



*Better Adherence to Requirements
Is Needed to Justify and Document
Noncompetitive Contract Awards*

April 30, 2014

Reference Number: 2014-10-030

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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HIGHLIGHTS

BETTER ADHERENCE TO REQUIREMENTS IS NEEDED TO JUSTIFY AND DOCUMENT NONCOMPETITIVE CONTRACT AWARDS

Highlights

Final Report issued on April 30, 2014

Highlights of Reference Number: 2014-10-030 to the Internal Revenue Service Deputy Commissioner for Operations Support.

IMPACT ON TAXPAYERS

One of the goals of Federal contracting is to promote competition when buying goods and services. Awarding noncompetitive contracts without the proper justifications and approvals could result in procurement of products or services at a higher cost, resulting in inefficient use of taxpayer funds.

WHY TIGTA DID THE AUDIT

Our objective was to determine whether the IRS is in compliance with Federal Acquisition Regulation (FAR) requirements and other applicable authorities for noncompetitive contract awards.

WHAT TIGTA FOUND

TIGTA determined that the IRS is generally in compliance with FAR requirements and other applicable authorities for the majority of the noncompetitive contract awards reviewed. However, 15 of 35 contracts reviewed by TIGTA did not comply with all of the requirements for noncompetitive awards.

TIGTA found that contracting officers obtained approval for noncompetitive contracts from the appropriate officials within the time frames required for 30 of the 35 contracts reviewed. However, for seven of 35 contracts, the award was not properly justified because the responsible contracting officer did not adequately explain why there was only one capable source available to fulfill the requirement. Further, 25 of the contracts TIGTA reviewed required documentation of 12 content

requirements mandated by the FAR. Eight of 25 forms justifying awards for these contracts either did not include sufficient information or were not adequately supported and therefore did not meet FAR requirements permitting other than full and open competition.

Finally, three contracts totaling \$14.9 million were improperly coded within the Federal Procurement Data System–Next Generation. These contracts were incorrectly recorded as being awarded noncompetitively because they were under the dollar threshold of \$150,000, when the actual award amounts were not under the threshold.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Deputy Commissioner for Operations Support should use the results of these 35 contract cases to reemphasize to IRS program office and procurement office personnel the need to obtain proper approval, adequately justify noncompetitive awards, and fully address FAR requirements prior to solicitation and award. In addition, the Chief, Agency-Wide Shared Services, should use TIGTA's contract review results to enhance periodic oversight reviews of contract files and should verify that contracts are properly coded within the Federal Procurement Data System–Next Generation.

In their response, IRS management agreed with our recommendations and plans to issue a communication to IRS employees on the need to obtain proper approval to adequately justify noncompetitive awards and follow appropriate FAR requirements prior to solicitation and contract awards. In addition, the IRS plans to review the results of the 35 contract cases and determine where increased focus is necessary in periodic reviews of contract files to ensure contracting officer compliance with FAR requirements for noncompetitive contracts. Finally, the IRS stated that the Office of Procurement was provided with the list of the Federal Procurement Data System–Next Generation entries in question and that corrections were made where appropriate.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 30, 2014

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM: (for) Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Better Adherence to Requirements Is Needed to
Justify and Document Noncompetitive Contract Awards
(Audit # 201310022)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is in compliance with Federal Acquisition Regulation requirements and other applicable authorities for noncompetitive contract awards. This review is included in the Treasury Inspector General for Tax Administration's Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Fraudulent Claims and Improper Payments.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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Abbreviations

CO	Contracting Officer
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
FY	Fiscal Year
IRS	Internal Revenue Service
JOFOC	Justification for Other Than Full and Open Competition
SBS	Small Business Specialist
TIGTA	Treasury Inspector General for Tax Administration



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Background

One of the goals of Federal contracting is to promote competition when buying goods and services. The Competition in Contracting Act of 1984¹ required, with limited exceptions, that contracting officers (CO) promote and provide for full and open competition in soliciting offers and awarding U.S. Government contracts. Full and open competition is desirable because it can result in quality products and services at reasonable costs, deter abusive procurement practices, and improve contractor performance.²

Contracting without full and open competition is a violation of statute³ unless permitted by one of the seven authorities outlined in the Federal Acquisition Regulation (FAR).⁴ Generally, noncompetitive contracts must be supported by written justifications and approvals that address the specific authority permitting other than full and open competition. The FAR⁵ lists the following seven authorities that permit other than full and open competition for awards greater than \$150,000 (above the simplified acquisition threshold):⁶

- Only one responsible source and no other supplies or services will satisfy agency requirements.
- Unusual and compelling urgency.
- Industrial mobilization; engineering, development, or research capability; or expert services.
- International agreement or treaty.
- Authorized or required by statute.
- National security.
- Public interest.

A CO must not initiate negotiations for or award a noncompetitive contract unless the CO justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification from the appropriate official or officials.

¹ 41 U.S.C. § 253.

