

OFFICE OF
**INSPECTOR
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OFFICE OF AUDITS

**The SEC Missed Opportunities to
Lower Contract Risk and More
Effectively Manage Time-and-
Materials Contracts**



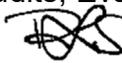
OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

M E M O R A N D U M

August 26, 2024

TO: Vance Cathell, Director, Office of Acquisitions
Kenneth Johnson, Chief Operating Officer

FROM: Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations,
and Special Projects, Office of Inspector General 

SUBJECT: *The SEC Missed Opportunities to Lower Contract Risk and More Effectively Manage Time-and-Materials Contracts, Report No. 582*

Attached is the Office of Inspector General (OIG) final report detailing the results of our audit of the U.S. Securities and Exchange Commission's (SEC) controls over time-and-materials contracts. The report contains seven recommendations that should help lower the SEC's contract risk and improve its management of time-and-materials contracts.

On July 24, 2024, we provided management with a draft of our report for review and comment. In its August 13, 2024, response, management concurred with our recommendations. We have included management's response as Appendix II in the final report.

Within the next 45 days, please provide the OIG with a written corrective action plan that addresses the recommendations. The corrective action plan should include information such as the responsible official/point of contact, timeframe for completing required actions, and milestones identifying how management will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the audit. If you have questions, please contact me or Eileen Kao, Audit Manager.

Attachment

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EXECUTIVE SUMMARY

The SEC Missed Opportunities to Lower Contract Risk and More Effectively Manage Time-and-Materials Contracts

REPORT NO. 582 | August 26, 2024

WHY WE DID THIS AUDIT

As recognized in the Federal Acquisition Regulation, time-and-materials (T&M) contracts do not reward a contractor for cost control or labor efficiency. They are generally considered riskier than other contract types and may only be used in certain circumstances. In recent years, these types of contracts have represented more than a third of all U.S. Securities and Exchange Commission (SEC or agency) contract actions and over half of all SEC contract obligations, totaling over \$375 million at the end of fiscal year 2023. Since 2019, we have raised concerns and encouraged management to assess the SEC's use of T&M contracts and formulate actions to reduce their use whenever possible.

We conducted this audit to assess the SEC's controls over T&M contracts and determine whether those controls ensure compliance with applicable laws, regulations, and SEC policies and procedures. Specifically, we assessed (1) the factors considered when awarding T&M contracts; (2) the measures taken to reduce the SEC's use of T&M contracts when possible and appropriate; and (3) the surveillance of T&M contracts, including through use of a quality assurance surveillance plan and coordination between contracting officers, contracting officer representatives, and program offices.

WHAT WE RECOMMENDED

We made seven recommendations to help lower the SEC's contract risk and improve its management of T&M contracts. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions.

WHAT WE FOUND

The SEC's Office of Acquisitions has reported numerous efforts to improve the agency's management of T&M contracts. However, further action is needed to reduce the SEC's contract risks, decrease dependence on T&M contracts, and comply with applicable federal regulations and guidance.

First, we reviewed invoices for a sample of T&M contracts and identified opportunities to convert portions of some contracts to lower-risk contract types. Although contracting officers converted parts of two contracts that we reviewed, the SEC missed other opportunities because it lacks a consistent approach, procedures, and an organization-wide commitment to assess available labor category data to look for such opportunities, as federal guidance and regulations encourage. Increased senior leadership attention may help identify opportunities to reduce the SEC's use of T&M contracts and properly manage associated risks. Additionally, contracting officers responsible for selecting the appropriate contract type reported that the SEC divisions and offices that most frequently procure goods and services prefer T&M contracts and pressure contracting officers to award them. Some contracting officers attributed this to agency culture, the lower level of effort by program offices required to define requirements for a T&M contract versus a firm-fixed-price contract, and a need for further training on requirements development. Five years ago, we reported that the Office of Acquisitions had not established policies and procedures for converting T&M contracts to other pricing structures and we encouraged management to establish such policies and procedures. As of the date of this report, the SEC does not have such policies and procedures in place, contributing to the conditions we observed.

Second, effective surveillance of T&M contracts is necessary to prevent the government from being overcharged, and well-documented surveillance plans provide a framework for ensuring that the government receives reasonable value for its spending. However, the surveillance plans were inadequate in half of the T&M contracts we reviewed. Office of Acquisitions officials explained that SEC contracting officers could help develop meaningful surveillance plans tailored to the nature of each contract. Contracting officers also relied on contracting officer's representatives to conduct appropriate surveillance, even if established plans were nonspecific. Contracting officer's representatives surveilled the contracts we reviewed, but our survey of contracting officer's representatives found that they were generally unaware of the surveillance plans in the contract files and their responsibilities for developing and using the plans. Additionally, relevant training materials did not include any specifics on monitoring cost controls or mitigating overcharge risks or provide examples of how surveillance plans should vary based on contract value, complexity, and criticality of services. In sum, better surveillance plans and practices are necessary to improve the SEC's stewardship, ensure that T&M contracts achieve their intended goals, and safeguard the government's interests.

Finally, third-party (i.e., contracted) contract file reviews were deficient. Six of the contracts we reviewed had been previously reviewed by the Office of Acquisitions' contractor, yet we identified substantial obvious defects with five of them. For example, contractor personnel did not identify documents missing from the files and did not accurately report concerns identified. We estimate that, between August 2020 and August 2022, the SEC paid between \$430,000 and \$520,000 for file reviews that were not always effective. The SEC has since awarded a new contract for this work and, to date, has not identified similar performance issues.

