



U.S. Securities and Exchange Commission
Office of Inspector General
Office of Audits

SEC's Use of Justifications and Approvals in Sole-Source Contracting



March 28, 2012
Report No. 507



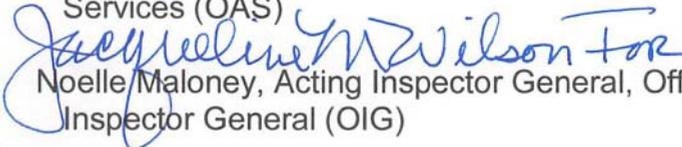
OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

March 28, 2012

To: Jayne Seidman, Acting Director, Office of Administrative Services (OAS)

From: 
Noelle Maloney, Acting Inspector General, Office of Inspector General (OIG)

Subject: *SEC's Use of Justifications and Approvals in Sole-Source Contracting, Report No. 507*

This memorandum transmits the U.S. Securities and Exchange Commission OIG's final report detailing the results on our audit of the Commission's use of justifications and approvals in sole-source contracting. This audit was conducted as part of our continuous effort to assess management of the Commission's programs and operations and as a part of our annual audit plan.

The final report contains six recommendations which if fully implemented should strengthen OAS' use of justifications and approvals in sole-source contracting. OAS concurred with all the recommendations. Your written response to the draft report is included in Appendix V.

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

Should you have any questions regarding this report, please do not hesitate to contact me. We appreciate the courtesy and cooperation that you and your staff extended to our auditor.

Attachment

cc: James R. Burns, Deputy Chief of Staff, Office of the Chairman
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Daniel Gallagher, Commissioner
Jeff Heslop, Chief Operating Officer, Office of Chief of Operations
Vance Cathell, Deputy Director, Office of Administrative Services

SEC's Use of Justifications and Approvals in Sole-Source Contracting

Executive Summary

Background. During his testimony on July 6, 2011, before the House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings and Emergency Management, the former U. S. Securities and Exchange Commission's (SEC or Commission) Inspector General informed the committee that the Office of Inspector General (OIG) would conduct an audit of the SEC's use of justifications and approvals (J&A) in sole-source contracting. The subject of the hearing was OIG's investigation regarding the SEC's lease for 900,000 square feet of office space at Constitution Center, costing approximately \$556.8 million, for over a 10 year period of time. Prominent in the leasing investigation was a J&A that was alleged to have been improperly used to support the Constitution Center's lease sole-source contracting action. In addition, the OIG received complaints on the SEC's use of J&As. As a result, the OIG conducted this audit based on improprieties that were found in the leasing investigation and on similar related complaints we received.

A sole-source acquisition is a contract that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source (vendor). With limited exceptions, a sole-source contract requires a J&A. The vision of the Federal Acquisition System (FAS), as established in the Federal Acquisition Regulation (FAR), is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Best value means that the expected outcome of the acquisition provides the greatest overall benefit in response to the government's requirements. Best value must be viewed from a broad perspective and is achieved by balancing competing interests in the FAS. One way the government expects to achieve best value is through competition. Further, FAS' policy is to promote competition in the acquisition process. Therefore, an agency's decision to limit competition in contracting should be carefully considered.

FAR § 6.3, *Other Than Full and Open Competition*, prescribes the policies and procedures and statutory authorities that must be applied when contracts are not awarded under full and open competition. FAR §§ 6.302-1 – 6.302-7 permit the following circumstances for other than full and open competition:

- FAR § 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements
- FAR § 6.302-2, Unusual and compelling urgency

- FAR § 6.302-3, Industrial mobilization; engineering, developmental, or research capability; or expert services
- FAR § 6.302-4, International agreement
- FAR § 6.302-5, Authorized or required by statute
- FAR § 6.302-6, National security
- FAR § 6.302-7, Public interest

The SEC primarily uses three of the aforementioned authorities as justification for other than full and open competition: FAR § 6.302-1, FAR § 6.302-2, and FAR § 6.302-3, specifically for expert services.

The J&A process is incorporated into the overall contracting process at the SEC. The Office of Administrative Services (OAS), Office of Acquisitions (OA) is comprised of a policy branch and four contracting branches that are staffed with contracting officers and contracting specialists. The branches are broken into the following specialized areas:

- OAS, Office of Human Resources, and Regional Offices,
- Enforcement, Office of the Secretary, Other Headquarters Divisions and Offices, and Regional Offices,
- Information Technology Software, and
- Information Technology Infrastructure.

The Commission's regional offices use outside vendors to acquire goods and services to support their operations and to help carry out the SEC's mission. This is accomplished either through purchases that are made by authorized government purchase cardholders or through the issuance of legally binding contractual documents. OAS has delegated senior officials in the regional offices (i.e., Regional Directors, select Associate Regional Directors, and select legal counsels) with the authority to enter into and modify contracts with vendors on behalf of the Commission. These officials have delegated written contracting authority in the form of warrants (up to \$100,000) to procure services limited to expert witnesses, foreign counsel, depositions, transcripts, courier or process servers, liens, and other case-related services. Since 2009, OA increased its training effort to regional office staff on contracting matters.

OA has taken positive steps to increase competition in contracting at the SEC, which is indicated by significant increases in the contract dollars the agency competed from fiscal years 2009 to 2011. For example, in fiscal year 2009, the SEC competed 38.5 percent of the agency's total obligated contract dollars, compared to 63.1 percent that was competed across the federal government. In fiscal year 2010, the SEC competed 52.5 percent of the agency's total obligated contract dollars, compared to 65.6 percent that was competed across the federal government. Finally, in fiscal year 2011, the SEC competed 73.3 percent of the

agency's total obligated contract dollars, compared to 63.3 percent that was competed across the federal government.

Objectives. The overall objective of the audit was to assess SEC's use of J&As in contracting. Specific audit objectives were to assess:

- OA's approval processes and procedures for J&As, to include the roles of contracting officials and legal counsel;
- whether applicable federal statutes and regulations and OA's policies and procedures are followed in preparing and approving J&As;
- whether J&As are appropriately used under the circumstances presented; and
- whether the use of J&As has impacted competition.

Results. We found sole-source contracts that were awarded to vendors that did not have J&As. Further, the contracting officer approved J&As after they were awarded and J&As were not always signed by the appropriate officials. We reviewed a sample of 64 sole-source contracts that the SEC awarded in fiscal years 2009 to 2011, that had a contract value of approximately \$10 million. Five of the 64 sole-source contracts did not have approved, written J&As, as required per FAR §§ 6.303 and 6.304. These contracts were awarded by a Regional Director in fiscal year 2011, for case-related services. Further, we found another 3 of the 64 contracts had J&As that were signed by the contracting officer after the contract was awarded. Finally, OA awarded a contract for \$620,000 in 2010, and the J&A was not signed by the competition advocate. The contract's amount exceeded the \$550,000 threshold established in FAR§ 6.304,¹ which requires the competition advocate to sign the J&A before the contract is awarded.