² Contracting officials, program office staff, and contractors may improperly seek to reduce the level of competition on an award in order to gain an advantage and direct the award to a specific favored contractor.

³ 10 U.S.C. § 2304.

⁴ 48 C.F.R. pts. 1–53. The FAR was established to codify uniform policies for acquiring supplies and services by executive agencies.

⁵ FAR 6.302, Circumstances permitting other than full and open competition.

⁶ Contracts below the simplified acquisition threshold are permitted by the first three authorities listed.

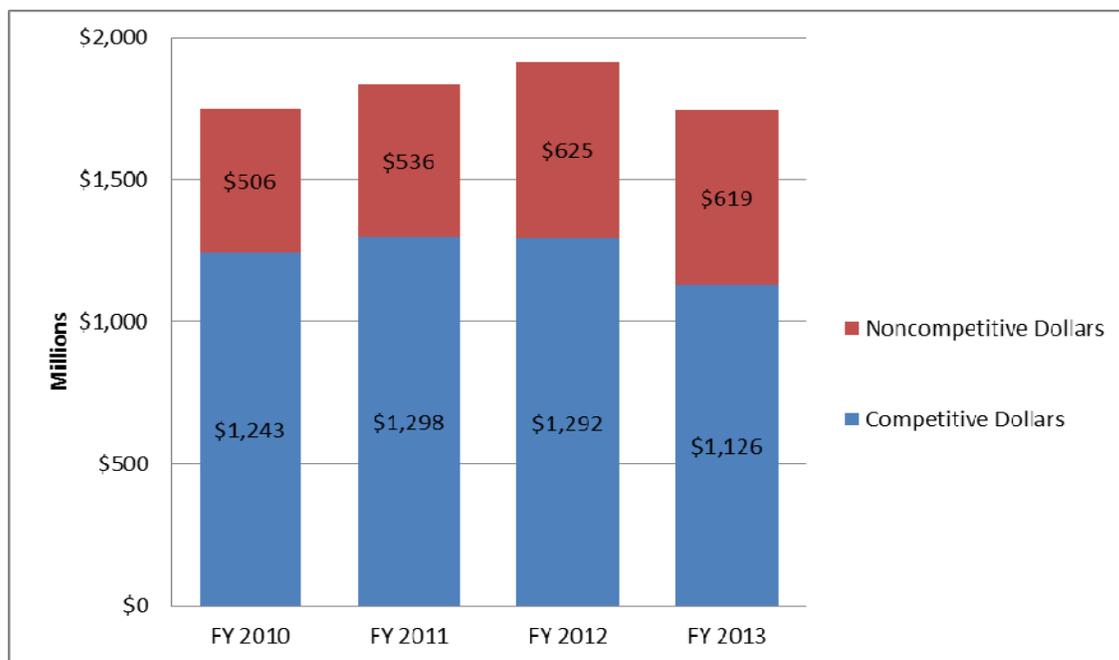


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The FAR⁷ requires that each justification contain sufficient facts and rationale to justify the use of one of the seven specific authorities permitting other than full and open competition. A complete list of the information required by the FAR for inclusion in the justification is listed in Appendix V.

From Fiscal Year⁸ (FY) 2010 through FY 2013, the Internal Revenue Service (IRS) obligated approximately \$7.3 billion in awards to Federal contractors, of which approximately \$2.3 billion (32 percent) was not awarded through full and open competition. Figure 1 provides a breakdown of total contract dollars that were awarded by fiscal year.

Figure 1: Total Contract Dollars by Fiscal Year⁹



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of IRS Office of Procurement data.

⁷ FAR, 6.303-2, Content.

⁸ A 12-consecutive-month period ending on the last day of any month. The Federal Government's fiscal year begins on October 1 and ends on September 30.