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Abbreviations

FAR	Federal Acquisition Regulation
FFP	firm-fixed-price (contract)
FY	fiscal year
GAO	U.S. Government Accountability Office
OA	Office of Acquisitions
OIG	Office of Inspector General
SEC or agency	U.S. Securities and Exchange Commission
T&M	time-and-materials (contract)

Background and Objectives

BACKGROUND

As recognized in the Federal Acquisition Regulation (FAR), time-and-materials and labor-hour contracts (collectively referred to here as T&M contracts) do not reward contractors for controlling costs or working efficiently.^{1,2} Consequently, they are considered higher-risk to the government. In recent years, the U.S. Government Accountability Office (GAO) and the Office of Management and Budget have encouraged federal agencies to assess steps they can take to use lower-risk contract types and implement strategies to reduce contract risk.³

Contract Types and Allocation of Risk. Agencies allocate risk between the government and a contractor, in part, by selecting the appropriate contract type.⁴ The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

Firm-fixed-price (FFP) contracts provide for a price that is unaffected by the contractor's cost in performing the contract. This contract type:

- places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss,
- provides maximum incentive for the contractor to control costs and perform effectively, and
- imposes a minimum administrative burden on the contracting parties.⁵

In contrast, T&M contracts compensate the contractor based on the number of labor hours billed at specified hourly rates and the cost of materials, offering no positive profit incentive to the contractor for cost control or labor efficiency.⁶ For this reason, government procurement regulations provide that T&M contracts may be used only when it is not possible at the time of placing the contract to estimate

¹ As defined in FAR Subpart 2.1, "contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301.

² FAR Subpart 16.6. As stated in FAR 16.602, labor-hour contracts are a variation of T&M contracts and differ only in that materials are not supplied by the contractor.

³ See U.S. Government Accountability Office, *FEDERAL CONTRACTING Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806, June 2022); and Office of Management and Budget, M-21-11, *Increasing Attention on Federal Contract Types Decisions*; January 5, 2021.

⁴ The acquisition lifecycle consists of five phases. Contract type is identified in the first phase (Planning).

⁵ FAR 16.202-1.

⁶ FAR 16.601(b)(1)(2) and FAR 16.601(c)(1).

accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.⁷

The following table further describes the allocation of risk between the contractor and the government for FFP and T&M contract types.

Table 1. Allocation of Risk: FFP and T&M Contract Types

	FFP	T&M
GOVERNMENT	Pays a fixed price irrespective of any variation between the actual cost of the product or service acquired and the agree-upon price	Pays per-hour labor rates and reimburses the contractor for direct materials as stated by contract terms
CONTRACTOR	Provides an acceptable deliverable as stated by contract terms	Makes a good faith effort to meet the government's needs within the contract ceiling price
WHO ASSUMES THE RISK OF COST INCREASES?	Contractor	Government

Source: U.S. Government Accountability Office, *FEDERAL CONTRACTING Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806, June 2022).

Additionally, while the Office of Management and Budget has stated that T&M contracts may increase competition and can be useful in certain circumstances, the government must bear a higher administrative burden both in developing contract terms and requirements and in overseeing performance.⁸ For example, before award, contracting officers (in coordination with contracting officer's representatives) must prepare a determination and findings statement justifying the use of a T&M contract.⁹ Contracting officers must also establish a ceiling price, which the contractor exceeds at their own risk, and document and justify subsequent changes to the ceiling price. Appropriate surveillance during performance is critical to assure that efficient methods and effective cost controls are being used, *i.e.*, that the government is not being overcharged.¹⁰ To accomplish this, the FAR expects agencies to prepare quality assurance surveillance plans specifying the contract work that requires surveillance and the method of surveillance.^{11,12}

⁷ FAR 16.601(c).

⁸ These circumstances include research studies, open-and-inspect type repair efforts, and investigative efforts which cannot be predicted with certainty. See Office of Management and Budget, M-21-11, *Increasing Attention on Federal Contract Types Decisions*; January 5, 2021; Footnote 4.

⁹ FAR 16.601(d)(1). As defined in FAR 1.701, "Determination and Findings means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions."

¹⁰ FAR 16.601(c)(1).

¹¹ FAR 46.401(a).

¹² Performance-based acquisitions focus on the purpose and outcome desired instead of the process by which the work is to be performed, and thus require more formal surveillance including the development and use of a quality assurance surveillance plan. The requirements for more formal quality assurance surveillance plans differ from those for surveillance plans required for T&M contracts that are not performance-based acquisitions. Of the 19 contracts we reviewed, only three were performance-based acquisitions that required a more formal quality assurance surveillance plan.

The SEC’s Use of T&M Contracts. More than one-third of the U.S. Securities and Exchange Commission’s (SEC or agency) contract actions in recent years have been for T&M contracts.¹³ The amounts obligated by the SEC for T&M contracts have also increased, surpassing the obligations to FFP contracts, and totaling over \$375 million as of the end of fiscal year (FY) 2023. (See Figure 1.) In fact, until FY 2023, T&M contracts as a percentage of all SEC contract obligations increased year over year, representing over half of the SEC’s contract obligations since FY 2021. (See Figure 2.) These factors prompted us to raise concerns and encourage management to assess the SEC’s use of T&M contracts and formulate actions to reduce their use whenever possible.¹⁴

Figure 1. SEC T&M Contract Obligations vs. FFP Contract Obligations (FY 2019 – FY 2023)

