, (3) if the proposed contract action is at the written direction of a foreign government, and (4) if the proposed contract action will be made and performed outside the United States.

⁷ FAR Section 6.305, "Availability of the Justification."

SAM.gov is the single Government point of entry for Government procurement opportunities over \$25,000.

⁸ Defense Federal Acquisition Regulation Supplement Procedures, Guidance, and Information Part 206, "Competition Requirements," Subpart 206.3, "Other Than Full and Open Competition," Section 206.303-2, "Content."

⁹ FAR Section 6.303-1, "Requirements."

¹⁰ We considered within 30 days after contract award to be reasonable. The FAR requires contracting officers awarding a contract due to unusual and compelling urgency to post the noncompetitive justification within 30 days of the contract award. Therefore, to meet this requirement, the contracting officer would need an approved justification within 30 days.

¹¹ Army Federal Acquisition Regulation Supplement Part 5106, "Competition Requirements," Subpart 5106.3, "Other Than Full and Open Competition," Section 5106.303-1, "Requirements."

¹² FAR Part 5, Subpart 5.2, "Synopses of Proposed Contract Actions," Section 5.202, "Exceptions."

Within the synopsis, contracting officers must identify the intended source and insert a statement justifying the lack of competition for noncompetitive contract actions. Additionally, contracting officers must insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which must be considered by the agency.¹³

Market Research

FAR Part 10, “Market Research,” prescribes policies and procedures for conducting market research. Contracting officers must use the results of market research to determine whether sources capable of satisfying the agency’s requirements exist and whether commercial products or commercial services, or modifications to commercial products or services, are available. Techniques for conducting market research could include contacting knowledgeable individuals, publishing formal requests for information, querying Government and commercial databases, and reviewing catalogs and other available information.

ACC Contracts and Procedures Reviewed

Using SAM.gov, we identified an initial universe of noncompetitive contract actions not awarded under simplified acquisition procedures from February 24, 2022, through February 9, 2023.¹⁴ We also coordinated a data call with the Army to verify our initial universe and identify any additional contract actions. The Army awarded Ukraine-related actions on 21 contracts valued at \$2.72 billion.¹⁵ We reviewed 13 out of 21 Ukraine-related, noncompetitive contracts, valued at \$1.26 billion, awarded by five ACC contracting centers—Redstone Arsenal, Aberdeen Proving Ground, Orlando, Detroit Arsenal, and the 409th Contracting Support Brigade. We reviewed Federal, DoD, and Army regulations to identify requirements for awarding noncompetitive contracts. We then reviewed the contract files and interviewed Army contracting officers to determine whether Army contracting officers followed the written award procedures of the Federal, DoD, and Army regulations. For a full discussion of this audit’s scope and methodology, see the appendix.

¹³ FAR Section 5.207, “Preparation and Transmittal of Synopses.”

FAR 5.207(c)(16) includes two different statements that must be included in a synopsis. The statement differentiates based on the noncompetitive authority cited.

¹⁴ SAM.gov reports provide detailed information on awarded contracts and associated modifications.

Simplified acquisition procedures are designed for the purchase of relatively simple supply or service requirements. The FAR requirements are less stringent and not as comprehensive as for other acquisitions. By excluding simplified acquisition contracts, we excluded routine contracts and focused our review on more complex acquisitions.

¹⁵ Our search identified Ukraine-related contract actions, which included delivery orders issued off non-Ukraine contracts. Therefore, this dollar value represents the total dollar value for the contracts as reported in SAM.gov; this dollar value does not represent the total dollar value of Ukraine-related actions.

Finding

Although Army Contracting Officers Properly Justified Noncompetitive Contracts, Administrative Errors Existed

In general, Army contracting officials awarded noncompetitive contracts in accordance with Federal, DoD, and Army regulations and guidance. For the 13 contracts valued at \$1.3 billion we reviewed, we found that the contracting officers were justified in awarding a noncompetitive contract. However, we identified some administrative errors in the awarding of noncompetitive contracts. Specifically, for the 13 contracts we reviewed, contracting officers did not:

- include the previous justification for consideration for follow-on acquisitions for 3 contracts;
- specify the authority for the noncompetitive award in the contract for 4 contracts;
- publicize the justification for the noncompetitive award for 10 contracts; or
- obtain justification approval before issuing a solicitation or awarding a contract for 3 contracts.

While these administrative errors did not affect the validity of the noncompetitive award of the contracts, Army contracting officers can improve in meeting Federal, DoD, and Army regulations and guidance when awarding noncompetitive contracts. Officials cited administrative oversight and a lack of awareness as two of the reasons why the contracting errors occurred.

Army Contracting Officials Generally Awarded Noncompetitive Contracts in Accordance with Guidance

In general, Army contracting officials awarded the 13 noncompetitive contracts we reviewed in accordance with Federal, DoD, and Army regulations and guidance. We found that all 13 contracting officers were justified in noncompetitively awarding their contracts. In addition, all 13 contracting officers adequately synopsisized or waived the requirement to synopsisize the proposed contract actions and conducted market research.