During the audit, we also found that a sole-source contract was awarded using the authority for "unusual and compelling urgency," that did not comply with FAR requirements. The circumstances identified in the J&A supported the use of this authority; however the contract exceeded the authorized period of performance allowed under FAR § 6.302-2. OA's award of this sole-source contract appropriately used the unusual and compelling urgency authority, but it did not limit the period of performance as required in FAR § 6.302-2. For sole-source contracts awarded using the unusual and compelling urgency authority, the period of performance is limited to the time necessary to perform the urgent work under the contract, and the time the agency needs to enter into another contract for the required goods and services through the use of competitive procedures. This time cannot exceed one year unless the head of the agency determines that exceptional circumstances apply.

¹ The current threshold is \$650,000. At the time the contract was awarded, the threshold was \$550,000.

Additionally, our review of the sole-source contracts that cited FAR § 6.302-3 for obtaining expert services found that most vendors received multiple contracts with the SEC, that the typical statements used in the expert witness J&As related to removing barriers to competition lacked real substance, and that any market research is limited and informal. The SEC's selection of expert witnesses is affected by variables such as witness expertise, availability, willingness to testify for the SEC, courtroom demeanor, and the trial attorney's confidence in the expert witness. Further, the unpredictable timeline of a trial can result in an unexpected and urgent need for an expert witness. These circumstances tend to limit the pool of potential witnesses for particular cases. As a result, the SEC may not be receiving the best value available for all of its expert witness contracts.

Finally, we found OA's current internal guidance for preparing J&As is potentially confusing to its contracting officers and contract specialists who prepare J&As. Over the past few years OA management has issued various guidance regarding J&A policy and procedures to its staff. However, based on the various guidance that has been issued and withdrawn, OA's contracting officers and contract specialists indicated confusion about the guidance they should use for processing J&As. OA needs to clarify what policies and procedures its staff should follow when processing J&A's.

Summary of Recommendations. Based on the results of our audit, we recommend the following:

- (1) The Office of Acquisitions (OA) should review contracting operations at the regional office where sole-source contracts were identified having no justifications and approvals. OA should further provide training to staff involved in the procurement process to ensure they are familiar with competition requirements in contracting, when sole-source contracting is appropriate and how to properly prepare justifications and approvals.
- (2) The Office of Acquisitions should establish procedures to regularly review a sample number of regional office contracts to ensure that their contracting practices comply with the Federal Acquisition Regulation and Commission regulations and operating procedures.
- (3) The Office of Acquisitions (OA) should review all open sole-source contracts awarded using FAR § 6.302-2, *Unusual and Compelling Urgency*, that are over the simplified acquisition threshold, and ensure that the contract's period of performance does not exceed one year. If any contract's period of performance exceeds one year, OA should modify the period of performance or obtain required approval from the Chairman for exceptional circumstances.

- (4) The Office of Acquisitions should conduct an assessment on the manner in which vendors are chosen as expert witnesses using FAR § 6.302-3, for sole-source contracts, and examine whether opportunities exist to expand the vendor competition base.
- (5) The Office of Acquisitions should publish comprehensive policies and procedures governing the justification and approval process at the Commission. This guidance should reflect a thorough analysis of the current process to determine if it includes sufficient controls to ensure justifications and approvals comply with federal statutes and regulations and are appropriately used under the circumstances presented.
- (6) The Office of Acquisitions (OA) should communicate its policies and procedures governing the justification and approval process at the Commission to contracting officers and contract specialists and provide training as necessary. OA should properly notify its staff when previously issued OA guidance (policies and procedures) and administrative regulations are revised, superseded, or are no longer available for use.

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Background and Objectives

Background

During his testimony on July 6, 2011, before the House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings and Emergency Management, the former U. S. Securities and Exchange Commission's (SEC or Commission) Inspector General informed the committee that the Office of Inspector General (OIG) would conduct an audit of the SEC's use of justifications and approvals (J&A) in sole-source contracting. The subject of the hearing was OIG's investigation regarding the SEC's lease for 900,000 square feet of office space at Constitution Center, costing approximately \$556.8 million, for over a 10 year period of time. Prominent in the leasing investigation was a J&A that was alleged to have been improperly used to support the Constitution Center's lease sole-source contracting action. In addition, the OIG received complaints on the SEC's use of J&As. As a result, the OIG conducted an audit based on improprieties that were found in the leasing investigation and from similar related complaints we received.

A sole-source acquisition is a contract that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source. With limited exceptions, a sole-source contract requires a J&A.² The *Competition in Contracting Act of 1984*, as implemented in the Federal Acquisition Regulation (FAR) Part 6, *Competition Requirements*, prescribes policies and procedures that are designed to promote full and open competition through the use of competitive procedures such as sealed bidding and competitive proposals.

The vision of the Federal Acquisition System (FAS), as established in the FAR, is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Best value means that the expected outcome of the acquisition provides the greatest overall benefit in response to the government's requirements. Best value must be viewed from a broad perspective and is achieved by balancing competing interests in the FAS. One way the government expects to achieve best value is through competition. Further, FAS' policy is to promote competition in the acquisition process.³ Therefore, an agency's decision to limit competition in contracting should be carefully considered.

² A J&A is a written justification for awarding a contract using other than full and open competition. It also includes the approval of the written justification by the appropriate authorities (See FAR §§ 6.303 and 6.304).

³ FAR § 1.102.

FAR § 6.3, *Other Than Full and Open Competition*, prescribes policies and procedures and identifies the statutory authorities that must be applied when contracts are not awarded under full and open competition. FAR §§ 6.302-1 – 6.302-7 permit the following circumstances for other than full and open competition:

- FAR § 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements
- FAR § 6.302-2, Unusual and compelling urgency
- FAR § 6.302-3, Industrial mobilization; engineering, developmental, or research capability; or expert services
- FAR § 6.302-4, International agreement
- FAR § 6.302-5, Authorized or required by statute
- FAR § 6.302-6, National security
- FAR § 6.302-7, Public interest

FAR Part 6 Authorities Used at SEC. The SEC primarily uses three of the aforementioned authorities as justification for other than full and open competition: FAR § 6.302-1, FAR § 6.302-2, and FAR § 6.302-3, specifically for expert services.

An agency may use the authority under FAR § 6.302-1 (only one responsible source) when supplies or services required by the agency are only available from one responsible source, and no other type of supplies or services will satisfy the agency's requirements. Supplies may be deemed available from only the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when substantial duplication of cost to the government is not expected to be recovered through competition, or when unacceptable delays in fulfilling the agency's requirements would result. Examples of how the SEC uses this authority include purchasing: required copyrighted manuals, unique internet-based services related to the financial markets, and follow-on maintenance agreements for previously acquired computer software.

An agency may use the authority under FAR § 6.302-2 (unusual and compelling urgency) when its needs for supplies and services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. The period of performance for a contract awarded under this authority is limited to the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract. This includes the time the agency needs to enter into another contract for the required goods and services through the use of competitive procedures. However, this time cannot exceed one year unless the head of the agency determines that exceptional circumstances apply. The SEC has used this authority to quickly enter into

contracts to investigate the May 6, 2010, market break⁴ and to fulfill time-sensitive requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was enacted on July 21, 2010.