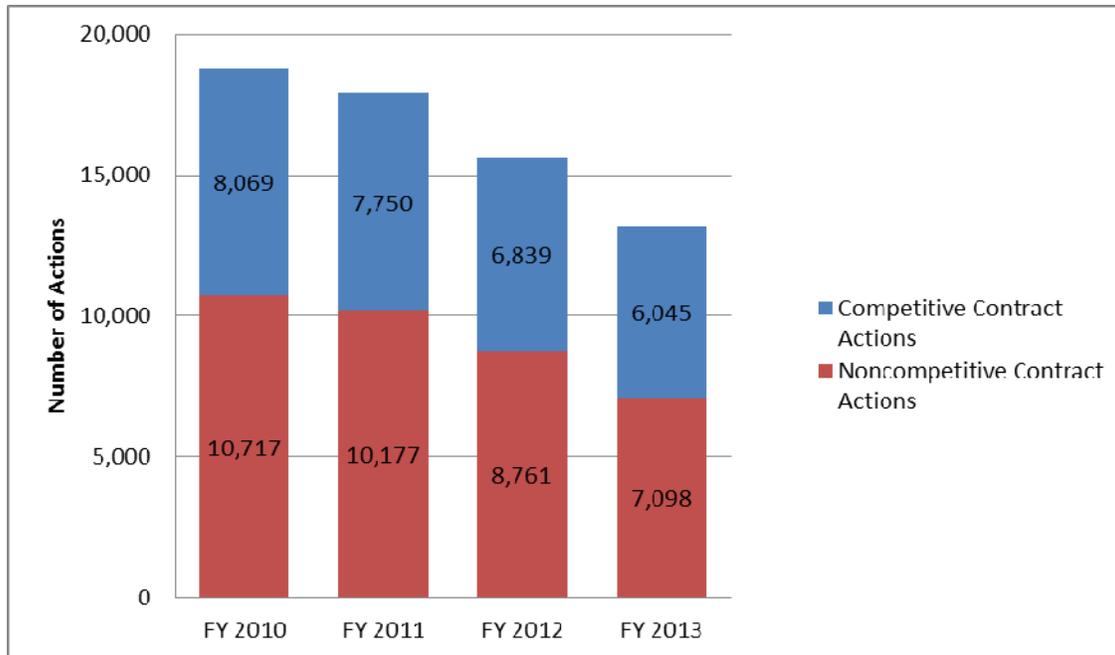
⁹ Although COs are required to categorize contract actions by whether they were competitively awarded, approximately \$60 million in awards between FYs 2010 and 2013 were not categorized. We removed these awards from Figure 1; however, this \$60 million is included in the \$7.3 billion total. These awards represent less than 1 percent of the total value of contracts during this period. Contracts awarded through certain small business programs, such as the HubZone Program and the Service Disabled Veteran Owned Small Business Program, would be considered noncompetitive if the award was made directly as a sole-source contract to one firm. However, if the IRS limited competition to a group of such small business companies, then these awards would be classified as competitively awarded.



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The \$7.3 billion in IRS awards from FYs 2010 through 2013 were accomplished through 66,227 contract actions, of which 36,753 (55 percent) were not competitively awarded. Figure 2 provides a breakdown of total contract actions that were awarded by fiscal year.

Figure 2: Total Contract Actions by Fiscal Year¹⁰



Source: TIGTA analysis of IRS Office of Procurement data.

IRS contracting personnel are required to use the Justification for Other Than Full and Open Competition (JOFOC) form to document compliance with FAR requirements.¹¹ The original copy of the approved JOFOC must be retained in the official contract file. Awards of \$150,000 or less (below the simplified acquisition threshold) do not require a formal JOFOC; however, a written justification, in memorandum form, must provide clear and convincing evidence to support the exemption authority for other than full and open competition.¹² The IRS Small Business Specialist (SBS) is required to review and sign all justifications for contracts greater than \$25,000.

¹⁰ Although COs are required to categorize contract actions by whether they were competitively awarded, approximately 771 contract actions were not categorized between FYs 2010 and 2013. We removed these 771 awards from Figure 2; however, these 771 are included in the 66,227 total. These awards represent approximately 1 percent of the total number of contracts awarded during this period.

¹¹ The JOFOC is also known as Treasury Form TDF 76-01.6, *Justification for Other Than Full and Open Competition*. Use of the JOFOC is required by Department of the Treasury Acquisition Procedures as well as IRS Policy and Procedures Memorandum 6.3, *Justification for Other than Full and Open Competition*.

¹² Awards of \$150,000 or less (below the simplified acquisition threshold) do not require additional approvals beyond the approval of the responsible CO.



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Contracts valued at greater than \$150,000 require additional levels of approval as they increase in value. Figure 3 depicts the various approval levels required by JOFOC dollar amount.

Figure 3: JOFOC Approval Levels Required by Dollar Amount

Award Value	CO	SBS	Competition Advocate	Director of Procurement	Senior Procurement Executive
≤ \$650,000	✓	✓			
> \$650,000	✓	✓	✓		
> \$12,500,000	✓	✓	✓	✓	
> \$62,500,000	✓	✓	✓	✓	✓

Source: IRS Policy and Procedures Memorandum 6.3 and FAR 6.304, Approval of the justification.

Significant risks are present when noncompetitive procurement requirements are not adhered to. To ensure that the IRS gets the most competitive price for goods and services, the CO should solicit offers from as many potential sources as possible in order to make them aware of the contract opportunities. COs, program office staff, and contractors may potentially seek to improperly reduce the level of competition on an award in order to gain an advantage and direct the award to a specific favored contractor. Without proper oversight and controls, noncompetitive contract awards put the IRS at risk for fraudulent, abusive, and wasteful spending and for noncompliance with the applicable authorities.