Preparing Justifications to Award Noncompetitive Contracts

Army contracting officers prepared justifications to award noncompetitive contracts for all 13 contracts we reviewed. Specifically, in written justification statements, the contracting officers demonstrated that the proposed contractor's unique qualifications required a noncompetitive contract, described efforts made to ensure that offers were solicited from as many potential sources as practicable and barriers to competition were removed for future acquisitions, and ensured that the justifications were approved by the required authorities.

Contracting Officers Demonstrated the Need for a Noncompetitive Contract

The contracting officers for all 13 contracts we reviewed demonstrated that the proposed contractor's unique qualifications or the nature of the acquisition required a noncompetitive contract. The FAR does not allow contracting officers to justify a noncompetitive contract because of: (1) lack of advance planning, or (2) concerns related to the amount of funds available.¹⁶ We reviewed the justifications for the 13 contracts and identified that contracting officers properly explained that the contractor was the only capable source.

Contracting officers for 11 of the 13 contracts we reviewed awarded the contract noncompetitively because the contractor owned the technical data and was the only source capable of fulfilling the requirement. For example, one contracting officer awarded a noncompetitive indefinite-delivery indefinite-quantity contract for radio and communications equipment and services to the contractor because the contractor owned the proprietary rights required to ensure compatibility with existing customer radios. The contractor refused to sell the data rights. Even if the Government had obtained the data rights, the duplicative cost, as well as the time required to procure, install, equip facilities, and train customers on new radios, would be excessive and would reduce and delay partner nations' abilities to execute missions required to defend against enemy and insurgent terrorist activities. This type of delay could potentially result in unnecessary combat losses to partner nation infrastructure and equipment, as well as unnecessary increases in injury and death.

¹⁶ FAR Section 6.301, "Policy."

Another contracting officer awarded a noncompetitive contract for a missile system because the contractor owned the technical data; therefore, the contractor had the unique knowledge and in-depth understanding of the equipment design, installation, integration, and operation. According to the justification, it would cost the Government \$836 million and require 108 months to qualify another source. The additional cost would not result in long-term savings, and the additional time would result in unacceptable delays in fulfilling the agency's requirements. The contracting officer stated that failure to obtain the required missile system would result in the inability to support Ukraine's military and security forces.

Contracting officers for the remaining 2 of the 13 contracts we reviewed justified the use of a noncompetitive award due to unusual and compelling urgency. The agency's need for the property or services was of such an unusual and compelling urgency that the Government would be seriously injured unless permitted to limit the number of sources from which it solicits bids or proposals. Specifically, contracting officers awarded the two noncompetitive contracts for cannon parts used in support of Ukraine. The contracting officer stated that if there was not a constant flow of these parts, production would cease and severely impact integration, assembly, and repair of the cannon assemblies. The contractor already possessed the necessary technology, tooling, fixtures, and industrial knowledge to successfully manufacture the part.

Contracting Officers' Efforts to Solicit Offers from Potential Sources

Army contracting officers for all 13 contracts we reviewed fully described their efforts to solicit offers from as many potential sources as practicable and remove barriers to competition for future acquisitions. Contracting officers for 8 of the 13 contracts we reviewed posted a sources sought notice to identify potential sources.¹⁷ Contracting officers for the remaining five contracts properly waived the requirement. Specifically, the FAR provides several exceptions to the synopsis requirement, including that disclosure of the Government's needs would compromise national security or that the Government would be seriously injured if the agency complies with the time periods required.¹⁸ Contracting officers for all five contracts waived the synopsis requirement due to protecting national security or the urgency of the requirement.

¹⁷ A sources sought notice is a Government market research tool to determine whether there are two or more capable businesses or small businesses that can perform the requirements of a planned contract.

¹⁸ FAR Section 5.202, "Exceptions."

In addition, Army contracting officials used innovative approaches to identify potential sources. Specifically, one project office used an Other Transactional Authority, a more flexible procurement vehicle.¹⁹ The office released a topic through the Aviation and Missile Technology Consortium to allow for an innovative competition approach of a Lethal Miniature Aerial Missile System. The existing contractor owned the technical data package and a new supplier would have to invest in substantial engineering development, develop a production line, and meet facility requirements. The contracting officer published a sources sought notice and published the requirements to the Competition Advocate Shopping List. Additionally, the contracting officer published a request for information for this capability. The request for information received five responses to be included in future market research efforts.

Contracting Officers Ensured Appropriate Justification Approval

The required officials approved the justifications for the 13 contracts we reviewed. The FAR provides the following levels of approval authority depending on the dollar value of the acquisition.²⁰

- If the acquisition does not exceed \$750,000, the contracting officer's certification serves as approval.
- If the acquisition is over \$750,000, but does not exceed \$15 million, the advocate for competition must sign the justification.
- If the acquisition is over \$15 million, but does not exceed \$100 million, the head of the procuring activity must sign the justification.
- If the acquisition is over \$100 million, the senior procurement executive must sign the justification.

We reviewed the estimated dollar value of the acquisition and ensured that the correct level of authority approved the justification. We determined that the justifications were approved by the appropriate level of approval authority for the dollar value specified. See Table 1 for a breakdown of the contracts and their level of approval authority.

¹⁹ An Other Transactional Authority is a procurement vehicle that can be used to implement innovative business models within the government.

²⁰ FAR Section 6.304, "Approval of the Justification."