An agency may use the authority under FAR § 6.302-3 (expert services) when it requires the use of an expert in litigation or disputes (including reasonably foreseeable litigation or disputes) involving the government in trials, hearings, or proceedings before a court, administrative tribunal, or agency, regardless of whether the expert is expected to testify. This authority is primarily used at the SEC by the Division of Enforcement (Enforcement) to obtain expert witnesses for litigation. This authority is also occasionally used for mediation services.

J&A Requirements. Under FAR § 6.303-1, contracts awarded using FAR §§ 6.302-1, 6.302-2, and 6.302-3 authority must be supported by written J&As. The justifications are approved by an appropriate authority and dependent on the dollar amount of the acquisition, the J&A requirements vary. With the exception of “unusual and compelling urgency” authority, J&As must be approved before the contract is awarded. The FAR prescribes the required content of J&As and the J&A approval levels as shown below in Table 1.

Table 1: Contract Limits and Required Approval Authority

Proposed Contract Amount	Required Approval Authority
\$650,000 or less	Contracting officer (unless a higher approval level is established in agency procedures)
Over \$650,000 - \$12.5 million	Competition advocate
Over \$12.5 million - \$62.5 million	Head of the contracting activity ⁵
Over \$62.5 million	Senior procurement executive

Source: FAR § 6.304

In most cases after awarding a contract under other than full and open competition, the FAR requires agencies to make the justification publicly available within 14 days.⁶ However, when an agency uses the “unusual and compelling urgency” exception, the FAR allows the agency 30 days to make the

⁴ Also known as the “Flash Crash.” On May 6, 2010, the financial markets experienced a brief but severe drop in prices, falling more than 5 percent in a matter of minutes, only to recover a short time later.

⁵ The Office of Acquisition’s Assistant Director is designated as the head of contracting activity and the senior procurement executive at SEC.

⁶ FAR § 6.305, Availability of the justification.

justification publicly available. Agencies are required to post these justifications on FedBizOpps⁷ unless one of the exceptions in FAR § 5.202 applies.

SEC's J&A Processes and Procedures. The J&A process is incorporated into the overall contracting process at the SEC. The Office of Administrative Services (OAS), Office of Acquisitions (OA) is comprised of a policy branch and four contracting branches that are staffed with contracting officers and contracting specialists. The branches are broken into the following specialized areas:

- OAS, Office of Human Resources, and Regional Offices,
- Enforcement, Office of the Secretary, Other Headquarters Divisions and Offices, and Regional Offices,
- Information Technology Software, and
- Information Technology Infrastructure.

Requests for goods and services are initiated when an office submits a requisition to OA. Team leaders from the contracting branches review the requisitions for content and complexity and subsequently assign requisitions to a contract specialist. The contract specialist processes requisitions, solicitations and contracts that are awarded by the contracting officers. OA also uses support contractors to conduct its functions. Goods and services are procured through competitive and non-competitive orders and contracts, purchase cards, and interagency agreements.

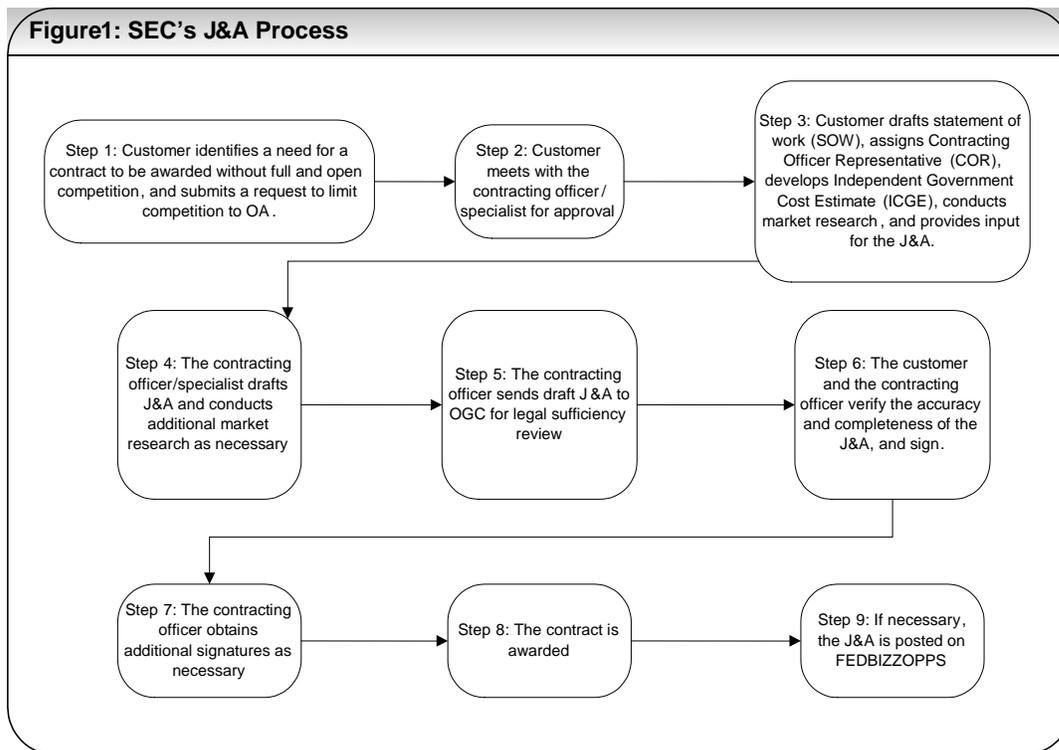
The Commission's regional offices acquire goods and services from outside vendors to support their operations and to help carry out the SEC's mission. This is accomplished either through purchases that are made by authorized government purchase cardholders or through the issuance of legally binding contractual documents. OAS has delegated senior officials (i.e., Regional Directors, select Associate Regional Directors, and select legal counsels) in the regional offices, the authority to enter into and modify contracts with vendors on behalf of the Commission. These officials have delegated written contracting authority in the form of warrants (up to \$100,000) to procure services limited to expert witnesses, foreign counsel, depositions, transcripts, courier or process servers, liens, and other case-related services. OA has provided training to regional office staff on contracting in various forms. For example, OA conducted on-site training at the Regional Offices in fiscal years 2009 and 2010. In 2010 and 2012, OA conducted training on contracting and competition at its Administrative Officer conference. Further, OA conducted training by teleconference for data entry in PRISM⁸ and the Federal Procurement Data

⁷ FedBizzOpps, or Federal Business Opportunities, is the Government Point of Entry for publicizing contracting actions. It is located at www.fbo.gov.

⁸ PRISM is the SEC's automated contract writing tool.

System (FPDS). Finally, the SEC's *Insider*⁹ has a section that provides detailed information on contracting at the Regional Office level.

OA's J&A process has evolved significantly since 2005 when it was informal and ad hoc. OA has documented procedures for drafting, reviewing, and approving J&As at the SEC. On December 29, 2009, OA published the *Justification and Approval Guide*, which provides its staff with detailed guidance on J&A processes and procedures. Further, over the past year the OA Assistant Director sent emails to her staff to clarify the office's guidance on processing J&As. OA's current J&A procedures are shown below in Figure 1.