From the Federal Procurement Data System–Next Generation (FPDS–NG), we obtained a population of new IRS contract awards made from October 1, 2010, through May 31, 2013. We determined the number and dollar amount of contracts that were noncompetitively awarded. Because of limitations in the reliability of FPDS–NG data, we excluded 33 contracts from the scope of our review. Specifically, for these 33 contracts, the FPDS–NG system showed the contract as being both over \$150,000 in amount (in the contract award amount field) and under the \$150,000 simplified acquisition threshold (in the extent competed field),¹³ both of which could not be accurate. Because there are different controls and processes in place for noncompetitive contracts above and below this \$150,000 threshold, we could not rely on this data to select cases of each. However, we did review three of the 33 contract files and found that these contracts totaling \$14.9 million were improperly coded as being below the \$150,000 threshold.

Further, we determined that the JOFOC form was not required for some cases because the contracts were awarded through special contracting programs, such as the Ability One Program

¹³ The “extent competed” field documents the reason for awarding the contract action without full and open competition.



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and the 8(a) Program. In these situations, we replaced these contracts in our sample with contracts noncompetitively awarded during our review period that did require the use of the JOFOC.

We reviewed a total of 35 noncompetitive contract awards (25 awards above the simplified acquisition threshold and 10 awards below the simplified acquisition threshold).¹⁴ A stratified random sample of 25 files for awards above the simplified acquisition threshold was selected to represent a cross-section of FAR exemption and approval categories. A nonrepresentative selection¹⁵ of 10 contract files below the simplified acquisition threshold was also reviewed. Award values for these 35 noncompetitive awards ranged from a low of \$3,137 to a high of \$65.2 million. Figure 4 provides details on the type of goods and services obtained through these awards.

Figure 4: Types of Goods and Services Obtained for the Contracts Reviewed

Type of Contract Good or Service ¹⁶	Number
Administrative and Support and Waste Management and Remediation Services	1
Finance and Insurance	1
Public Administration	1
Real Estate and Rental and Leasing	1
Manufacturing	2
Other Services (except Public Administration)	2
Utilities	4
Educational Services	5
Information	6
Professional, Scientific, and Technical Services	12
Total	35

Source: TIGTA analysis of FPDS-NG data.

¹⁴ Although our sample of 25 of the population was randomly selected within the various strata we identified, we are not projecting the results of our analysis to the entire population of noncompetitive contracts awarded during our audit period because the sample size was not large enough.

¹⁵ A nonrepresentative selection is a nonstatistical selection, the results of which cannot be used to project to the population.

¹⁶ These awards are categorized based on the North American Industry Classification System code assigned by IRS procurement personnel. The North American Industry Classification System was developed as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy.



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We held discussions with personnel and analyzed data obtained from the Agency-Wide Shared Services Office of Procurement in Oakland, California; Atlanta, Georgia; Oxon Hill, Maryland; New York, New York; and Farmers Branch, Texas, during the period May 2013 through January 2014. The focus of our review was to determine whether or not the IRS was in compliance with FAR requirements and other applicable authorities for the 35 noncompetitive contract awards we reviewed. We did not review for abusive procurement practices, such as whether COs or program office staff were directing noncompetitive contracts to favored vendors or were engaged in other types of improper procurement activities.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information about our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Approvals for the Selected Contracts Were Timely Obtained From the Appropriate Officials

Thirty (86 percent) of the 35 contracts we reviewed contained documentation that appropriate approvals were obtained prior to contract award.¹⁷ The FAR requires that justifications be approved at various levels according to the dollar value of the contract. In two cases, contracts below the simplified acquisition threshold were not signed by the CO. A third contract below the simplified acquisition threshold required approval by the SBS because the contract value exceeded \$25,000, but this approval was not obtained. When we asked these COs why they did not formally sign the justification documentation and the SBS signature was not obtained, we were told that it was due to an oversight on their part.

The fourth contract, which was above the simplified acquisition threshold, required approval by the CO and the SBS; however, the SBS did not approve the JOFOC. In this instance, the CO did not use the proper JOFOC form, which includes a specific signature block for the SBS. For the fifth contract, which was also above the simplified acquisition threshold, the documentation did not include approval by the SBS and Competition Advocate, both of which were required. We could not determine the cause of the lack of appropriate approval in this case. Without proper approval, these awards are not fully justified and did not fully comply with the FAR and IRS policy. Figure 5 shows the details of the five contracts that did not have the proper approvals.

Figure 5: Contract Approvals Not Obtained

Contract	CO	SBS	Competition Advocate	Director of Procurement	Senior Procurement Executive
1	Not obtained	N/A	N/A	N/A	N/A
2	Not obtained	N/A	N/A	N/A	N/A
3	✓	Not obtained	N/A	N/A	N/A
4	✓	Not obtained	N/A	N/A	N/A
5	✓	Not obtained	Not obtained	N/A	N/A

Source: TIGTA analysis of IRS contract files.

¹⁷ We reviewed a stratified random sample of 25 awards out of a universe of 282 awards above the simplified acquisition threshold of \$150,000 and a nonrepresentative selection of 10 awards at or below the simplified acquisition threshold based on specific risk factors. We did not make projections based on our results.