Table 1. Appropriate Approval Authority Required by the FAR by Contract

Contract	Dollar Value of Ukraine-Related Contract Actions	Estimated Dollar Value Listed on the Justification	Required Level of Approval as Defined by the FAR	Title of Approving Official
Contract 1	\$32,562,783	\$22,044,200,000	SPE	SPE
Contract 2	273,468,814	3,300,000,000	SPE	SPE
Contract 3	558,940,315	1,500,265,298	SPE	SPE
Contract 4	182,295,333	275,517,375	SPE	SPE
Contract 5	19,978,997	187,227,484	SPE	SPE
Contract 6	132,281,851	176,376,807	SPE	SPE
Contract 7	25,448,444	99,202,786	Head of the Procuring Activity	Senior Contracting Official*
Contract 8	24,980,482	19,924,714	Head of the Procuring Activity	Senior Contracting Official*
Contract 9	3,176,478	5,522,618	AC	AC
Contract 10	3,726,376	3,414,044	AC	AC
Contract 11	1,171,600	2,674,500	AC	AC
Contract 12	862,920	1,924,770	AC	AC
Contract 13	511,606	511,606	Contracting Officer	Contracting Officer

* The approval authority for this dollar value range was delegated to the Senior Contracting Official.

LEGEND

AC Advocate for Competition

SPE Senior Procurement Executive

Source: The DoD OIG.

The FAR requires technical and requirements personnel to provide and certify as accurate and complete the necessary data to support their recommendation for a noncompetitive award.²¹ Additionally, the Army Federal Acquisition Regulation Supplement also requires legal counsel to review the justification.²² All 13 justifications we reviewed contained approvals from technical and requirements personnel and legal counsel.

²¹ FAR Section 6.303-1, "Requirements."

²² Army Federal Acquisition Regulation Supplement Part 5135, "Forms," Subpart 5153.3, "Illustration of Forms," Section 5153.303-4, "Format for a Justification Review Document for Other than Full and Open Competition."

Synopsizing Contract Actions to Publicize the Requirement

Army contracting officers for all 13 contracts we reviewed adequately synopsized or waived the requirement to synopsize proposed contract actions in accordance with Federal, DoD, and Army regulations and guidance. FAR Section 5.207, "Preparation and Transmittal of Synopses," provides a list of items that each synopsis should address as applicable; these include product or service code, contracting office address, proposed solicitation number, closing response date, description, and place of performance. Synopses for noncompetitive contract actions should also identify the intended source and include a statement justifying the lack of competition.²³ Contracting officers for 8 of the 13 contracts we reviewed posted a synopsis. We reviewed the eight synopses and determined that contracting officers included all applicable items.

Contracting officers for the remaining five contracts properly waived the requirement. The FAR provides several exceptions to the synopsis requirement, including that disclosure of the Government's needs would compromise national security or that the Government would be seriously injured if the agency complies with the time periods required.²⁴ Contracting officers for the remaining five contracts properly waived the synopsis requirement due to protecting national security or the urgency of the requirement. We also reviewed the description of the requirement listed in the synopsis to the description listed in the justification to determine whether they were similar. We determined that the descriptions in all the synopses matched the descriptions in the justifications.

Conducting Market Research to Identify Potential Sources

Army contracting officers for all 13 contracts we reviewed conducted market research. We determined whether contracting officers posted a sources sought or request for information notice. If contracting officials did not post a notice, we determined whether the contracting officer cited an applicable FAR exception to the requirement. The FAR provides a list of information that market research should address, including:

- if commercial products or commercial services, or modifications to commercial products or services, are available,
- customary practices regarding customizing, modifying, or tailoring products or services to meet customer needs,
- the requirements of any laws and regulations unique to the item being acquired, and
- distribution and support capabilities of potential suppliers.²⁵

²³ FAR Section 5.207, "Preparation and Transmittal of Synopses."

²⁴ FAR Section 5.202, "Exceptions."

²⁵ FAR Part 10, "Market Research," Subpart 10.002, "Procedures."

We determined that contracting officers included most of the items listed. The FAR also lists various techniques for conducting market research that could include contacting knowledgeable individuals, publishing formal requests for information, querying Government and commercial databases, and reviewing catalogs and other available information. We reviewed the contracting officers' market research techniques and determined whether the research identified sources that may have potentially competed. We found that the contracting officers for all 13 contracts conducted market research in accordance with Federal, DoD, and Army regulations and guidance.

For example, a contracting officer conducted market research before awarding a contract for unmanned aircraft systems. The contracting officer posted a sources sought notice to the Government point of entry and received four responses. Project office personnel evaluated the four contractors against five categories: (1) reliability and production, (2) operational characteristics, (3) system survivability, (4) technical characteristics, and (5) services and support. Results from the evaluations showed that only one contractor had the ability to meet all the characteristics required. The contracting officer also reviewed Government and commercial databases and catalogs and other publicly available information. The contracting officer noted that market research would continue to be gathered as technical advances are made and other viable competitive companies emerge.

Another contracting officer was conducting market research before awarding a contract for virtual battlespace capabilities. The integrated product team attended trade shows and conferences to talk to contractors and subject matter experts. The team also viewed demonstrations of virtual battlespace capabilities. In addition, the contracting officer posted a sources sought notice, but received no responses. The contracting officer noted that while no sources had expressed written interest in the acquisition, any bids, proposals, or capabilities statements would be considered.