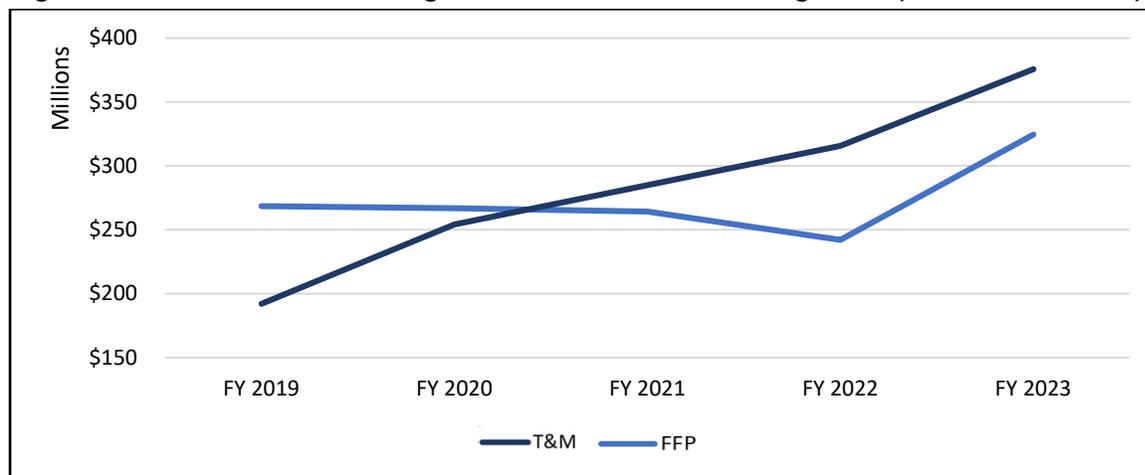
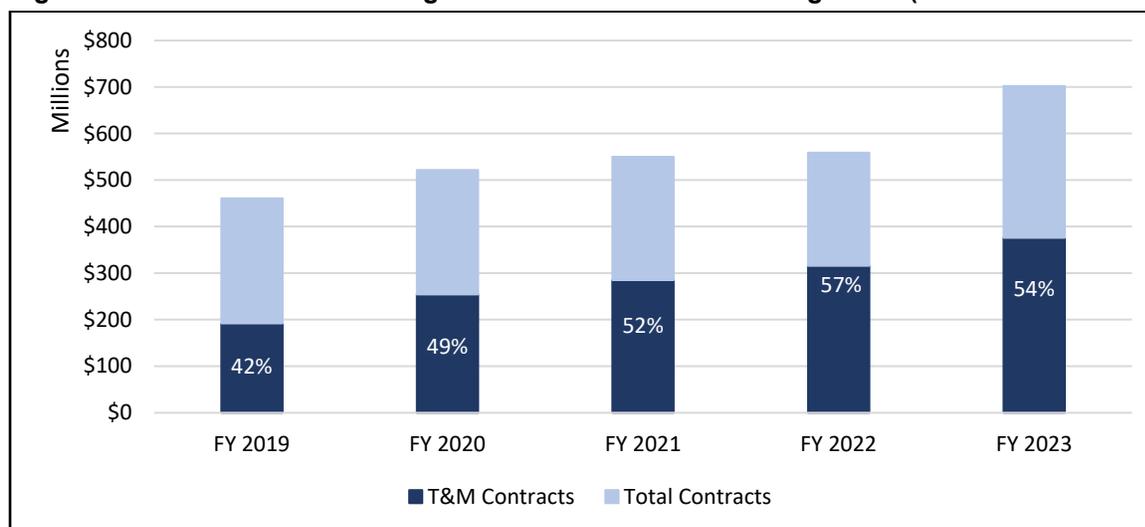


Figure 2. SEC T&M Contract Obligations vs. Total Contract Obligations (FY 2019 – FY 2023)



Source for Figures 1 and 2: OIG-generated based on data obtained from the Federal Procurement Data System on March 20, 2024.

¹³ As of the end of fiscal year 2023, 373 of the SEC’s 960 total active contracts (or about 39 percent) were T&M contracts.

¹⁴ We first raised concerns five years ago in our report titled *The SEC Can Better Manage Administrative Aspects of the ISS Contract* (Report No. 554; May 31, 2019). Each of the OIG’s annual statements on the SEC’s management and performance challenges issued between 2019 and 2023 also discussed the SEC’s use of T&M contracts. These annual statements can be accessed at <https://www.sec.gov/oig/management-performance-challenges>.

Acquisition Roles and Responsibilities. The SEC's Office of Acquisitions (OA) is responsible for procuring all goods and services, except real property, for the SEC; managing contracts and contractors; monitoring contractor performance, all in accordance with applicable procurement laws, regulations, and directives. When an SEC division or office (referred to as a program office) identifies a procurement need, the program office sends OA an acquisition request. Contracting officers within OA, who have the authority to enter into, administer, and/or terminate contracts, are responsible for selecting the most appropriate contract type to fulfill the need, in consultation with program office personnel. Contracting officer's representatives, who are typically program office personnel, assist contracting officers in the technical monitoring or administration of each contract, acting as the contracting officers' "eyes and ears" and keeping contracting officers informed of performance issues or other problems.¹⁵ With respect to T&M contracts, this involves implementing a surveillance plan and/or other surveillance activities throughout the performance of each contract.

OBJECTIVES

Our overall objective was to assess the SEC's controls over T&M contracts and determine whether those controls ensure compliance with applicable laws, regulations, and SEC policies and procedures.

Specifically, we assessed:

1. the factors OA considered when awarding T&M contracts;
2. the measures taken to reduce the SEC's use of T&M contracts when possible and appropriate; and
3. the surveillance of T&M contracts, including through use of a quality assurance surveillance plan and coordination between contracting officers, contracting officer's representatives, and program offices.

Our audit covered SEC T&M contracts awarded in FY 2021 and FY 2022 (that is, between October 1, 2020, and September 30, 2022). Appendix I of this report includes additional information about our scope and methodology, relevant internal controls, and prior coverage.

¹⁵ Performing as a contracting officer's representative can be either a part-time or full-time responsibility, and it is often a collateral duty.

Results

In response to OIG concerns about the use of T&M contracts, agency management committed in 2021 to “exercise rigorous oversight of these types of contracts,” and stated that OA “made a number of improvements to better manage T&M contracts,” including a new independent government cost estimate guide, contract compliance reviews, information sharing on T&M invoicing, regular training and education for contracting officer’s representatives, and by reviewing contract actions, files, and trends, among other things.¹⁶ Also, to address a recommendation from a prior OIG report, OA developed a quality assurance surveillance plan template that establishes procedures and guidelines for ensuring contractors achieve required performance standards or service levels.¹⁷

We recognize the improvements OA has made. However, further action is needed to reduce the SEC’s contract risks, decrease dependence on T&M contracts, and comply with applicable federal regulations and guidance. As described in the findings that follow, these actions include establishing policies and procedures for converting T&M contracts to other pricing structures, better protecting the SEC’s interests through surveillance plans, and ensuring effective contract file reviews.