Source: OIG Generated

Competition in Contracting at SEC. As stated in FAR § 6.501, Section 20 of the Office of Federal Procurement Policy Act requires the head of each executive agency to designate a competition advocate. The competition advocate is responsible for promoting the acquisition of commercial items; promoting full and open competition; challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics; and challenging barriers to the acquisition of commercial items and full and open competition. To accomplish these tasks the competition advocate reviews the agency's contracting operations, recommends new

⁹ The SEC's Insider is used as a primary internal source of information for SEC personnel.

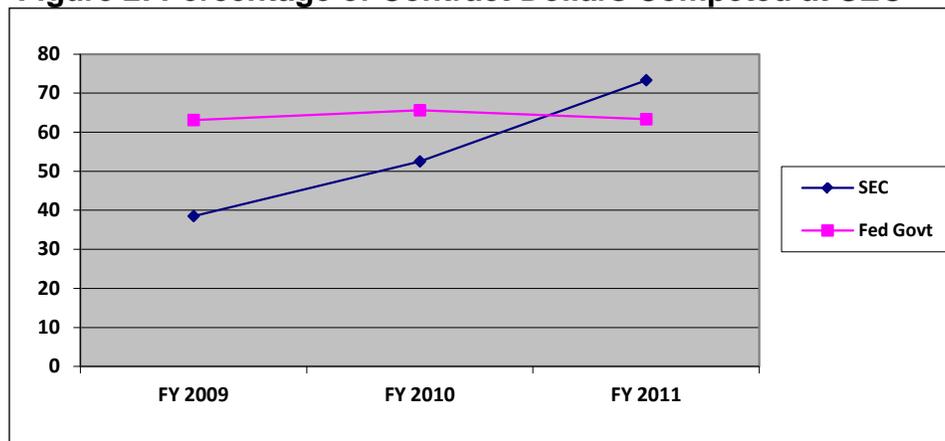
initiatives, and reports the result to the senior procurement executive. Further, the competition advocate duties at the SEC include:

- (1) improving the quality of decision making for competition in contracting;
- (2) reviewing selected J&As for quality control purposes and approving ones for contracts over \$650,000;
- (3) reviewing policy affecting competition, to include J&A policy; and
- (4) assessing various types of contracts used at the SEC.

Over the past year, OA has appointed several different staff as competition advocates. The current competition advocate spends about 25 percent of her time on competition advocate duties.

OA has taken positive steps to increase competition in contracting at the SEC. This is indicated by significant increases in the contract dollars the agency competed from fiscal years 2009 to 2011.¹⁰ For example, as shown in Figure 2, in fiscal year 2009, the SEC competed 38.5 percent of the agency's total obligated contract dollars, compared to 63.1 percent that was competed across the federal government. In fiscal year 2010, the SEC competed 52.5 percent of the agency's total obligated contract dollars, compared to 65.6 percent that was competed across the federal government. Finally, in fiscal year 2011, the SEC competed 73.3 percent of the agency's total obligated contract dollars, compared to 63.3 percent that was competed across the federal government.

Figure 2: Percentage of Contract Dollars Competed at SEC



Source: Federal Procurement Data System

¹⁰ SEC obligated contract dollars in the amounts of \$151 million, \$222 million, and \$222 million respectively in fiscal years 2009 through 2011.

Several factors contributed to the increase in contract dollars the SEC competed. First, the leadership of OA has increased its oversight and scrutiny of J&As in an effort to improve quality and maximize competition. Further, OA contracting specialists received continuing education in competition that has been reinforced by OA's leadership. The Office of the General Counsel (OGC) has also begun routinely reviewing and assessing J&A documents for legal sufficiency. Most importantly, OA has hired several experienced contracting officers and contracting specialists. The additional staffing and expertise in contracting has lead to an increase in competitive actions.

Audit Universe of Awarded Sole-Source Contracts

To assess the SEC's use of J&A in contracting, we developed a statistical sample of the universe of sole-source acquisitions OA awarded from fiscal years 2009 through 2011, using data from FPDS. See Appendix II, Methodology.

Objectives

Objectives. The overall objective of the audit was to assess SEC's use of J&As in contracting. Specific audit objectives were to assess:

- OA's approval processes and procedures for J&As, to include the roles of contracting officials and legal counsel;
- whether applicable federal statutes and regulations and OA's policies and procedures are followed in preparing and approving J&As;
- whether J&As are appropriately used under the circumstances presented; and
- whether the use of J&As has impacted competition.

Where appropriate, OIG will also identify best practices for consideration by management.

Findings and Recommendations

Finding 1: Sole-Source Contracts Were Awarded Without Proper Support Documents and Approval

OIG identified sole-source contracts that were awarded to vendors that did not have J&As. Further, the contracting officer approved/signed J&As after they were awarded and J&As were not always signed by the appropriate officials.

We reviewed a sample of 64 sole-source contracts that the SEC awarded during fiscal years 2009 to 2011, that had a contract value of approximately \$10 million. Five of the 64 sole-source contracts did not have approved, written J&As, though they were required per FAR §§ 6.303 and 6.304.¹¹ These contracts were awarded by a regional office, Regional Director in fiscal year 2011 for case related services. Further, three contracts from other offices had J&As that were signed by the contracting officer after the contract was awarded. Finally, OA awarded a contract for \$620,000 in 2010, and the J&A was not signed by the competition advocate. The contract amount exceeded the \$550,000 threshold that is established in FAR§ 6.304, which requires the competition advocate to sign the J&A before the contract is awarded.¹²

Sole-Source Contracts Without Written Justifications and Approvals

Using his warrant authority, a Regional Director signed the five sole-source contracts the OIG identified as not having an approved, written J&A.¹³ Two paralegals from this regional office oversaw the vendor selection process for three of the contracts. Personnel from this regional office informed the OIG they were unaware J&As were required and they only had limited training on contracting procedures. Regional office personnel further indicated that there were exigent circumstances associated with some contracts, and this drove them to quickly enter into contracts for items such as process servers and other case-related services. The paralegal's rationale for selecting certain vendors included:

¹¹ There were 14 contracts in the sample that did not have J&As. However, we determined that nine of the contracts did not require a FAR Part 6 J&A for the following reasons: 1) Four contracts were under the micro purchase threshold of \$3,000; 2) Four contracts used FAR Part 13 simplified procedures; and 3) One contract was an 8(a) contract that was under \$20 million.

¹² The current threshold is \$650,000. At the time the contract was awarded, the threshold was \$550,000.

¹³ OIG met with representatives from the regional office on January 31, 2012.

- Defendants in Commission litigation chose the vendors and the regional office had no part in the selection;
- The vendors selected were preferred over other possible vendors;
- In the past, regional staff had problems with certain vendors, so they routinely tend to request preferred companies they work best with.