Areas the Army Could Improve When Awarding Noncompetitive Contracts

Although contracting officials properly prepared award justifications, synopsis contract actions, and conducted market research for all 13 contracts we reviewed, we identified four administrative areas in need of improvement. Specifically, Army contracting officers did not include the previous justification for follow-on acquisitions, cite the specific authority for the noncompetitive award within the contract, publish the justification to the Government point of entry, or comply with the timing requirements for justification approval when awarding noncompetitive contracts.

Including Previous Justifications for Follow-On Acquisitions

Contracting officers did not include the justification for the previous contract for consideration when preparing the justification for three follow-on acquisitions. These 3 contracts represent the only follow-on contracts of the 13 contracts we reviewed. Defense Federal Acquisition Regulation Supplement Procedures, Guidance, and Information 206.303-2 requires contracting officers to include the previous justification to assist the approval authority in determining whether the planned actions to remove any barriers to competition listed on the previous justification were completed. However, the three follow-on contracts we reviewed did not have the previous justification attached.

One contracting officer stated that while the previous justification was not attached, leadership received all applicable documents from the previous contract as part of the review process. The contracting officer stated that these documents would have included market research, noncompetitive justifications, the previous solicitation, proposal, evaluation, and any vendor responses. Another contracting officer did not know that the previous justification was required to be included in the file. The third contracting officer was not the contracting officer at the time of award, so they did not know why it was not included. During the audit, all three contracting officers added the previous justification to the contract file. It is imperative that the previous justification be included and reviewed before determining to award a follow-on noncompetitive contract.

Citing the Specific Authority for Awarding a Noncompetitive Contract

Army contracting officers did not cite the specific authority for the noncompetitive award in the contract for 4 of the 13 contracts we reviewed. The FAR requires that each contract awarded noncompetitively contain a reference to the specific authority used to noncompetitively award the contract.²⁶ Contracting officers for the four contracts cited the noncompetitive authority in the justification for the noncompetitive award, but not the contract. Two contracting officers stated that the omission of the specific authority was an oversight on their part. The other two contracting officers noted that while the contract did not state the authority, the justification and subsequent contract file documentation identified the authorities. However, the omission of the citation within the contract does not meet the FAR requirement.

²⁶ FAR Section 6.301, "Policy."

Publishing the Justification to the Government Point of Entry

Army contracting officers did not publicize the justification for the noncompetitive award on the Government point of entry for 10 of the 13 contracts we reviewed. The FAR requires contracting officers to make the justification publicly available at the Government point of entry (SAM.gov), unless disclosure of the agency's needs would compromise national security or create other security risks.²⁷ Contracting officers for three contracts stated that they did not post the justification for the noncompetitive award because posting a Ukraine effort did not appear to be in the best interest of the Government. However, the contracting officers did not document this rationale in the contract file. The contracting officers for the seven remaining contracts did not post the justification due to an oversight or confusion about whether synopsis and posting a noncompetitive justification was required.²⁸ However, FAR 6.305 mandates that the justification for noncompetitively awarded contracts be made publicly available.

Complying with Timing Requirements for Justification Approval

Army contracting officials did not comply with justification and approval timeline requirements for 3 of the 13 contracts we reviewed. Specifically, one Army contracting officer did not obtain justification approval before soliciting a proposal. The Army Federal Acquisition Regulation Supplement requires contracting officers to have an approved justification before releasing a noncompetitive solicitation.²⁹ In this case, Army contracting officials solicited a proposal from the contractor almost 2 months before the justification was approved. The contracting officer did not know why this occurred because they were not the contracting officer at the time. However, an ACC-Redstone official stated that it appears a previously approved justification was leveraged to get the contract awarded. However, we still consider releasing a solicitation before receiving justification approval improper because the only exception is when there is unusual and compelling urgency, which was not cited for this contract.

For the two remaining contracts, both awarded under unusual and compelling urgency, Army officials did not approve the award justifications within a reasonable period after the contract award date. The FAR requires that agencies justify the use of a noncompetitive contract, certify the accuracy and completeness

²⁷ FAR Section 6.305, "Availability of the Justification."

²⁸ One of the seven contracting officers stated that they relied on FAR 1.102-5(e) as rationale for not posting the justification. FAR 1.102-5(e) states that if a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited, personnel should not assume it is prohibited.

²⁹ Army Federal Acquisition Regulation Supplement Section 5106.303-1, "Requirements."

of the justification, and obtain the appropriate approvals before issuing an award.³⁰ However, FAR 6.303-1(e) allows justifications for contracts awarded under “unusual and compelling urgency” to be prepared and approved within a reasonable time after the contract’s award date. While the FAR does not define a reasonable time period for approving the justification after the award, the FAR does offer additional guidance. The FAR requires that contracting officers awarding a contract due to unusual and compelling urgency post the noncompetitive justification within 30 days of the contract award.³¹ Therefore, to meet this 30-day requirement for posting the justification, contracting officers would need an approved justification within 30 days. We determined that contracting officials did not meet the FAR requirement because the justifications were approved 37 and 141 days after the award. The contracting officer for both contracts stated that the delay was due to the urgency of the requirement and waiting on reviews from legal counsel and the competition advocate. However, the delay of an approved justification does not meet the FAR requirement.