FINDING 1. THE SEC CAN AND SHOULD TAKE OPPORTUNITIES TO REDUCE ITS USE OF T&M CONTRACTS

While contracting officers may use broad discretion and judgment when selecting contract types, federal regulations instruct them to avoid protracted use of T&M contracts after experience provides a basis for firmer pricing.¹⁸ Moreover, if an entire contract cannot be FFP, contracting officers are expected to “consider whether or not a portion of the contract can be established on a firm-fixed-price basis.”¹⁹ SEC contracting officers stated that OA management encouraged the use of and conversion to FFP contracts, and some contracting officers proactively converted some work to FFP. However, the SEC overlooked opportunities to convert parts of T&M contracts to a lower-risk contract type, and thereby save the substantial resources necessary for effective contract surveillance. (See Finding 2 for more information on additional resources required to monitor T&M contracts.) Furthermore, increased senior leadership attention in general, including in the form of comprehensive operating procedures, could reduce the agency’s use of T&M contracts overall.

A. Opportunities Exist to Convert Labor Categories in T&M Contracts and Lower the SEC’s Risk

To identify opportunities to convert portions of ongoing contracts to an FFP basis, we reviewed invoices for a sample of 19 SEC T&M contracts awarded in FY 2021 or FY 2022 for which one or more option

¹⁶ U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report* (November 15, 2021); pg. 154.

¹⁷ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Has Taken Steps To Strengthen Its Monitoring Of ISS Contractor’s Performance, But Additional Actions Are Needed* (Report No. 565; February 24, 2021).

¹⁸ FAR 16.103(c).

¹⁹ FAR 16.104(e).

years was exercised.²⁰ In four of those contracts, base and option year labor hours associated with one or more labor categories appeared consistent enough to reliably estimate future labor costs. We also reviewed invoices for nine follow-on contracts and noted that a labor category for one appeared consistent enough to estimate future labor category costs. Contracting officers converted parts of two of the 19 contracts we reviewed. However, the SEC missed the opportunity to convert the others because it lacks a consistent approach, procedures, and an organization-wide commitment to assess available labor category data to look for such opportunities, as federal guidance and regulations encourage.

Federal regulations instruct contracting officers to avoid protracted use of T&M contracts when experience provides for firmer pricing

When presented with our findings, four of the five responsible contracting officers acknowledged that there were opportunities for conversion, while the remaining contracting officer felt that additional data may be needed to determine whether conversion to a lower-risk contract type was appropriate. Additionally, we surveyed SEC

contracting officers and contracting officer's representatives to gather information about coordination and other matters important to administering T&M contracts.²¹ Contracting officers affirmed that OA management encouraged them to use FFP contracts and, when possible, to convert from T&M to FFP, yet some assumed that contracting officer's representatives (not contracting officers) were responsible for performing and providing analyses to support possible conversion. About 59 percent (33 out of 56) of the contracting officer's representatives who responded to one OIG survey question stated that they either had not been involved in decisions to convert contracts or they had not provided input to relevant analyses. Also, about 53 percent (36 out of 68) of the contracting officer's representatives who responded to another OIG survey question stated either they did not believe the SEC makes sufficient efforts to minimize its use of T&M contracts or they were unaware of any efforts made.

B. Increased Senior Leadership Attention May Help Reduce the SEC's Use of T&M Contracts

Increased senior leadership attention may help identify opportunities to reduce the use of T&M contracts and properly manage associated risks. Contracting officers responsible for selecting the appropriate contract type reported that the SEC divisions and offices that most frequently procure goods and services prefer T&M contracts and pressure contracting officers to award them. Some contracting officers attributed this to agency culture, the lower level of effort by program offices required to define requirements for a T&M contract versus an FFP contract, and a need for further training on requirements development. While some contracting officers acknowledged that OA management encourages the use of FFP contracts, about 47 percent (nine out of 19) of the contracting officers who responded to an OIG survey question reported that failure by a program office to clearly or sufficiently describe contract requirements contributed to awarding T&M contracts over FFP contracts. About 42 percent (eight out of 19) of the contracting officer respondents agreed that program offices and/or contracting officer's

²⁰ Appendix I of this report describes our sampling methodology.

²¹ Appendix I of this report describes our survey methodology and response rates.

representatives have sufficient training and knowledge to define requirements when drafting a statement of work to support an FFP contract type.

GAO has advocated for increased leadership attention with respect to T&M contracts, stating that organizations seeking to significantly improve acquisition outcomes must begin with an established vision and commitment from senior management.²² Additionally, the standards for internal control in the federal government stress the importance of leadership involvement and warn that, without a strong tone at the top to support an internal control system, an entity's risk identification may be incomplete and risk responses may be inappropriate, among other things.²³

The SEC has a significant number of T&M contracts and dollars obligated to such contracts and has a responsibility to minimize the government's risk when possible. Five years ago, we reported that OA had not established policies and procedures for converting T&M contracts to other pricing structures and we encouraged management to establish such policies and procedures.²⁴ As of the date of this report, the SEC does not have such policies and procedures in place, contributing to the conditions we observed. Additionally, leadership from across the SEC should jointly recognize the risks T&M contracts pose and work together to minimize that risk, such as by identifying instances of recurring requirements or tasks and services that are likely to be provided on a full-time basis as potential opportunities for fixed-price type contracting. Without such actions, the SEC could miss further opportunities to reduce its use of T&M contracts, which would shift risk from the agency to contractors, reduce the need for close surveillance and other administrative burdens, and further protect the SEC's limited resources.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To ensure the SEC reduces its use of T&M contracts when possible and appropriate, we recommend that:

Recommendation 1:

The Office of Acquisitions update the SEC Office of Acquisitions Procedures to include policies and procedures for comprehensive reviews to identify and, where possible, convert time-and-materials and labor-hour contracts to other pricing structures, including (a) requirements for periodic assessments of whether continued use of a time-and-materials or labor-hour contract is appropriate, and (b) clear roles and responsibilities for identifying opportunities to convert contracts or portions of contracts from time-and-materials or labor-hour types to lower-risk contract types.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will update SEC Office of Acquisitions

²² U.S. Government Accountability Office, *FEDERAL CONTRACTING Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806, June 2022).

²³ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Attributes 1.03 and 1.05, Tone at the Top.

²⁴ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Better Manage Administrative Aspects of the ISS Contract* (Report No. 554; May 31, 2019); pg. 22.