We determined the five contracts in question should have either been competed or an authorized contracting official should have approved and signed J&As for the contracts prior to the contracts being awarded. OA coded the contracts in FPDS by using the authority under FAR § 6.302-3 for expert services. Based on circumstances presented by the regional office staff, such as situations where the regional office had no choice in selecting a vendor, we determined that FAR § 6.302-1 for “only one responsible source” was the more appropriate authority that should have been used. In all other cases, the contracts should have been opened to competition because they did not meet the requirements of the FAR § 6.302 authorities for other than full and open competition.

Awarding a sole-source contract without proper J&A is a violation of FAR § 6.303-1 and the *Competition in Contracting Act of 1984*¹⁴ which requires that contracting officers not commence negotiations for sole-source contracts, commence negotiations for contracts resulting from unsolicited proposals, or award any other contract without providing for full and open competition, unless the contracting officer justifies the use of such actions in writing (if required in FAR § 6.302), certifies the accuracy and completeness of the justification, and obtains the approval required by FAR § 6.304.

Further, this practice unnecessarily limits competition and restricts vendor’s access to federal contracting opportunities. Competition provides the best assurance that the government receives a fair and reasonable price and obtains the most comprehensive input on technical aspects of the various methods work can best be performed.

Contracting Officer Signed J&As After Award

For three contracts we reviewed, the contracting officer did not sign the J&A before the contract was awarded. All of the contracts involved were sole-source awards that used the expert services authority. For one contract awarded in 2010, the contracting officer signed the original J&A before the contract was awarded. However, the J&A was subsequently revised and the contracting officer did not certify, approve, and sign the updated J&A before the contract was awarded. The two remaining contracts were awarded in 2009. In both cases, a sole-source contract was awarded for an expert witness before the contracting

¹⁴ 43 U. S. Code § 253.

officer certified, approved, and signed the J&A. In 2011, our sample found no instances where the contracting officer signed a J&A after the contract was awarded.

The mandatory information contained in the J&A¹⁵ requires the technical representative and the contracting officer to scrutinize their claim that competition should be limited for a particular acquisition. Certification and approval of a J&A after a contract is awarded indicates that this analysis is not timely; therefore the acquisition may be flawed. When sole-source contracts are awarded prior to the approval of a J&A, OA cannot properly demonstrate that it determined the prices were fair and reasonable or that it received the best possible value for the goods and services acquired.

J&As Not Always Signed at the Appropriate Level

One sole-source contract we reviewed was awarded without the proper J&A because it was not signed by the competition advocate. This contract was awarded for expert services in 2010, for \$620,000. This amount was above the \$550,000 threshold established by FAR § 6.304. At the time of the contract's award the competition advocate should have signed the J&A.

The competition advocate's role is to ensure that competition is maximized in the agency by challenging any unnecessary restrictions on competition. When the competition advocate does not review and approve J&As when required, one of the agency's tools to promote competition is negated.

Failure to execute an appropriately signed J&A prior to contract award may indicate a lack of training and/or insufficient internal controls to ensure compliance with federal regulations and Commission policies and procedures.

Recommendation 1:

The Office of Acquisitions (OA) should review contracting operations at the regional office where sole-source contracts were identified having no justifications and approvals. OA should further provide training to staff involved in the procurement process to ensure they are familiar with competition requirements in contracting, when sole-source contracting is appropriate and how to properly prepare justifications and approvals.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

¹⁵ FAR § 6.303-2

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Recommendation 2:

The Office of Acquisitions should establish procedures to regularly review a sample number of regional office contracts to ensure that their contracting practices comply with the Federal Acquisition Regulation and Commission regulations and operating procedures.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Finding 2: Sole-Source Contract Authorized for Unusual and Compelling Urgency Exceeded the Authorized Period of Performance

A sole-source contract awarded using the authority for "unusual and compelling urgency" did not comply with FAR requirements. The circumstances identified in the J&A supported the use of this authority; however the contract exceeded the authorized period of performance allowed under FAR § 6.302-2.

OA awarded a sole-source contract on June 14, 2010, using FAR's "unusual and compelling urgency" authority. The contract's period of performance was from June 14, 2010 to June 13, 2013, and the initial contract value was \$250,000, which exceeded the simplified acquisition \$150,000 threshold. This contract was modified four times and its current value is now \$1,500,000. The objective of the contract is to have the vendor conduct an investigation related to the May 6, 2010, market break and determine:

- (1) to the extent possible, what events precipitated or contributed to the market break; and
- (2) what the features of market design and market participant behavior may have propagated or amplified the event.

OA's award of this sole-source contract appropriately used the unusual and compelling urgency authority, but it did not limit the period of performance for acquisitions that exceed the simplified threshold as required in FAR § 6.302-2.

For sole-source contracts awarded using the unusual and compelling urgency authority, the contract's period of performance is limited to the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract. This includes the time the agency needs to enter into another contract for the required goods and services through the use of competitive procedures. However, this time cannot exceed one year unless the head of the agency determines that exceptional circumstances apply.

We concluded that the period of performance on the contract in question should not have exceeded one year, unless the SEC Chairman determined that exceptional circumstances applied and approved the request. However, there is no evidence in the contract file that supports that the Chairman made this determination. Because this was not done, the SEC inappropriately limited competition for follow-on work related to this contract. Therefore, OA cannot assure that the cost of the follow-on work was reasonable or the SEC received the best value for services rendered.

Recommendation 3:

The Office of Acquisitions (OA) should review all open sole-source contracts awarded using FAR § 6.302-2, *Unusual and Compelling Urgency*, that are over the simplified acquisition threshold, and ensure that the contract's period of performance does not exceed one year. If any contract's period of performance exceeds one year, OA should modify the period of performance or obtain required approval from the Chairman for exceptional circumstances.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Finding 3: Expert Services Contracts Are Sourced From a Limited Supply of Vendors that Could Potentially be Expanded

Our review of sole-source contracts that cited FAR § 6.302-3 for expert services, found that: most vendors received multiple contracts with the SEC, typical statements in the expert witness J&As about removing barriers to competition lacked real substance, and market research is limited and informal.

Enforcement is OA's primary customer for sole-source expert services contracts. Enforcement uses these contracts to hire expert witnesses in support of SEC litigation.

Some Vendors for Expert Services Contracts Have Multiple SEC Contracts

Of the sole-source contracts we reviewed, 27 of 64 (42 percent) were awarded as "expert services" contracts. Of these 27 contracts, 21 (78 percent) were awarded to vendors that received at least two SEC contracts during fiscal years 2009 through 2011. Some vendors received more than two SEC contract awards during this period. For the three year period, we found:

- Two vendors were awarded seven contracts; each vendor's total contracts were valued at over \$2.2 million and \$1.3 million, respectively.
- Two vendors were awarded five contracts; each vendor's total contracts were valued at over \$2.7 million and \$246,000 respectively.
- Three vendors were awarded four contracts; each vendor's total contracts were valued at over \$1 million, \$890,000, and \$217,000, respectively.

Vendors are generally awarded multiple expert services contracts with the SEC. The opportunity for new entrants to break into this opportunity is thereby limited. Therefore, the SEC may not be receiving the best value for its expert services contracts.