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Some Justifications Were Inadequate for the Authority Permitting Other Than Full and Open Competition Cited

Seven (20 percent) of the 35 contract files we reviewed did not contain adequate justification of the exception authority permitting other than full and open competition. These seven were for awards totaling \$76,287. While many of the justifications we reviewed contained clear descriptions of why only one source was available to meet the IRS's needs, we observed that justifications for lower dollar awards contained fewer facts and rationale than higher dollar awards. These lower dollar awards require approval by COs, in contrast to higher dollar awards, which can require additional approvals by competition advocates and/or procurement executives, depending on the dollar value of the award.

The seven awards we identified that did not contain specific facts and rationale to justify that only one source was reasonably available were all below the simplified acquisition threshold of \$150,000. For purchases not exceeding the simplified acquisition threshold, the FAR permits COs to solicit from one source if the CO appropriately determines that there is only one source reasonably available. While these seven contracts did contain information regarding the contractors' qualifications and price reasonableness, contract file documentation failed to clearly explain why these vendors were the only source available.

When we discussed this with the COs responsible for these justifications, they generally agreed that the justifications themselves should have contained additional support to document why the specified contractors were the only source reasonably available. Without documenting why these contractors were the only source available, these awards are not fully justified and therefore did not fully comply with the FAR.

Required Content Elements Were Missing From Justification Documents for the Selected Contracts

Eight (32 percent) of 25 contracts above the simplified acquisition threshold did not comply with one or more of the 12 content requirements¹⁸ outlined in the FAR.¹⁹ The required JOFOC form is designed to mirror the 12 content requirements outlined in the FAR. Awards below the simplified acquisition threshold do not require the CO to formally address these 12 content requirements; therefore, the 10 awards we reviewed below the threshold were not included in this specific analysis.

¹⁸ See Appendix V for a list of the 12 content requirements.

¹⁹ FAR 6.302-3, Content.



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All 25 contracts we reviewed adequately addressed the first six content elements required by the FAR. Those elements are as follows:

- Identification of the agency and the contracting activity and specific identification of the document as a “justification for other than full and open competition.”
- Nature and/or description of the action being approved.
- Description of the supplies or services required to meet the agency’s needs (including the estimated value).
- Identification of the statutory authority permitting other than full and open competition.
- Demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.
- Description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR Subpart 5.202 applies.

However, we found that for eight (32 percent) of the 25 JOFOCs contained in the contract files reviewed, COs inadequately addressed one or more of the remaining content requirements or omitted required information when preparing the JOFOC. These eight were for awards totaling \$13.1 million. Specifically, six JOFOCs inadequately addressed one content element, one inadequately addressed two elements, and one inadequately addressed three elements. Figure 6 provides details on the content requirements that were missing from contract documentation.

Figure 6: Content Requirement Elements Missing in Contract Files

Content Requirement	Noncompliance Details
Determination by the CO that the anticipated cost to the Government will be fair and reasonable.	<ul style="list-style-type: none"> • Three contracts did not adequately address this requirement. • Although there were statements that the CO would determine that the anticipated cost would be fair and reasonable, either the price determination was not completed or it was not documented; therefore, we determined that documentation was not adequate to address this requirement.
Description of the market research conducted and the results or a statement of the reason market research was not conducted.	<ul style="list-style-type: none"> • Two contracts did not adequately address this requirement. • No documentation of market research was found in the contract file or through subsequent follow-up requests to the IRS. • In one case, the CO who awarded this contract was no longer working at the IRS; therefore, the reason for the absence of market research could not be determined. • In the other case, the CO told us that the lack of adequate and sufficient market research documentation in the contract file was due to an urgent need to award the contract coupled with the IRS clearly knowing that the contractor could provide third-party goods and services at a discounted cost due to past experiences working with the contractor.



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Content Requirement	Noncompliance Details
<p>Any other facts supporting the use of other than full and open competition, such as:</p> <ul style="list-style-type: none"> i. Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available. ii. When FAR 6.302-1 is cited for follow-on acquisition²⁰ as described in FAR 6.302-1(a)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was arrived. iii. When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government. 	<ul style="list-style-type: none"> • Two contracts did not address this requirement. • The Treasury JOFOC form or corresponding IRS guidance does not specifically identify this FAR requirement language. As a result, this element was incomplete or required data were omitted. These awards were both follow-on acquisitions; however, the file contained no documentation as to the cost to the IRS that would be duplicated (if a contract was awarded to a new vendor).
<p>Listing of the sources, if any, that expressed, in writing, an interest in the acquisition.</p>	<ul style="list-style-type: none"> • One contract did not address this requirement. • The responsible CO has retired and the IRS could not provide an explanation as to why this requirement was not adequately addressed.
<p>Statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.</p>	<ul style="list-style-type: none"> • Two contracts did not address this requirement. • In one case, the CO did not use the official JOFOC form, which contains template language to address this requirement. The informal alternative JOFOC that was substituted did not contain this language. • In the other case, the CO has retired and the IRS could not provide an explanation as to why this requirement was not addressed.
<p>CO certification that the justification is accurate and complete to the best of the CO's knowledge and belief.</p>	<ul style="list-style-type: none"> • One contract did not address this requirement. • The CO did not use the official JOFOC form, which contains template language to address this requirement. The alternative JOFOC that was developed did not contain this language or a signature block.