Procedures as recommended. These updates will include requirements for assessing time-and-materials and labor-hour contracts when a contract option is being exercised and when a contract is being recompeted. The updates will also clarify the roles and responsibilities of the contracting officer and contracting officer's representative for identifying opportunities for converting contracts or portions of contracts from time-and-materials and labor-hour types to lower-risk contract types. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 2:

The Office of Acquisitions include in periodic training for contracting officers and contracting officer's representatives the importance of identifying opportunities to convert contracts or portions of contracts from time-and-materials or labor-hour types to lower-risk contract types and guidance on how to do so.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will provide recurring training and guidance to contracting officers and contracting officer's representatives on the importance of identifying opportunities to convert time-and-materials or labor-hour contracts (or portions thereof) to contract types with lower-risks. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 3:

The Office of Acquisitions review the contracts the Office of Inspector General identified as opportunities for conversion to a lower-risk contract type and take action to convert part(s) or all of those contracts, as appropriate.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will review the contracts identified by the Office of Inspector General for possible conversion and execute conversions, if appropriate. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 4:

The Chief Operating Officer communicate to the agency's acquisition workforce management's expectation that responsible personnel from all divisions and offices will work with the Office of Acquisitions to minimize the use of time-and-materials and labor-hour contracts thereby reducing the risks to the agency.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, he will communicate to the agency's divisions and offices the expectation that acquisition workforce personnel work with the Office of Acquisitions to minimize the use of time-and-materials and labor-hour contracts, as appropriate. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 2. THE SEC SHOULD IMPROVE ITS T&M CONTRACT SURVEILLANCE PLANS TO ACHIEVE BETTER MONITORING

Effective surveillance of T&M contracts is necessary to prevent the government from being overcharged. In all contracts, the contracting officer and the program officials who serve as contracting officers' representatives must scrutinize the timeliness and quality of contractor performance, including their ability to meet milestones and deliver agreed-upon services and products that meet government needs. For T&M contracts, surveillance of labor effort is particularly important, as the contractor has little incentive to control such costs.

To ensure that contractors, especially in T&M contracts, perform effectively and efficiently, SEC contracting officers and program officials should develop surveillance plans for monitoring contract performance.²⁵ SEC operating procedures provide that the "level and detail" of surveillance plans will depend on contract value, complexity, and criticality of services.²⁶

However, the surveillance plans were inadequate in half of the T&M contracts (8 of 16) in our sample.²⁷ We found, for example, that a \$224 million support services contract for EDGAR, one of the SEC's flagship information technology systems, and a \$500,000 contract for acquisition support services had similar generic one-sentence surveillance plans that did not reflect the requirements of either contract.²⁸ By contrast, the surveillance plan for a \$4.5 million cloud services contract outlined surveillance activities specific to contract requirements.

Table 2 illustrates surveillance plans for T&M contracts we reviewed that did not align with contract risks, in terms of dollars at risk, complexities, and degrees of criticality to the SEC's programs and operations. In comparison, Table 3 shows a T&M contract surveillance plan that included more details and result in better monitoring.

²⁵ SEC Operating Procedure 10-1, *Acquisition Authority and Lifecycle*, § 11.4 (May 2019), was in effect during our scope period. Although it was updated and superseded in November 2023, the requirements for surveillance plans remained the same.

²⁶ SEC Operating Procedure 10-1, *Acquisition Authority and Lifecycle*, § 11.4 (May 2019).

²⁷ Three of the 19 contracts we reviewed did not require a surveillance plan.

²⁸ EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, is the primary system for companies and others to file documents required by the federal securities laws. EDGAR contains millions of company and individual filings and benefits investors, corporations, and the U.S. economy overall by increasing the efficiency, transparency, and fairness of the securities markets. The system processes about 3,000 filings per day and serves up 3,000 terabytes of data to the public annually, and accommodates 40,000 new filers per year on average.

Table 2. Inadequate Surveillance Plans Not Aligned to Contract Specifics

Contract Description	Value ^a	Surveillance Plan Appropriate government surveillance of contractor performance will be conducted by the contracting officer’s representative who will . . .
Enterprise EDGAR System Support Services	\$224,000,000	. . . monitor the contractor daily, analyze monthly invoices and monthly reports to provide reasonable assurance that efficient methods and effective cost controls are in place and being utilized.
Records Management, Production Processing and Scanning Services	\$22,000,000	. . . ensure controls are put in place to provide reasonable assurance that efficient methods and effective cost controls are being utilized. The contracting officer’s representative will review status reports against the expected work to be conducted and review invoices for work that was completed to ensure that the labor category and labor hours mix utilized was appropriate for the work performed and if not, work with the contractor to correct.
Acquisition Support Services	\$500,000	. . . actively perform surveillance to reasonably ensure that efficient methods and effective cost controls are being utilized.
Human Resources Professional Services	\$3,000,000	. . . conduct recurring status meetings with the contractor and escalate any contractual concerns to the contracting officer to provide reasonable assurance that efficient methods and effective cost controls are being utilized.

Table 3. More Detailed Surveillance Plan

Contract Description	Value ^a	Surveillance Plan Appropriate government surveillance of contractor performance will be conducted by the contracting officer’s representative who will . . .
AWS Cloud Environment at the SEC Cloud Center of Excellence	\$4,500,000	<p>. . . monitor the contractor’s progress and coordinate with OA if any issues arise to provide reasonable assurance that efficient methods and effective cost controls are used.</p> <p>The contract requires the following specific deliverables and processes to support contract surveillance:</p> <ul style="list-style-type: none"> • Participation in all Cloud Leader directed planning meetings, scrums, and associated meetings. • Monthly status reports on completed tasks (changes and updates), improvements completed, improvements planned, and risks. • Hours consumed by contract staff on a monthly basis and pre-approvals for consumption of hours above the baseline. • Status update on knowledge transfer to federal employees.

Source for Tables 2 and 3: OIG-generated based on the subject contract files, including T&M determination and findings statements. The language shown represented the sum total of each contract’s formal surveillance plan.

^a The value shown is the T&M ceiling amount at the time the contract was awarded. It includes all contract option years.