Language in Expert Services J&As Lacks Substance

After reviewing and analyzing numerous J&As we determined that some language in the expert services J&As regarding "removing barriers to

competition,” lacked real substance.¹⁶ For example, paragraph 10 of the J&A states “a listing of sources, if any that expressed, in writing an interest in the acquisition.” OA’s typical response was “A listing of sources that express an interest in actions under this J&A will be maintained in the applicable contract files.” Paragraph 6 of the J&A states, “Efforts to ensure that offers are solicited from as many potential sources as possible.” Most of the expert services J&As we reviewed cited FAR § 5.202 (a) (14), as exempting the SEC from publicizing the action. We determined that it was unlikely that potential vendors would express an interest in writing to the SEC if the action is not publicized in FedBizOpps.

Further, paragraph 11 of the J&A states “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” and OA’s typical response was “The Commission’s requirements are ongoing and the SEC will continue to survey potential experts for similar services.”

The standard language found in many sections of the expert services J&As does not encourage the type of analysis that will truly remove barriers to competition in expert services contracting at the SEC. Therefore, the SEC does not obtain the benefits of competition in this category of contracts.

Market Research is Limited and Informal

Enforcement maintains a database (Word document) consisting of expert witnesses that are available for contracting services by various subject areas such as insider trading cases, broker-dealer issues, municipal bond fraud, etc. According to Enforcement’s Acting Deputy Managing Executive, the list is updated when:

- individuals contact Enforcement and express an interest in doing expert services work for the SEC;
- staff in Enforcement’s Trial Unit network with expert witnesses they meet during cases;
- Enforcement reaches out to trusted firms; and
- the Division conducts limited market research.

The Acting Deputy Managing Executive pointed out that for some expert services, there is a very small community of available resources and many vendors do not want to testify for the SEC. Also, Enforcement’s Trial Unit does not want to reveal its litigation strategy, so the search for an expert is often conducted confidentially by limiting queries to trusted associates.

¹⁶ FAR § 6.303-2 requires the J&A to address 12 areas.

FAR § 10.001 requires agencies to conduct market research before soliciting acquisition offers above the simplified acquisition threshold, and for acquisitions below the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost. The extent of market research varies depending on factors such as urgency, estimated dollar value, complexity and past experience. The contracting officer may use market research conducted within the last 18 months before awarding a task order or delivery order, if the information is still current, accurate, and relevant.

Our review found SEC's expert services J&As show limited and informal market research. In 22 percent of the J&As we reviewed, the J&A indicated no market research was conducted before the contract was awarded. For example, one J&A stated that a "market survey was not conducted because it would not be appropriate in litigation to announce the Commission's goals in its search for an expert." With few exceptions, the remaining expert services J&As we reviewed illustrated that only limited, informal market research was conducted among experts who were already known to the SEC. For example, one J&A stated, "The staff considered three experts The staff also reviewed lists of potential experts located on EnforceNet,¹⁷ as well as a list of experts the SEC has used within the past three years." None of these solicitations were publicized.

The informal market research conducted for expert services contracts limits the pool of potential vendors for expert services. Therefore, the SEC may not be receiving best value for its expert services contracts.

SEC's Expert Witness Selection Process Variables

The SEC's selection of expert witnesses is affected by variables such as witness expertise, availability, willingness to testify for the SEC, court room demeanor, and the trial attorney's confidence in the expert witness. Though these characteristics are subjective in nature, they may be valid. Further, the unpredictable timeline of a trial can result in an unexpected and urgent need for an expert witness. Also, the timeline of a trial is generally not controlled by Enforcement's Trial Unit, so the need for an expert witness can be unexpected and urgent. These circumstances tend to limit the pool of potential witnesses for a particular case.

Once a trial has begun, the desire to keep the litigation strategy confidential precludes the SEC from openly soliciting expert witnesses. In these instances, Enforcement does not conduct additional market research or informal research as was illustrated in our J&A review.

¹⁷ EnforceNet is the Division of Enforcement's intranet.

The SEC's approach to selecting certain expert witnesses is impacted by its current operational concerns, and there is a limited supply of known experts in certain areas. The culmination of these circumstances restricts the opportunity for new vendors to enter into this contracting opportunity. As a result, the SEC may not be receiving the best value available for all its expert witness contracts.

Recommendation 4:

The Office of Acquisitions should conduct an assessment on the manner in which vendors are chosen as expert witnesses using FAR § 6.302-3, for sole-source contracts, and examine whether opportunities exist to expand the vendor competition base.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Finding 4: OA's Current Guidance on J&As is Potentially Confusing

OA's current internal guidance for preparing J&As is potentially confusing to contracting officers and contract specialists who prepare J&As.

OA's J&A Guidance

Over the past few years OA management has issued various guidance regarding J&A policy and procedures to its staff. Specifically, on December 29, 2009, OA issued internal J&A guidance to its staff in the *Justification and Approval Guide*. This guide is posted on the SEC's *Insider* as an Acquisition Policy Newsflash. On July 8, 2011, the Head of the Contracting Activity (HCA) sent an email to OA staff that was described as written policy for J&As and throughout the year the HCA sent additional guidance related to J&As via emails to OA staff. In December 2011, OAS published Securities and Exchange Commission Regulation (SECR) 10-21, *Restricting Competition for SEC Acquisitions*, which provided guidance on the use and preparation of J&As in contracting at the SEC. Subsequently, SECR 10-21 was removed from SEC's internal site and is currently under further review.

We found OA's *Justification and Approval Guide* conflicts with the HCA's emails as follows:

The *Justification and Approval Guide* specifies that

- the project manager (technical representative or end user) is responsible for preparing the J&A; and
- OGC will review all J&As.

The HCA's emails

- designate the contracting officer/contract specialist responsible for preparing J&As;
- indicate OGC will sign all J&As.
- add a requirement that the technical representative submit a request to limit competition that is not included in the guide.
- specifies that the contract specialist will add their own additional market research to the J&A. Note: the *Justification and Approval Guide* does not have this requirement.

Contract Specialist Interview Results. As shown in Table 2, OIG interviews with 16 contract specialists assigned to OA had the following results:

Table 2: OIG Contract Specialist Interview Results

Number of Contract Specialists	OIG Interview Results
Six	Indicated SECR 10-21 was the guidance they used to process J&As, even though OA withdrew it as an active regulation in December, 2011
Seven	Indicated the HCA's emails were the prevailing J&A guidance.
One	Indicated OA's J&A Guide is the prevailing J&A guidance.
Two	Were unaware of any current internal guidance and refer to J&A examples and the FAR to process J&As.

Source: OIG Generated

Further, a consistent comment contract specialist relayed to OIG was that the HCA had sent out several emails related to processing J&As and the guidance needs to be clarified regarding what policies and procedures they are required to follow when processing J&A's.

OA's J&A Policies and Procedures. Internal controls¹⁸ (e.g., the organization's policies, procedures, etc.) are tools that can be used to help management achieve results and safeguard the integrity of their programs. The objectives of internal control include:

- (1) effectiveness and efficiency of operations;
- (2) reliability of financial reporting; and
- (3) compliance with applicable laws and regulations.