Full Compliance with Federal, DoD, and Army Requirements is Imperative for Noncompetitive Contracts

Noncompetitive contracts should be used only when necessary; limiting competition can prevent the Government from obtaining the best products and services to meet its requirements. Additionally, noncompetitive contracts can also cause the Government to pay unreasonably high prices due to the lack of price competition. Contracting officers can mitigate these risks by justifying the use of noncompetitive contracts in writing. Properly justifying and approving a noncompetitive award provides assurance that the contracting officer had no other choice than to limit the award to one contractor. Furthermore, contracting officers who award noncompetitive contracts need all possible information available to them. Specifically, contracting officers awarding a follow-on contract need to review the previous justification to determine why the contractor’s unique qualifications or nature of the acquisition required a noncompetitive award and if those circumstances still apply. Contracting officers can also review the previous efforts to ensure offers were solicited from as many sources as possible and determine whether any of the barriers to competition were overcome or removed.

While Army contracting officers did not meet all Federal, DoD, and Army requirements for noncompetitive contract awards, the administrative errors we identified did not affect the validity of the noncompetitive award of the contracts. Army contracting officers generally awarded their contracts in accordance with

³⁰ FAR Section 6.303-1, “Requirements.”

³¹ FAR Section 6.305, “Availability of the Justification,” Subsection 6.305(b).

Federal, DoD, and Army regulations and guidance. Furthermore, one contracting center developed a quality control checklist to ensure the completeness of the contract files and adherence to the FAR. If the ACC implements and enforces a similar checklist across the ACC, it should help Army contracting officials avoid the errors and omissions we identified in this report. Therefore, the ACC Commanding General should develop and implement a quality control tool and train contracting officials as necessary to ensure proper documentation and adherence to Federal, DoD, and Army regulations when awarding noncompetitive contracts. At a minimum, the tool and training should address:

- documentation for follow-on acquisitions;
- citation of specific authority for awarding noncompetitive contracts;
- publication of the justification; and
- timing for justification approval.

We will continue to analyze the Army's administrative procedures for noncompetitive contracts and may make additional recommendations in the subsequent report in this series covering the administration of noncompetitive contracts in support of the Ukraine response.

Recommendation, Management Comments, and Our Response

Recommendation 1

We recommend that the Commanding General, Army Contracting Command, develop and implement a quality control tool and train contracting officials as necessary to ensure proper documentation and adherence to Federal, DoD, and Army regulations when awarding noncompetitive contracts. At a minimum, the tool and training should address documentation for follow-on acquisitions, citation of the specific authority for awarding noncompetitive contracts, publication of the justification, and timing for justification approval.

Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments

The Deputy Assistant Secretary of the Army (Procurement), responding for the Commanding General, Army Contracting Command, partially agreed with the recommendation. The Deputy Assistant Secretary stated that the Army Federal Acquisition Regulation Supplement already requires Paperless Contract Files and the Army Cabinet Index folder structure to be used. The Deputy Assistant Secretary stated that this index has the list of everything needed in a

noncompetitive action; therefore, the Army Contracting Command should not add any additional checklists. Additionally, the Deputy Assistant Secretary stated that Paperless Contract Files training is already routinely provided and will continue to be provided on a routine basis to contracting officials. Finally, the Deputy Assistant Secretary stated that by July 31, 2024, an article will be issued to remind contracting officials of the training and the use of the Army Cabinet Index folder structure.

Our Response

Comments from the Deputy Assistant Secretary did not address the specifics of the recommendation; therefore, the recommendation is unresolved. We encourage the use of existing processes and application of existing policies whenever possible by having the Deputy Assistant Secretary emphasize them. However, the Deputy Assistant Secretary's comments do not address the fact that the current processes did not prevent the deficiencies identified during the audit. Furthermore, the comments do not explain what additional control mechanism the Army will put in place to ensure the current guidance is followed, nor do the comments make clear whether the training addresses the requirements regarding documentation for follow-on acquisitions, citation of the specific authority for awarding noncompetitive contracts, publication of the justification, and timing for justification approval. We request that the Army provide comments within 30 days in response to the final report with additional information explaining how the Army Contracting Command will ensure policies and procedures will be followed to avoid the issues identified in this report and how the training will mitigate them.

Army Materiel Command Comments

Although not required to comment, the Executive Deputy to the Commanding General, Army Materiel Command, reviewed and endorsed the draft report and the responses from the Army Contracting Command.

Appendix

Scope and Methodology

We conducted this performance audit from February 2023 through February 2024 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.

Overall Contract Universe and Selection Process

Using SAM.gov, we identified an initial universe of noncompetitive contract actions not awarded under simplified acquisition procedures from February 24, 2022, through February 9, 2023.³² We also coordinated a data call with the Department of the Army, Department of the Navy, Department of the Air Force, and the Defense Logistics Agency to verify our initial universe and identify any additional contract actions.

Our universe included 35 contracts awarded for the total of \$2.72 billion with the following four DoD activities.