When asked about these issues, an OA official stated that contracting officers could help develop meaningful surveillance plans tailored to the nature of each contract. Furthermore, contracting officers relied on contracting officer’s representatives to conduct appropriate surveillance, even if established plans were nonspecific. Although contracting officer’s representatives performed some monitoring of the contracts we reviewed, our survey of contracting officer’s representatives found that they were generally unaware of the surveillance plans in the contract files or of their program office’s responsibilities for developing and using the plans. Of the contracting officer’s representatives who responded to our survey:

- about 52 percent (59 out of 113) either were uncertain, did not know about, or did not participate in the development of T&M contract surveillance plans;
- about 58 percent (66 out of 113) did not believe or know whether surveillance plans were well prepared or useful for contract oversight; and
- about 44 percent (50 out of 113) did not believe or know whether available resources were useful to prepare surveillance plans.

When asked about the survey results, OA officials informed us that they provided training to staff in 2023. The training materials included overall requirements of surveillance plans but did not include any specifics on monitoring cost controls or mitigating overcharge risks or provide examples of how plans should vary based on contract value, complexity, and criticality of services.

Well-documented surveillance plans, particularly for T&M contracts that are complex, critical, and high-dollar, provide a framework for ensuring that the government receives reasonable value for its spending. Office of Management and Budget guidance states that such plans should provide a systematic, structured method for the contracting officer's representative to evaluate services and products contractors are required to furnish, focusing on the quality of the contractor's work.²⁹ In 2021, we reported that the SEC had not effectively implemented tools, including surveillance activities, to monitor its infrastructure support service contractor's performance and to drive performance outcomes for that T&M contract, which remains the agency's largest active contract.³⁰ Better surveillance plans and practices are necessary to improve the agency's stewardship, ensure that T&M contracts achieve their intended goals, and safeguard the government's interests.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To increase the value of the SEC's surveillance plans for T&M contracts, we recommend that the Office of Acquisitions:

Recommendation 5:

Include in periodic training for contracting officers and contracting officer's representatives, best practices and examples of surveillance plans, as well as the purpose of and requirements for time-and-materials and labor-hour contract surveillance plans.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will provide recurring training for contracting officers and contracting officer's representatives on time-and-materials and labor-hour contract

²⁹ Office of Management and Budget, Office of Federal Procurement Policy, *A Guide to Best Practices for Contract Administration* (October 1994).

³⁰ U.S. Securities and Exchange Commission Office of Inspector General, *The SEC Has Taken Steps To Strengthen Its Monitoring Of ISS Contractor's Performance, But Additional Actions Are Needed* (Report No. 565; February 24, 2021).

surveillance plans, including examples and best practices. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 3. THE SEC PAID FOR THIRD-PARTY CONTRACT FILE REVIEWS THAT WERE NOT ALWAYS EFFECTIVE

In 2020, OA hired a third-party (i.e., a contractor) to complete oversight reviews of active SEC contracts for compliance and best practices.³¹ The following year, in response to our concerns about the SEC's use of T&M contracts, agency management cited these contract compliance reviews, along with other improvements made, as improvements in the management of T&M contracts.³² Among other things, OA's contractor was to determine whether the SEC's contract files included properly executed T&M determination and findings statements and other required documents.³³

We found that these contract file reviews were deficient. Six of the contracts in our sample had been previously reviewed by OA's contractor. Nevertheless, we identified substantial obvious defects in five of those six.

For example, contractor personnel did not identify missing documents related to pre-award actions, such as market research and determination and findings statements, and contract surveillance. They also mistakenly noted that a pre-solicitation checklist had been filed when it had not, that a missing pre-award checklist had been "resolved" when it was not, and that contract deliverables and

Five of six third-party contract file reviews were deficient, and the SEC paid between \$430,000 and \$520,000 for services that were not always effective

documents for onboarding and offboarding certain contractor personnel were not applicable without explanation. We estimate that, between August 2020 and August 2022, the SEC paid between \$430,000 and \$520,000 for file reviews that were not always effective.³⁴

OA officials acknowledged that the third-party contract file reviews did not always meet OA's expectations. Before our audit began, the responsible contracting officer's representatives noted contractor performance and staffing issues. OA did not renew the original third-party review contract but instead engaged similar services from a new contractor. To date, OA has not identified any performance issues with the new contractor.

For these reviews to be useful and effective, reviewers must have the requisite knowledge and contracting officials must work together to take timely action. Otherwise, OA risks (1) expending the SEC's limited resources on incomplete, ineffective, or unacceptable contract management support

³¹ This contractor was also responsible for the acquisition support service task referred to in the table shown in Finding 2 of this report.

³² U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report* (November 15, 2021); pg. 154.

³³ Federal regulations require contract files to be maintained to ensure, among other things, effective documentation of contract actions and conformance with agency regulations. FAR 4.802. Additionally, SEC policy requires contracting officer's representatives to ensure contract files are uploaded and maintained in the associated eFile workspace (the OA online system of record for contracts, agreements, orders, and calls) and contracting officers to properly maintain contract files in accordance with federal regulations. SEC Operating Procedure 10-1, *Acquisition Authority and Lifecycle*, § 3.15 (May 2019).

³⁴ The estimated range is based on a calculation of the contractor's labor hours, provided by the responsible contracting officer's representative, on three contract task orders that included contract file reviews and other services.

services; and (2) failing to ensure that key documents reflecting important decisions or compliance with the FAR are readily accessible in contract files, which increases the chance that non-compliant contract actions were or will be taken without detection.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To ensure contract file reviews are effective, we recommend that the Office of Acquisitions:

Recommendation 6:

Review the Comprehensive Contract/File Review Checklist and identify opportunities to more clearly communicate requirements and provide training for those performing contract file compliance reviews.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will perform the recommended review with an eye towards more clearly communicating the requirements for contract file reviews. Appropriate training also will be provided on an as-needed basis for those performing compliance reviews. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 7:

Update procedures to ensure all issues identified in either third-party or internal contract file reviews are communicated to responsible contracting officers and resolved in a timely manner.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will update procedures for reviewers to communicate their findings and verify that all issues were resolved in a timely manner. Management's complete response is reprinted in Appendix II.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Appendix I. Scope and Methodology

We conducted this performance audit from April 2023 through August 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives and Scope

The overall objective of this audit was to assess the SEC's controls over T&M contracts and determine whether those controls ensure compliance with applicable regulations, and SEC policies and procedures. Specifically, we assessed:

- the factors OA considered when awarding T&M contracts;
- the measures taken to reduce the SEC's use of T&M contracts when possible and appropriate; and
- the surveillance of T&M contracts, including through use of a quality assurance surveillance plan and coordination between contracting officers, contracting officer's representatives, and program offices.