Source: TIGTA's review of 25 contract files.

Each of these content requirements is mandatory for contracting without providing for full and open competition. Because eight JOFOC forms either did not include sufficient information or were not completed, they were not compliant with the FAR requirements for permitting other than full and open competition.

We determined that the Treasury JOFOC form used by the IRS is designed in such a way that it may have contributed to the COs' omission of required data for one of the FAR content requirements. In general, the JOFOC form mirrors the 12 content requirements word for word. However, for one of the content elements, the information required by the FAR is more specific

²⁰ A follow-on acquisition is an award that is issued to the same contractor or subcontractor for the same item or services as a preceding contract.



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than the information asked for in the JOFOC form. Figure 7 compares the documentation required by the FAR in comparison to the corresponding JOFOC language.

Figure 7: Comparison of Language in the FAR and the JOFOC

FAR Requirement	JOFOC Language
<p>Any other facts supporting the use of other than full and open competition, such as:</p> <p>(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.</p> <p>(ii) When FAR 6.302-1 is cited for follow-on acquisitions as described in FAR 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.</p> <p>(iii) When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.</p>	<p>Describe any other documentation to support the JOFOC.</p>

Source: TIGTA’s review of the FAR and JOFOC form.

As a result of this inconsistency, in two instances we found that this element was incomplete or that required data were omitted. When we spoke with COs regarding this section of the JOFOC, they were not knowledgeable of the underlying FAR requirement and were unaware of the variance in the JOFOC form language.

Recommendations

Recommendation 1: The Deputy Commissioner for Operations Support should use the results of these 35 contract cases to reemphasize to IRS program office and procurement office personnel the need to obtain proper approval, adequately justify noncompetitive awards, and fully address FAR requirements prior to solicitation and award.

Management’s Response: The IRS agreed with this recommendation and stated that the Deputy Commissioner for Operations Support will issue a communication to IRS employees on the need to obtain proper approval to adequately justify noncompetitive awards and follow appropriate FAR requirements prior to solicitation and contract awards.



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Recommendation 2: The Chief, Agency-Wide Shared Services, should use the results of these 35 contract cases to ensure that periodic oversight reviews of contract files provide increased focus on these areas to ensure CO compliance with FAR requirements for noncompetitive contracts.

Management's Response: The IRS agreed with this recommendation and stated that the Chief, Agency-Wide Shared Services, will review the results of the 35 contract cases and determine where increased focus is necessary in periodic reviews of contract files to ensure CO compliance with FAR requirements for noncompetitive contracts.

Contract Data Were Miscoded in the Federal Procurement Data System

We identified a list of all contracts awarded through other than full and open competition from October 1, 2010, through May 31, 2013. In March 2007, the Office of Federal Procurement Policy issued a memorandum that tasked all agency chief acquisition officers with establishing processes to ensure that FPDS-NG data are accurate.

For 33 contracts in the FPDS-NG, the system showed the contract as being both over \$150,000 in amount (in the contract award amount field) and under the \$150,000 simplified acquisition threshold (in the extent competed field), both of which could not be accurate. We reviewed three of the 33 contract files and found that these contracts totaling \$14.9 million were improperly coded as being below the \$150,000 threshold. We forwarded all 33 of these contract cases to the IRS for review and appropriate adjustment to correct any miscoding.

When contracts are miscoded, the IRS does not have accurate data on the contracts it awards. Complete, accurate, and timely Federal procurement data are essential for ensuring that the Government has the right information when planning, awarding, and performing oversight on Federal contracts.

Recommendation

Recommendation 3: The Chief, Agency-Wide Shared Services, should ensure that contracts awarded during the audit period, and specifically the 33 that we identified through our analysis, are reviewed to confirm that they were properly coded in the FPDS-NG.

Management's Response: The IRS agreed with this recommendation and stated that the Office of Procurement was previously provided the list of the 33 FPDS-NG entries in question and corrections were made where appropriate.