- Department of the Army
- Department of the Navy
- Department of the Air Force
- Defense Logistics Agency³³

³² SAM.gov reports provide detailed information on awarded contracts and associated modifications. Ad hoc reports on SAM.gov offer the ability to select specific fields from data to create a customized report.

Simplified acquisition procedures are designed for the purchase of relatively simple supply or service requirements. The FAR requirements are less stringent and not as comprehensive as for other acquisitions. By excluding simplified acquisition contracts, we excluded routine contracts and focused our review on more complex acquisitions.

³³ Contract actions include initial contracts awarded, delivery orders issued off indefinite-delivery indefinite-quantity contracts, or modifications made to either. We included all contract actions in our search because modifications and delivery orders could be specific to Ukraine.

See Table 2 for the number of contracts and their associated dollar value by DoD Component.

Table 2. Universe of Noncompetitive Contracts Not Awarded Under Simplified Acquisition Procedures from February 24, 2022, Through February 9, 2023

DoD Component	Number of Contracts	Dollar Value	Percentage of Dollar Value to Total
Army	21*	\$2,715,078,634	99.74
Navy	5	5,629,763	0.21
Air Force	7	841,392	0.03
Defense Logistics Agency	2	478,712	0.02
Total	35	\$2,722,028,501	100.00

* The audit team removed one contract identified in the initial universe that was miscoded and used simplified acquisition procedures.

Source: The DoD OIG.

Of the total \$2.722 billion awarded, the Army awarded \$2.715 billion, or 99.74 percent, of the total dollar value across 21 unique contracts.³⁴ We reviewed 13 of the 21 Ukraine-related, noncompetitive contracting actions, awarded by the Army between February 24, 2022, and February 9, 2023, valued at \$1.26 billion. We initially selected 11 contracts based on dollar value and the awarding agency; we added the remaining two Army contracts in our universe with initial award dates after February 24, 2022. See Table 3 for the contracts we reviewed and their associated dollar value in our sample.

³⁴ Our search identified Ukraine-related contract actions, which included delivery orders issued off non-Ukraine-related contracts. Therefore, this dollar value represents the total dollar value for the contracts as reported in SAM.gov; this dollar value does not represent the total dollar value of Ukraine-related actions.

Table 3. Dollar Value of the Contracts Reviewed in our Sample

Contract	Dollar Value of Ukraine-Related Contract Actions
Contract 3	\$558,940,315
Contract 2	273,468,815
Contract 4	182,295,333
Contract 6	132,281,851
Contract 1	32,562,783
Contract 7	25,448,444
Contract 8	24,980,482
Contract 5	19,978,997
Contract 10	3,726,376
Contract 9	3,176,478
Contract 11	1,171,600
Contract 12	862,920
Contract 13	511,606
Total	\$1,259,405,999

Source: The DoD OIG.

Review of Documentation and Interviews

We reviewed Federal, DoD, and Army regulations to identify requirements for awarding contracts. We then reviewed the contract files and interviewed Army contracting officers to determine whether Army contracting officers followed the written award procedures of Federal, DoD, and Army regulations. Specifically, we reviewed the following documentation to determine whether contracting officers met the requirements for justifying a noncompetitive award, synopsising contract actions, and conducting market research.

- Contract award and subsequent modifications
- Justifications and approvals for noncompetitively awarding a contract
- Performance work statements
- Price negotiation memorandums
- Sources sought notices
- Market research reports and commerciality determinations
- Requests for proposals
- Independent cost estimates
- Synopses

We also conducted searches on the Government point of entry, SAM.gov, to identify whether contracting officers published a sources sought notice, a synopsis of the contract action, and the justification for awarding a noncompetitive contract. If the contracting officer did not meet one of the Federal, DoD, or Army requirements, we asked the contracting officer for the reason this requirement was not met.

Internal Control Assessment and Compliance

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the control environment and the related principle of establishing structure, responsibility, and authority. Additionally, we assessed the control activities component of internal control and the related principles of management designing and implementing control activities. Our internal control assessment was limited to assessing the control environment and control activities related to the justification and approval of noncompetitive awards. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Use of Computer-Processed Data

In order to review contract awards, we used data systems that serve as data repositories for contract documentation. These data systems include the Army's Paperless Contract Files system and the Electronic Data Access system, which resides under the DoD's Procurement Integrated Enterprise Environment.

Our review of these two web-based systems showed that:

- the Army's Paperless Contract Files system is a contracting office file system that allows acquisition professionals to store, edit, review and approve, and archive contractual files; and
- the Electronic Data Access system provides secure online access, storage, and retrieval of contract documents.

Based on this review, these systems serve as data repositories and do not perform data manipulation; therefore, we concluded that we did not use computer-processed data to perform this audit.

To verify our initial universe of contracts identified from SAM.gov and to provide any additional Ukraine-related actions, we requested information from the Department of the Army, Department of the Navy, Department of the Air Force, and the Defense Logistics Agency. This data call revealed seven additional Army contracts and one additional Army delivery order, valued at \$1.65 billion. However, we determined that one of the seven additional Army contracts was miscoded

and used simplified acquisition procedures. Therefore, we removed this contract from our universe. Our universe consisted of 21 contracts (15 contracts identified through SAM.gov and 6 contracts provided by Army contracting personnel) which the Army awarded noncompetitively (valued at \$2.72 billion) in support of the Ukraine response.