The audit covered SEC T&M contracts awarded in FY 2021 and FY 2022 (that is, between October 1, 2020, and September 30, 2022) and included contracts supporting various SEC divisions and offices.

Methodology

To address our objectives, among other work performed, we:

- interviewed contracting officers to assess their experience and understanding of awarding and, when possible and appropriate, converting T&M contracts;
- interviewed contracting officer's representatives to assess their experience with and responsibilities for monitoring T&M contracts;
- reviewed applicable federal regulations and guidance and agency policies and procedures;
- tested multiple judgmental samples of T&M contracts to assess factors considered when awarding and surveilling T&M contracts and to determine whether opportunities existed to convert all or part(s) of contracts;
- surveyed contracting officers and contracting officer's representatives; and
- obtained access to and an understanding of the OA's eFile system and Delphi, the SEC's financial accounting system.

Sampling Methodology. We performed tests and assessments using judgmental (that is, non-statistical) samples of the 248 T&M contracts the SEC awarded in FY 2021 and FY 2022. We selected multiple

judgmental samples that were representative of contracts awarded by different contracting officers and procurements from different SEC divisions and offices, including the Division of Enforcement, the Division of Economic and Risk Analysis, the Office of Information Technology, and the Office of Acquisitions. Specifically, we tested the following:

1. Nineteen of 248 T&M contracts, and five of 153 expert witness and foreign counsel service contracts (also classified as T&M) to assess factors OA considered when awarding and surveilling T&M contracts.
2. Nineteen T&M contracts with option years exercised (36 of the 248 T&M contracts had option years exercised), and nine follow-on T&M contracts from the above sample of 19 T&M contracts to determine whether opportunities existed to convert all or part(s) of the contracts.

Although our samples were non-statistical and our results cannot be projected to the total population for each test performed, the evidence we gathered helped support our findings, conclusions, and recommendations.

Survey Methodology. We issued two optional web-based surveys that included multiple choice questions and optional comment fields to gather information about coordination between contracting officers and contracting officer's representatives, reasons for selecting a T&M contract type, knowledge and ability to develop requirements and surveillance plans, and T&M contract surveillance. The first survey was issued to 41 contracting officers and completed by 20 of them for a response rate of about 49 percent. The second survey was issued to 493 contracting officer's representatives and completed by 113 of them for a response rate of about 23 percent. However, only 249 of the contracting officer's representatives surveyed were active contracting officer's representatives; therefore, the response rate can be adjusted to 113 of 249, or about 45 percent.

Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objectives, as described below.

Control Environment. We assessed the control environment established by OA by reviewing contracts and interviewing responsible OA management personnel, contracting officers, and contracting officer's representatives. As Finding 1 describes, we identified opportunities that the agency overlooked to convert parts of T&M contracts to a lower-risk contract type. Additionally, we determined that increased senior leadership attention on the SEC's use of T&M contracts was needed.

Control Activities. We reviewed applicable federal laws, regulations, and guidance; SEC policies and procedures; and risk and control matrices to identify and test key control activities. We identified and reviewed control activities related to each of our sub-objectives, and we interviewed contracting officers and contracting officer's representatives and tested key internal controls related to awarding and administering T&M contracts. As Findings 1 through 3 describe, we identified opportunities to (1) reduce the SEC's use of T&M contracts, including by establishing control activities through comprehensive policies and procedures; (2) increase the effectiveness of surveillance plans; and (3) improve the effectiveness of third-party contract file reviews.

Information and Communication. OA is responsible for managing and executing the SEC's procurement activities, including certification programs for the agency's contracting officer's representatives. We interviewed several contracting officers and contracting officer's representatives, and as discussed in Finding 1, we noted opportunities to reduce the agency's use of T&M contracts through communication and increased leadership attention.

Monitoring. We assessed OA management's role as it relates to establishing and operating monitoring activities to assess the quality of performance over time and promptly resolve findings of audits and other reviews. As Finding 3 describes, we identified opportunities to improve the effectiveness of third-party contract reviews.

Based on the work performed, as noted in this report, we identified areas of potential improvement related to internal control deficiencies that were significant within the context of our audit objectives. Our recommendations, if implemented, should help strengthen OA's controls over T&M contracts.

Data Reliability

GAO's *Assessing Data Reliability* (GAO-20-283G, December 2019) states reliability of data means that data are applicable for audit purpose and are sufficiently complete and accurate. Data primarily pertains to information that is entered, processed, or maintained in a data system and is generally organized in, or derived from, structured computer files. Furthermore, GAO-20-283G defines "applicability for audit purpose," "completeness," and "accuracy" as follows:

"Applicability for audit purpose" refers to whether the data, as collected, are valid measures of the underlying concepts being addressed in the audit's research objectives.

"Completeness" refers to the extent to which relevant data records and fields are present and sufficiently populated.

"Accuracy" refers to the extent that recorded data reflect the actual underlying information.

To address our objectives, we relied on computer-processed data from the Federal Procurement Data System. To assess the reliability of that data, we:

- interviewed knowledgeable OA personnel to discuss system controls and the accuracy of the SEC's contracting data in the system;
- reviewed relevant data dictionaries and user manuals, as well as the SEC's annual Federal Procurement Data System verification and validation reports;
- reviewed the universe of T&M contracts awarded during FY 2021 and FY 2022 and tested for missing, duplicative, or irregular data or values; and
- reviewed prior audit reports assessing the accuracy of the SEC's contracting data in Federal Procurement Data System.