Internal controls are built on five standards: control environment; risk assessment; control activities; information and communications; and monitoring. The fourth standard (information and communications) asserts that information should be communicated to relevant personnel at all levels within an organization. The information should be relevant, reliable, and timely. Confusing J&A policy guidance is contrary to this standard and may result in the contracting staff's failure to comply with the laws and regulations that govern SEC's use of J&As in contracting.

Recommendation 5:

The Office of Acquisitions should publish comprehensive policies and procedures governing the justification and approval process at the Commission. This guidance should reflect a thorough analysis of the current process to determine if it includes sufficient controls to ensure justifications and approvals comply with federal statutes and regulations and are appropriately used under the circumstances presented.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

OIG Analysis. We are pleased that OAS concurred with this recommendation.

¹⁸ OMB Circular A-123, Management's Responsibility for Internal Controls.

Recommendation 6:

The Office of Acquisitions (OA) should communicate its policies and procedures governing the justification and approval process at the Commission to contracting officers and contract specialists and provide training as necessary. OA should properly notify its staff when previously issued OA guidance (policies and procedures) and administrative regulations are revised, superseded, or are no longer available for use.

Management Comments. OAS concurred with this recommendation. See Appendix V for management's full comments.

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Abbreviations

CICA	Competition in Contracting Act of 1984
COSO	Committee of Sponsoring Organizations of the Treadway Commission
Enforcement	Division of Enforcement
FAR	Federal Acquisition Regulation
FAS	Federal Acquisition System
FedBizOpps	Federal Business Opportunities
FPDS	Federal Procurement Data System
HCA	Head of Contracting Activity
J&A	Justification and Approval
OA	Office of Acquisitions
OAS	Office of Administrative Services
OGC	Office of General Counsel
OIG	Office of Inspector General
SEC or Commission	U. S. Securities and Exchange Commission
SECR	Securities and Exchange Commission Regulation
USC	United States Code

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Scope. Our audit focused on OA's policy and procedures for processing J&As at SEC. In addition, we reviewed sole-source contracts with J&As in our scope of fiscal years 2009 through 2011. Further, we considered federal law, federal regulations, and SEC policies and procedures that pertain to contracting. We conducted our fieldwork from November 2011 to February 2012.

Methodology. To meet the objectives of assessing (1) OA's approval processes and procedures for J&As, to include the role of contracting officials and legal counsel, and (2) whether applicable federal statutes and regulation and OA's policies and procedures are followed in approving J&As, we gained familiarity with federal contracting law, federal contracting regulations, and SEC policies and procedures related to contracting and J&As. In addition, we conducted a walk-through of OA's J&A approval process, interviewed key personnel, and collected supporting documentation. We also developed a statistical sample of sole-source contracts that were awarded during fiscal years 2009 to 2011, obtained and reviewed contracting documents to include J&As, and conducted testing to ensure compliance with federal laws, regulations, and the SEC policies and procedures.

To meet the objective of determining whether J&As were appropriately used under the circumstances presented, we identified the universe of J&A and conducted a review on a sample number (see the Statistical Sampling section) using a standard template and compared the assertions of the J&A to the facts presented in the contract file. In cases where we found anomalies we conducted interviews with personnel involved in the contracting action. In addition, we analyzed the results of testing to understand trends in sole-source contracting and followed up with customers and contracting officials.

Finally, to meet the objective of assessing the impact of J&As on competition at the SEC, we used FPDS to developed comparative statistics on contract dollars competed at the SEC and across the federal government as a whole. We also interviewed the Commission's competition advocate and reviewed the SEC's Competition Advocate Report for fiscal years 2009 through 2011.

Internal Controls. The Internal Control—Integrated Framework, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), provides a framework for organizations to design, implement, and evaluate controls that facilitate compliance with federal laws, regulations, and program compliance requirements.¹⁹ For this audit, we based our assessment of OA's internal controls that were significant to the audit objectives on the COSO framework, including control environment, risk assessment, control activities, information and communication, and monitoring. Among the internal controls that we assessed were OA's controls related to processing J&As, the annual risk assessment for the Federal Manager's Financial Integrity Act assurance statement,²⁰ OA's policies and procedures in place to meet its objectives, and OA's internal communication process.

Use of Computer-Processed Data. We determined the best way to generate a list of sole-source contracts likely to have a J&A for this audit was to use the USASpending website.²¹ USASpending receives contract data from FPDS daily. Per FAR § 4.606, agencies are required to report all contract data over the micro-purchase threshold, or \$3,000, to FPDS. Therefore, USASpending should provide a complete listing of contract actions since it regularly receives data updates from FPDS. Since the audit objectives required the review of contracts and associated J&As, the primary concern was that the information systems generate an accurate list of sole-source contracts. To test this, we conducted basic existence and completeness testing using a list from OA's contract file room. The results of the completeness and existence testing gave us reasonable assurance that the data from USASpending/FPDS is sufficient to generate an accurate list of sole-source contracts for this audit.

Statistical Sampling. To review the SEC's use of J&A in contracting the OIG used USASpending/FPDS to generate all contracts awarded during fiscal years 2009 through 2011. Subsequently, we selected contracts that were not competed and eliminated duplicates. The result was an audit universe of 454 sole-source contracts. We then used the EZ Quant Statistical Analysis Audit tool to generate a statistical sample of 64 contracts. The sample was designed to project rates of occurrence with 90 percent confidence that the point estimate is within ± 5 percent of the audit universe.

¹⁹ Committee of the Sponsoring Organizations of the Treadway Commission, *Internal Control – Integrated Framework* (1992).

²⁰ Federal Manager's Financial Integrity Act of 1982.

²¹ <http://www.usaspending.gov/>

Prior Coverage. OIG reviewed improper actions related to the leasing of office space where an inappropriately backdated J&A was prominent. In another review, we examined a sole-source contract that was awarded prior to the J&A being signed. Further, this J&A was not approved by the competition advocate though it exceeded the dollar threshold required for the competition advocate's review.

Criteria

41 United States Code (USC) § 253. Also known as the Competition in Contracting Act of 1984 (CICA). Section 253 is the statutory authority for competition requirements in federal contracting. It is the source of law for the FAR Part 6 – Competition Requirements. The section outlines the exceptions by which a federal agency may use noncompetitive procedures in procurement and the J&As that must be included.

FAR Part 6 – Competition Requirements. Prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. Further, it specifies the requirements for J&As.

FAR Part 2 – Definitions. This part: (1) defines words and terms that are frequently used in the FAR; (2) provides cross-references to other definitions in the FAR of the same word or term; and (3) provides for the incorporation of these definitions in solicitations and contracts by reference.

FAR Part 5 – Publicizing Contract Actions. Prescribes policies and procedures for publicizing contract opportunities and award information.

FAR Part 10 – Market Research. Prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

SECR 10-02, SEC Contracting Authorities and Appointments. Establishes uniform policies and procedures for the acquisition of products and services for the SEC. It also describes the delegation of authority and accountability for the management of acquisition functions performed on behalf of the Chairman.

SEC's Justification and Approval (J&A) Guide. Issued by the Policy, Oversight & Acquisitions Branch of the Office of Acquisitions on 12/29/2009 to provide guidance and procedures for developing J&As that are adequate and complete.