Prior Coverage

During the last 5 years, the DoD Office of Inspector General (DoD OIG), Department of Homeland Security, Department of Justice, and Department of the Interior issued six relevant reports discussing noncompetitively awarding contracts, or adequate internal controls for awarding contracts.

Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

Unrestricted Department of Homeland Security reports can be accessed at <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>.

Unrestricted Department of Justice reports can be accessed at <https://oig.justice.gov/reports>.

Unrestricted Department of the Interior reports can be accessed at <https://www.doioig.gov/reports/all-reports>.

DoD OIG

Report No. DODIG-2024-041, “Management Advisory: Audit of Remote Maintenance and Distribution Cell – Ukraine Restructuring Contract Award,” January 5, 2024

ACC contracting personnel properly awarded the task order for the maintenance of equipment at the Remote Maintenance and Distribution Cell – Ukraine in accordance with Federal and DoD policies. Specifically, ACC contracting personnel adequately planned the task order and supported the award decision. Therefore, ACC contracting personnel complied with the applicable procedures designed to ensure selection of the most qualified contractor, out of the businesses that submitted offers, to repair and return critical equipment to the Ukrainian Armed Forces as they defend against the Russian full-scale invasion.

Report No. DODIG-2022-072, “Audit of Contracts Awarded and Administered by the Defense Media Activity,” March 14, 2022

Defense Media Activity contracting personnel did not consistently award or administer contracts according to Federal and DoD requirements. This occurred because Defense Media Activity officials did not establish or

implement effective internal controls. The DoD OIG recommended that the Defense Media Activity Director for Acquisition and Procurement provide training for contracting personnel and to develop and implement agency wide quality controls.

Report No. DODIG-2020-094, “Audit of Army Contracting Command–Afghanistan’s Award and Administration of Contracts,” June 18, 2020

The DoD OIG found that the ACC-Afghanistan did not award and administer contracts in accordance with Federal regulations and Army procedures. ACC-Headquarters had not implemented an organizational document that detailed required staffing levels, positions, roles, and qualifications of staff. Furthermore, the ACC-Afghanistan used an improvised hiring and training process. The DoD OIG recommended that the ACC develop a document that identifies staffing levels, positions, roles, and responsibilities and develop and implement a plan to improve the hiring process for civilian contracting personnel.

Department of Homeland Security OIG

Report No. OIG-21-17, “DHS [Department of Homeland Security] Grants and Contracts Awarded through Other Than Full and Open Competition, FYs 2018 and 2019,” February 1, 2021

The OIG found that the Department of Homeland Security complied with applicable laws and regulations. Department of Homeland Security officials supported award decisions with the required planning, market research, justification, and approval documentation to ensure effective stewardship of taxpayer dollars.

Department of Justice OIG

Report No. 21-116, “Audit of the United States Marshals Service’s Awarding and Administration of Sole-Source Contracts,” September 2021

The OIG found that the United States Marshals Service needs to improve its acquisition oversight. The United States Marshals Service was unable to demonstrate that sole-source acquisitions were always justified and approved at the appropriate levels. The OIG recommended that the United States Marshals Service evaluate the creation of a central, electronic contract filing system, and develop and implement procedures to ensure all contract files and documentation are maintained as required, and readily accessible through the system.

Department of the Interior OIG

Report No. 2020-FIN-008, "The U.S. Department of the Interior Needs to Improve Support for Price Reasonableness Determinations and Justifications for Sole-Source Awards," September 30, 2021

While contracting officers generally prepared adequate sole-source justifications, improvements are needed to prevent mistakes. Contracting officers at the Bureau of Indian Affairs and the Bureau of Land Management did not adequately support their sole-source justifications for 11 contracts. The OIG recommended that the two Bureaus provide refresher training to contracting officers on justification of sole-source contracts, emphasizing that the justification should include enough information that a future contracting officer can review it and understand why only one contractor was capable of performing the work.

Management Comments

Office of the Assistant Secretary of the Army



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

SAAL-ZP

MEMORANDUM FOR DEPARTMENT OF DEFENSE, OFFICE OF THE INSPECTOR
GENERAL, 4800 MARK CENTER DRIVE, ALEXANDRIA, VA 22350-5000

SUBJECT: DoDIG DRAFT Report: The Army's Award of Noncompetitive Contracts in
Support of Ukraine (D2023RH-0082)

1. In accordance with Army Regulation 36-2, Audit Services in the Department of the
Army, Section II, paragraphs 1-9 (f), I am providing the Official Army Position for
recommendation 1. The Army concurs with the response to the Recommendation.

2. The point of contact for this action is [REDACTED]

DAKE.MEGAN.R [REDACTED]

Encl

Megan R. Dake
Deputy Assistant Secretary
of the Army (Procurement)

Army Materiel Command



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMIR

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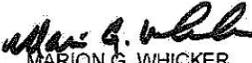
MEMORANDUM FOR Department of Defense Inspector General (DoDIG) [REDACTED], 4800 Mark
Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments to Department of Defense Inspector General Draft Report: Audit of the Army's Award to Noncompetitive Contracts in Support of Ukraine, Project: D2023-D000RH-0082.000

1. The U.S. Army Materiel Command concurs with the subject draft report findings and endorses the U.S. Army Contracting Commands response. Our specific comments are included at the enclosure.