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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether the IRS is in compliance with FAR¹ requirements and other applicable authorities for noncompetitive contract awards. To achieve our objective, we:

- I. Obtained an understanding of the statutory authority for contracting without providing for full and open competition and all acquisition planning policies, procedures, and practices the IRS uses to ensure compliance with the requirements, justifications, and approvals as required by FAR Subpart 6.3.
 - A. Researched the FAR, Department of the Treasury regulations, and IRS policies and procedures regarding the requirements, justifications, and approvals for noncompetitive contracts.
 - B. Interviewed Office of Procurement contracting personnel and program office staff to document the current process and the practices used to determine how noncompetitive contracts are justified and the documentation that is involved for supporting these procurements.
- II. Determined for a selection of contracts whether the IRS met FAR and other related requirements for awarding these noncompetitive procurements.
 - A. Obtained from the FPDS–NG a population of new awards made from October 1, 2010, through May 31, 2013. We determined the number and dollar amount of awards the IRS made that were noncompetitively awarded. We assessed the reliability of the FPDS–NG computer-processed data by examining contract data fields such as the Procurement Instrument Identifier, type of contract, vendor name, and product or service description. We determined that the data were sufficiently reliable to use for our audit tests.
 - B. Reviewed a nonrepresentative selection² of 10 awards at or below the simplified acquisition threshold of \$150,000 based on specific risk factors and determined if the contract file contained a written justification, in memorandum form, that provided clear and convincing evidence to support the exemption for other than full and open

¹ 48 C.F.R. pts. 1–53. The FAR was established to codify uniform policies for acquiring supplies and services by executive agencies.

² A nonrepresentative selection is a nonstatistical selection, the results of which cannot be used to project to the population.



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- competition. Five of these awards were selected randomly out of a universe of 6,230 awards, and five of these awards were identified as potentially lacking appropriate justification through prior TIGTA work.³
- C. Reviewed a stratified random sample of 25 files out of a universe of 282 awards above the simplified acquisition threshold of \$150,000 and determined whether the IRS complied with FAR 6.302 requirements, which require justification to support the use for other than full and open competition.⁴ These 25 files were selected to represent a cross-section of FAR exemption and approval categories.
 - D. For the 25 contracts above the simplified acquisition threshold, determined whether the IRS complied with FAR 6.302 requirements, which require each justification to contain sufficient facts and rationale to justify the use of the specific authority cited.
 - E. For the 25 contracts above the simplified acquisition threshold, determined whether the IRS complied with FAR 6.304 requirements, which require that the justification for other than full and open competition be approved in writing.
 - F. If the selected noncompetitive contracts reviewed did not comply with FAR requirements, we followed up with relevant procurement officials, COs, contract officer representatives, and program officials to determine why FAR requirements were not followed.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: FAR Part 6, Subpart 6.3, Other Than Full and Open Competition; FAR Part 10, Market Research Policy and Procedures; FAR Part 13, Simplified Acquisition Procedures; and Department of the Treasury policies and procedures and IRS internal policies and procedures pertaining to noncompetitive procurements. We evaluated these controls by interviewing personnel, reviewing documentation, and reviewing 35 contract files.

³ TIGTA, Ref. No. 2013-10-037, *Review of the August 2010 Small Business/Self-Employed Division's Conference in Anaheim, California* (May 2013), identified questionable expenses related to IRS conferences and outside speakers.

⁴ Contracts were divided into nonoverlapping strata. After each stratum was defined, simple random sampling was used within each stratum. In some cases, we determined that the JOFOC form was not required because the contracts were awarded through special contracting programs, such as the 8(a) Program. In these situations, we replaced these contracts in our sample with contracts that did require the use of the JOFOC. Although our sample of 25 was randomly selected within the various strata we identified, we did not project the results of our analysis to the entire population of noncompetitive contracts awarded during our audit period due to the small sample size.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
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Deputy Commissioner for Services and Enforcement SE
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Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Protection of Resources – Potential; \$13.2 million, the value of 15 contracts for which required approvals were not obtained, justifications were inadequate, or information in the contract file to support compliance with FAR requirements were not present. As a result, these awards did not comply with FAR requirements permitting other than full and open competition (see pages 7 and 8).

Methodology Used to Measure the Reported Benefit:

We reviewed 35 contract files out of 6,512 awards to determine whether required approvals were timely obtained and determined that in five instances not all of the required approvals were obtained. In two of those instances, the individual preparing the contract documentation did not sign the appropriate contract award documents for inclusion in the contract file. In the other three instances, an additional level of approval was required (beyond the individual preparing the documentation) but was not obtained. We identified seven contracts that did not contain adequate justification of the exception authority permitting other than full and open competition.

In addition, we reviewed 25 files to determine whether they included all 12 content elements required by the FAR and determined that eight awards did not comply with at least one of these required elements. If the IRS had issued these contracts through full and open competition, they might have resulted in lower costs, although we could not determine the specific savings that might have resulted from competition. We have included the entire value of these awards in this outcome measure. Five contracts did not meet two of the requirements; however, we have only counted each award once for the purpose of this outcome measure.

Type and Value of Outcome Measure:

- Reliability of Information – Actual; \$14.9 million for three contracts for which the contract category was improperly coded (see page 12).