OMB Circular A-123, Management's Responsibility for Internal Control. Establishes that management has a fundamental responsibility to develop and maintain effective internal control.

List of Recommendations

Recommendation 1:

The Office of Acquisitions (OA) should review contracting operations at the regional office where sole-source contracts were identified having no justifications and approvals. OA should further provide training to staff involved in the procurement process to ensure they are familiar with competition requirements in contracting, when sole-source contracting is appropriate and how to properly prepare justifications and approvals.

Recommendation 2:

The Office of Acquisitions should establish procedures to regularly review a sample number of regional office contracts to ensure that their contracting practices comply with the Federal Acquisition Regulation and Commission regulations and operating procedures.

Recommendation 3:

The Office of Acquisitions (OA) should review all open sole-source contracts awarded using FAR § 6.302-2, *Unusual and Compelling Urgency*, that are over the simplified acquisition threshold, and ensure that the contract's period of performance does not exceed one year. If any contract's period of performance exceeds one year, OA should modify the period of performance or obtain required approval from the Chairman for exceptional circumstances.

Recommendation 4:

The Office of Acquisitions should conduct an assessment on the manner in which vendors are chosen as expert witnesses using FAR § 6.302-3, for sole-source contracts, and examine whether opportunities exist to expand the vendor competition base.

Recommendation 5:

The Office of Acquisitions should publish comprehensive policies and procedures governing the justification and approval process at the Commission. This guidance should reflect a thorough analysis of the current process to determine if it includes sufficient controls to ensure justifications and approvals comply with federal statutes and regulations and are appropriately used under the circumstances presented.

Recommendation 6:

The Office of Acquisitions (OA) should communicate its policies and procedures governing the justification and approval process at the Commission to contracting officers and contract specialists and provide training as necessary. OA should properly notify its staff when previously issued OA guidance (policies and procedures) and administrative regulations are revised, superseded, or are no longer available for use.

Management's Comments

MEMORANDUM

TO: Jacqueline Wilson, Assistant Inspector General for Audits, Office of Inspector General

FROM: Jayne L. Seidman, Acting Director, Office of Administrative Services 

SUBJECT: *The SEC's Use of Justifications and Approvals in Sole-Source Contracting, Report No. 507*

DATE: March 23, 2012

This memorandum is in response to the Office of Inspector General's (OIG) Draft Report No. 507, titled *The SEC's Use of Justifications and Approvals in Sole-Source Contracting*. Thank you for the opportunity to review and respond to this report.

OIG Recommendation 1. *The Office of Acquisitions (OA) should review contracting operations at the regional office where sole-source contracts were identified having no justifications and approvals. OA should further provide training to staff involved in the procurement process to ensure they are familiar with competition requirements in contracting, when sole-source contracting is appropriate and how to properly prepare justifications and approvals.*

The Office of Administrative Services (OAS) concurs. The Office of Acquisitions will review contracting operations in that regional office and provide training to staff involved in the procurement process to ensure that they are familiar with competition requirements, when sole-source contracting is appropriate, and how to properly prepare justifications and approvals.

OIG Recommendation 2. *The Office of Acquisitions should establish procedures to regularly review a sample number of regional office contracts to ensure that their contracting practices comply with the Federal Acquisition Regulation and Commission regulations and operating procedures.*

OAS concurs. OA is reviewing a sample of regional office contracts for compliance with the acquisition policies, including the Federal Acquisition Regulation and Commission regulations and operating procedures. OA will implement a process whereby in the future OA reviews a sample of new regional office contracts quarterly.

OIG Recommendation 3: *The Office of Acquisitions (OA) should review all open sole-source contracts awarded using FAR § 6.302-2, Unusual and Compelling Urgency, that are over the simplified acquisition threshold, and ensure that the contract's period of performance does not exceed one year. If any contract's period of performance*

exceeds one year, OA should modify the period of performance or obtain required approval from the Chairman for exceptional circumstances.

OAS concurs. For the contract mentioned in the IG's report, OA has begun corrective action by completing a modification correcting the period of performance to reflect the actual work period, June 14, 2010 to March 8, 2011, and officially closing the contract. OA is also reviewing other open sole source contracts awarded under the authority of FAR § 6.302-2, Unusual and Compelling Urgency. For any such contract found to reference a period of performance exceeding one year, OA will take appropriate corrective actions.

OIG Recommendation 4. *The Office of Acquisitions should conduct an assessment on the manner in which vendors are chosen as expert witnesses using FAR § 6.302-3, for sole-source contracts, and examine whether opportunities exist to expand the vendor competition base.*

OAS concurs. OA is assessing the current processes used for choosing expert witnesses and is working with technical and requirements staff to formalize improvements to expand the vendor competition base.

OIG Recommendation 5. *The Office of Acquisitions should publish comprehensive policies and procedures governing the justification and approval process at the Commission. This guidance should reflect a thorough analysis of the current process to determine if it includes sufficient controls to ensure justifications and approvals comply with federal statutes and regulations and are appropriately used under the circumstances presented.*

OAS concurs. OA will publish comprehensive policies and procedures governing the justification and approval process, and will assure that the procedures include sufficient controls to ensure the justification and approvals are used appropriately under the circumstances presented, and to ensure compliance with federal statutes and regulations.

OIG Recommendation 6. *The Office of Acquisitions should communicate its policies and procedures governing the justification and approval process at the Commission to contracting officers and contract specialists and provide training as necessary. OA should properly notify its staff when previously issued OA guidance (policies and procedures) and administrative regulations are revised, superseded, or are no longer available for use.*

OAS concurs. OA will communicate its revised policies and procedures governing the justification and approval process to contracting officers and contract specialists, and will provide training as necessary. Further, OA will establish a procedure to assure staff is notified of changes to OA policies, procedures, and administrative regulations.

OIG Response to Management's Comments

OIG is pleased that OAS concurred with all of the report's recommendations. We are also encouraged that OAS has indicated that it intends to take prompt action to address the deficiencies we identified in the report.

We believe that fully implementing all of our recommendations will significantly enhance the efficiency and effectiveness of OAS in connection with its important work of awarding contracts for goods and services at the SEC.

Audit Requests and Ideas

The Office of Inspector General welcomes your input. If you would like to request an audit in the future or have an audit idea, please contact us at:

U.S. Securities and Exchange Commission
Office of Inspector General
Attn: Assistant Inspector General, Audits (Audit Request/Idea)
100 F Street, N.E.
Washington D.C. 20549-2736

Tel. #: 202-551-6061
Fax #: 202-772-9265
Email: oig@sec.gov

A light blue rectangular box with a decorative border. The word "Hotline" is written in large, bold, red font at the top left. Below it, in smaller blue font, is the text "To report fraud, waste, abuse, and mismanagement at SEC, contact the Office of Inspector General at:". Underneath that, the phone number "Phone: 877.442.0854" is listed. At the bottom, it says "Web-Based Hotline Complaint Form:" followed by the URL "www.reportlineweb.com/sec_oig".

Hotline

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