2. The U.S. Army Materiel Command point of contact is [REDACTED]

Encl


MARION G. WHICKER
Executive Deputy to the
Commanding General

Army Contracting Command



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
4505 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMCC-IR (RN 11-7a)

14 MAR 2024

MEMORANDUM FOR Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898-5000

SUBJECT: U.S. Department of Defense Inspector General (DoDIG) Audit Draft Report
Project No. D2023-D000RH-0082.000 (CUI) Army's Award of Noncompetitive Contracts in Support of Ukraine

1. Reference. DoDIG Audit Draft Report (CUI) "Army's Award of Noncompetitive Contracts in Support of Ukraine" (Project Number D2023-D000RH-0082.000)
2. The Commanding General, U.S. Army Contracting Command (ACC) partially concurs with recommendation 1. The Army Federal Acquisition Regulation Supplement already requires Paperless Contract Files (PCF) and the Army Cabinet Index folder structure to be used. This index has the listing of everything needed in a noncompetitive action. ACC shouldn't add any additional checklists as this is what is required. PCF training is already routinely provided and will continue to be provided on a routine basis to contracting officials.
3. By 31 July 2024, an article will be included in the, "Hot off the Press" Spring Edition 2024, reminding contracting officials of the PCF training and the utilization of the Army Cabinet Index folder structure. Detailed comments are enclosed.
4. The ACC point of contact for this memorandum is [REDACTED].

Encl

A handwritten signature in black ink, appearing to read "Christine A. Beeler".

CHRISTINE A. BEELER
Brigadier General, USA
Commanding

Army Contracting Command (cont'd)

Project Number: D2023-D000RH-0082.000

Audit Location: Army Contracting Command

Objective Title: Army's Award of noncompetitive Contracts in Support of Ukraine

Objective: To determine whether Army contracting officials properly awarded noncompetitive contracts in support of the Ukraine response in accordance with Federal, DoD, and Army regulations and guidance.

Conclusion: In general, Army contracting officials awarded noncompetitive contracts in accordance with Federal, DoD, and Army regulations and guidance. For the 13 contracts valued at \$1.3 billion we reviewed, we found that the contracting officers were justified in awarding a noncompetitive contract. However, we identified some administrative errors in the awarding of noncompetitive contracts.

Specifically, for the 13 contracts we reviewed, contracting officers did not:

- include the previous justification for consideration for follow-on acquisitions for 3 contracts;
- specify the authority for the noncompetitive award in the contract for 4 contracts;
- publicize the justification for the noncompetitive award for 10 contracts; or
- obtain justification approval before issuing a solicitation or awarding a contract for 3 contracts.

While these administrative errors did not affect the validity of the noncompetitive award of the contracts, Army contracting officers can improve in meeting Federal, DoD, and Army regulations and guidance when awarding noncompetitive contracts. Officials cited administrative oversight and a lack of awareness as two of the reasons why the contracting errors occurred.

Recommendations:

We recommend that the Commanding General, Army Contracting Command, develop and implement a quality control tool and train contracting officials to ensure proper documentation and adherence to Federal, DoD, and Army regulations when awarding noncompetitive contracts.

Action taken or planned: Concur with comments.

The Army Federal Acquisition Regulation Supplement (AFARS) already requires Paperless Contract Files (PCF) and the Army Cabinet index folder structure to be used. This index has the listing of everything needed in a noncompetitive action. ACC shouldn't add any additional checklists as this is what is required. Here is the language.

Army Contracting Command (cont'd)

AFARS 5104.802 Contract files.

(f) Contracting officers shall utilize the Virtual Contracting Enterprise (VCE) tools throughout the acquisition process to maximize visibility and management of contract specific information and documents. VCE shall not be used for classified documents or contracts.

(i) The PCF module shall be used to store, access, and route documents necessary to manage the acquisition process for review and approval. Contracting officers shall ensure that the PCF contains all appropriate contract documents. If the contract document is maintained within the Procurement Integrated Enterprise Environment (PIEE, <https://wawf.eb.mil/>) or the Federal Procurement Data System-Next Generation (FPDS-NG)), then that system is the official system of record; contracting officers should not duplicate the document and file it in the PCF.

Follow procedures at AFARS Procedures, Guidance, and Information (PGI) 5104.802(f)(i)-1.

Follow procedures at AFARS PGI 5104.802(f)(i)-2.

(1) The Army Cabinet Index folder structure shall be used when filing documents in PCF to ensure standardization throughout Army contract files. See AFARS PGI 5104.802(f)(i)(1) for instructions to access the cabinet index structure.

PCF training is already routinely provided and will continue to be provided on a routine basis to contracting officials.

By 31 July 2024, an article will be included in the, "Hot off the Press" Spring Edition 2024, reminding contracting officials of the PCF training and the utilization of the Army Cabinet Index folder structure.

Acronyms and Abbreviations

- ACC** Army Contracting Command
- FAR** Federal Acquisition Regulation

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U.S. DEPARTMENT OF DEFENSE

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