Based on our assessment, we found the data sufficiently reliable for the purpose of our audit.

Prior Coverage

Between 2018 and 2023, the SEC OIG and GAO issued the following reports of particular relevance to this evaluation:

SEC OIG:

- *Audit of the SEC's Internal Controls for Retaining External Experts and Foreign Counsel for the Division of Enforcement* (Report No. 547; June 15, 2018).
- *The SEC Can Better Manage Administrative Aspects of the ISS Contract* (Report No. 554; May 31, 2019).
- *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2019.*
- *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2020.*
- *The SEC Has Taken Steps To Strengthen Its Monitoring Of ISS Contract's Performance, But Additional Actions Are Needed* (Report No. 565; February 24, 2021).
- *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2021.*
- *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2022.*
- *The Inspector General's Statement on the SEC's Management and Performance Challenges, 2023.*

GAO:

- *FEDERAL CONTRACTING Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806, June 2022).

These reports can be accessed at <https://www.sec.gov/oig> (SEC OIG) and <https://www.gao.gov> (GAO).

Appendix II. Management Comments



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

To: Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, Office of Inspector General

From: Kenneth A. Johnson, Chief Operating Officer KENNETH JOHNSON Digitally signed by KENNETH JOHNSON
Date: 2024.08.13 10:34:15
+0400

Date: August 13, 2024

Subject: Management Response to *The SEC Missed Opportunities to Lower Contract Risk and More Effectively Manage Time-and-Materials Contracts*

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report related to its review of the SEC's use of time-and-materials (T&M) contracts. I am pleased your report recognizes improvements that the Office of Acquisitions (OA) has made in managing T&M contracts. A wide selection of contract types is available to the Government in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. T&M contracts, when appropriate, provide the SEC with important flexibility in determining the types of risk it takes on when acquiring services, particularly when costs cannot be anticipated with a reasonable degree of confidence. The SEC recognizes the inherent risks associated with T&M contracts and appreciates the OIG's recommendations to further improve on the agency's efforts to monitor T&M contracts and minimize their use.

Your report identifies seven recommendations for further improvement, with which we concur. More details on management's responses to these recommendations are found in Appendix 1.

We appreciate the professionalism and courtesies provided by the OIG during this audit, and we look forward to working with your office to address the areas noted in your report.

Attachment: Appendix 1: Management Responses to Recommendations

cc: Vance Cathell, Director, Office of Acquisitions



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Appendix 1: Management Responses to Recommendations

Please find below the actions the SEC intends to take to address each recommendation:

Recommendation 1: The Office of Acquisitions update the SEC Office of Acquisitions Procedures to include policies and procedures for comprehensive reviews to identify and, where possible, convert time-and-materials and labor-hour contracts to other pricing structures, including (a) requirements for periodic assessments of whether continued use of a time-and-materials or labor-hour contract is appropriate, and (b) clear roles and responsibilities for identifying opportunities to convert contracts or portions of contracts from time-and-materials or labor-hour types to lower-risk contract types.

Response: We concur. The Office of Acquisitions will update SEC Office of Acquisitions Procedures as recommended. These updates will include requirements for assessing time-and-materials and labor-hour contracts when a contract option is being exercised and when a contract is being recompleted. The updates also will clarify the roles and responsibilities of the Contracting Officer and Contracting Officer's Representative for identifying opportunities for converting contracts or portions of contracts from time-and-materials and labor-hour types to lower-risk contract types.

Recommendation 2: The Office of Acquisitions include in periodic training for contracting officers and contracting officer's representatives the importance of identifying opportunities to convert contracts or portions of contracts from time-and-materials or labor-hour types to lower-risk contract types and guidance on how to do so.

Response: We concur. The Office of Acquisitions will provide recurring training and guidance to Contracting Officers and Contracting Officer's Representatives on the importance of identifying opportunities to convert time-and-materials or labor-hour contracts (or portions thereof) to contract types with lower-risks.

Recommendation 3: The Office of Acquisitions review the contracts the Office of Inspector General identified as opportunities for conversion to a lower-risk contract type and take action to convert part(s) or all of those contracts, as appropriate.

Response: We concur. The Office of Acquisitions will review the contracts identified by the Office of Inspector General for possible conversion and execute conversions, if appropriate.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Recommendation 4: The Chief Operating Officer communicate to the agency’s acquisition workforce management’s expectation that responsible personnel from all divisions and offices will work with the Office of Acquisitions to minimize the use of time-and-materials and labor-hour contracts, thereby reducing the risks to the agency.

Response: We concur. The Chief Operating Officer will communicate to the agency’s divisions and offices the expectation that acquisition workforce personnel work with the Office of Acquisitions to minimize the use of time-and-materials and labor-hour contracts, as appropriate.

Recommendation 5: Include in periodic training for contracting officers and contracting officer’s representatives best practices and examples of surveillance plans, as well as the purpose of and requirements for time-and-materials and labor-hour contract surveillance plans.

Response: We concur. The Office of Acquisitions will provide recurring training for Contracting Officers and Contracting Officer’s Representatives on time-and-materials and labor-hour contract surveillance plans, including examples and best practices.

Recommendation 6: Review the Comprehensive Contract/File Review Checklist and identify opportunities to more clearly communicate requirements and provide training for those performing contract file compliance reviews.

Response: We concur. The Office of Acquisitions will perform this review with an eye towards more clearly communicating the requirements for contract file reviews. Appropriate training also will be provided on an as-needed basis for those performing compliance reviews.

Recommendation 7: Update procedures to ensure all issues identified in either third-party or internal contract file reviews are communicated to responsible contracting officers and resolved in a timely manner.

Response: We concur. The Office of Acquisitions will update procedures for reviewers to communicate their findings and verify that all issues were resolved in a timely manner.

Major Contributors to the Report

Eileen Kao, Audit Manager
Matthew Fryer, Lead Auditor
Nick Napolitano, Auditor
Alonzo Munyeneh, Auditor

Comments and Suggestions

If you wish to comment on the quality or usefulness of this report or suggest ideas for future audits, evaluations, or reviews, please send an e-mail to OIG Audit Planning at AUDplanning@sec.gov.

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