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Methodology Used to Measure the Reported Benefit:

We identified the universe of contracts awarded through other than full and open competition from October 1, 2010, through May 31, 2013. During our review, we determined that at least three of the contracts in our population, totaling approximately \$14.9 million, were improperly coded in the “Extent Competed” field as awarded noncompetitively because they were under the micropurchase threshold or under the simplified acquisition threshold of \$150,000 when they in fact were not under those limits. IRS management advised that all three were coding errors and that corrections were made in the FPDS-NG. The total value of the three miscoded contracts was \$14.9 million.



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Appendix V

Federal Acquisition Regulation 6.303-2

The following elements are required by the FAR in a written justification for other than full and open competition for awards above the simplified acquisition threshold of \$150,000.

Federal Acquisition Regulation 6.303-2

- (a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited.
- (b) As a minimum, each justification shall include the following information:
 - (1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”
 - (2) Nature and/or description of the action being approved.
 - (3) A description of the supplies or services required to meet the agency’s needs (including the estimated value).
 - (4) An identification of the statutory authority permitting other than full and open competition.
 - (5) A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.
 - (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under Subpart 5.202 applies.
 - (7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.
 - (8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.
 - (9) Any other facts supporting the use of other than full and open competition, such as:
 - (i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.



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Federal Acquisition Regulation 6.303-2 (continued)

- (ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.
 - (iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.
- (10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.
- (11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.
- (12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.
- (c) Each justification shall include evidence that any supporting data that are the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

Source: FAR 6.303-2.



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Appendix VI

Management's Response to the Draft Report



CHIEF
AGENCY-WIDE
SHARED SERVICES

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

April 9, 2014

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: J. Stuart Burns 
Chief, Agency-Wide Shared Services

SUBJECT: Draft Audit Report – Better Adherence to Requirements Is
Needed to Justify and Document Noncompetitive Contract
Awards (Audit # 201310022)

Thank you for the opportunity to respond to the subject draft audit report. We are committed to ensuring compliance with Federal Acquisition Regulation requirements and other applicable authorities for noncompetitive contract awards.

We agree with all three recommendations and will develop and implement the corrective actions detailed in our attached response. Please note that we have completed one of the corrective actions.

We appreciate the continued support and assistance provided by your office. If you have any questions, please contact me at (202) 317-7500, or a member of your staff may contact Jacob B. Hansen, Director, Procurement at (240) 613-8500. For matters concerning audit procedural follow-up, please contact Patricia Alvarado, Resource & Operations Management, Agency-Wide Shared Services, at (202) 317-3272.

Attachment



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Attachment

RECOMMENDATION 1:

The Deputy Commissioner for Operations Support should use the results of these 35 contract cases to reemphasize to IRS program office and procurement office personnel the need to obtain proper approval, adequately justify noncompetitive awards, and fully address FAR requirements prior to solicitation and award.

CORRECTIVE ACTION:

We agree with this recommendation. The Deputy Commissioner for Operations Support will issue a communication to Internal Revenue Service (IRS) employees on the need to obtain proper approval, to adequately justify noncompetitive awards, and follow appropriate Federal Acquisition Regulation (FAR) requirements prior to solicitation and contract award.

IMPLEMENTATION DATE: July 30, 2014

RESPONSIBLE OFFICIAL:

Director, Procurement, Agency-Wide Shared Services

CORRECTIVE ACTION MONITORING PLAN:

Procurement, AWSS, will enter accepted corrective actions into the Joint Audit Management Enterprise System (JAMES). These corrective actions are monitored on a monthly basis until completion.

RECOMMENDATION 2:

The Chief, Agency-Wide Shared Services, should use the results of these 35 contract cases to ensure that periodic oversight reviews of contract files provide increased focus on these areas to ensure CO compliance with FAR requirements for noncompetitive contracts.

CORRECTIVE ACTION:

We agree with this recommendation. The Chief, Agency-Wide Shared Services (AWSS), will review the results of the 35 contract cases and determine where increased focus is necessary in periodic reviews of contract files to ensure Contracting Officer (CO) compliance with FAR requirements for noncompetitive contracts.

IMPLEMENTATION DATE: February 28, 2015

RESPONSIBLE OFFICIAL:

Director, Procurement, Agency-Wide Shared Services



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CORRECTIVE ACTION MONITORING PLAN:

Procurement, AWSS will enter accepted corrective actions into JAMES. These corrective actions are monitored on a monthly basis until completion.

RECOMMENDATION 3:

The Chief, Agency-Wide Shared Services, should ensure that contracts awarded during the audit period, and specifically the 33 that we identified through our analysis, are reviewed to confirm that they were properly coded in the FPDS-NG.

CORRECTIVE ACTION:

We agree with this recommendation. The Office of Procurement was previously provided the list of the 33 Federal Procurement Data System-Next Generation (FPDS-NG) entries in question and corrections were made where appropriate.

IMPLEMENTATION DATE: February 28, 2014

RESPONSIBLE OFFICIAL:

Director, Procurement, Agency-Wide Shared Services

CORRECTIVE ACTION MONITORING PLAN:

N/A