



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Audit Report

EPA Can Improve the Awarding of Noncompetitive Contracts

Report No. 08-P-0186

June 30, 2008

Report Contributors:

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPA	U.S. Environmental Protection Agency
FAR	Federal Acquisition Regulation
FY	Fiscal Year
JOFOC	Justification for Other than Full and Open Competition
OAM	Office of Acquisition Management
OIG	Office of Inspector General
SAP	Simplified Acquisition Procedures



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We performed this review to determine if the U.S. Environmental Protection Agency's (EPA's) award of noncompetitive contracts was appropriate. Specifically, we determined if these contracts were awarded according to federal regulations and EPA policy.

Background

One of the goals of federal contracting is to promote competition when buying goods and services. In limited circumstances, however, federal agencies are authorized to award contracts without providing for full and open competition. The Federal Acquisition Regulation (FAR) has established specific procedures for agencies to follow under these circumstances. The Office of Acquisition Management, within the Office of Administration and Resources Management, is responsible for EPA's contracting activities.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2008/20080630-08-P-0186.pdf

EPA Can Improve the Awarding of Noncompetitive Contracts

What We Found

While EPA's most recent competition report made several recommendations to strengthen EPA's competition practices, additional measures would help to further improve compliance with the FAR and EPA policy. For example, we identified Justifications for Other than Full and Open Competition (JOFOCs) that were not approved at the appropriate level, including two of seven that were not approved by the Competition Advocate. Eight of 15 JOFOCs we reviewed were not prepared in accordance with federal requirements. FAR Part 6 establishes the approval requirements for JOFOCs and identifies their required elements. These issues occurred because either EPA did not have effective internal controls, or because existing controls were not followed. Without the required approvals for the JOFOCs and without the required elements, EPA increases the risk that inappropriate sole source procurements will be awarded.

We also identified two noncompetitive procurements in which market research could have been improved. FAR Part 10 requires federal agencies to conduct market research appropriate to the circumstances. Improved market research may lead to competitive acquisitions, allowing potential offerors the opportunity to compete for contracts. By increasing competition, the government saves taxpayer money, improves contractor performance, and curbs fraud.

What We Recommend

We recommend that the Assistant Administrator for the Office of Administration and Resources Management:

- Document in each contract file the circumstances why the JOFOC was not approved at the appropriate level and the corrective actions taken.
- Revise the Approval Matrix in the Acquisition Handbook to require that contracting staff one level above the Contracting Officer review and approve all JOFOCs to ensure they include required elements.
- Ensure that internal controls designed to identify JOFOCs for sole source procurements over \$550,000 requiring the Competition Advocate's approval are developed and properly implemented.

The report contains other recommendations to strengthen EPA's controls. EPA agreed with our recommendations and provided adequate corrective action plans.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

June 30, 2008

MEMORANDUM

SUBJECT: EPA Can Improve the Awarding of Noncompetitive Contracts
Report No. 08-P-0186

FROM: Melissa M. Heist *Melissa M. Heist*
Assistant Inspector General for Audit

TO: Luis A. Luna
Assistant Administrator
Office of Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$313,813.

Action Required

In your response to the draft report, you agreed with our recommendations and described the corrective actions to be taken along with applicable milestone dates. Therefore, a formal response to the final report is not required. The agreed-to milestone actions for each recommendation are required to be tracked in the Management Audit Tracking System until the corrective actions are complete. While a formal response to the final report is not required, we would appreciate being notified once all agreed-to actions have been completed. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions, please contact Janet Kasper, Director, Contracts and Assistance Agreement Audits, at 312-886-3059 or Kasper.Janet@epa.gov.

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Chapter 1

Introduction

Purpose

We conducted this audit to determine if the U.S. Environmental Protection Agency's (EPA's) award of noncompetitive procurements was appropriate. Specifically, we examined the rationale for limiting competition in EPA's Justification for Other than Full and Open Competition (JOFOC), determined if the JOFOC was approved at the appropriate level and contained all required elements, determined if EPA published a synopsis of the proposed sole source procurement and ensured that it contained required elements, and determined if market research was conducted for these procurements.

Background

The Competition in Contracting Act of 1984 requires, with limited exceptions, that contracting officers promote and provide for full and open competition in soliciting offers and awarding U.S. Government contracts. Maximum competition is desirable because it results in timely delivery of quality products and services at reasonable costs. In Fiscal Year (FY) 2006, the Office of Management and Budget reported that EPA competed 80 percent of its contract dollars. For FY 2007, EPA reported that more than 82 percent of its acquisitions were competitively conducted.¹ The Office of Acquisition Management (OAM) recently informed the OIG that, due to a calculation error, the competition rate will be revised to over 90 percent.

The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquiring supplies and services by executive agencies. Although one of the goals of the FAR is to promote and provide for full and open competition in the acquisition process, the FAR provides several exceptions to the requirement to obtain full and open competition. Our review focused on procurement actions involving the following two exceptions, which for the purpose of this report we refer to as sole source procurements:

1. FAR Subpart 6.3 provides the following circumstances that permit contracting without providing for full and open competition:
 - 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;

¹ The OIG did not verify the competition rates for either FY 2006 or FY 2007.

- Authorized or required by statute;
 - National security; and
 - Public interest.
2. FAR Subpart 13.501 allows sole source acquisitions for certain commercial items.

Other noncompetitive awards can be made to further socio-economic goals such as those contracts awarded to Small Business Administration 8(a) firms.

When limiting competition, federal agencies must generally justify such decisions in writing via a JOFOC. The FAR establishes the content requirements for JOFOCs, as well as the approval requirements. In order to ensure federal agencies maximize competition, the Office of Federal Procurement Policy Act requires the head of each executive agency to designate a Competition Advocate. Competition Advocates are responsible for promoting full and open competition by reviewing the contracting operations of the agency. They are also charged with identifying and reporting to the agency's senior procurement executive any opportunities and actions taken to achieve full and open competition in the agency's contracting operations, as well as any conditions or actions that may unnecessarily restrict the acquisition of commercial items or competition in the contracting actions of the agency.

OAM falls within the Office of Administration and Resources Management and is responsible for all contracting and related activities to fulfill the Agency's mission to protect and safeguard the environment through its business relationships. To ensure quality, consistency, and accuracy in contract management, OAM requires each of its contracting offices to establish a Quality Assessment Plan. OAM Divisions and Regional Contracting Offices establish their own unique plans to ensure that their acquisition products and processes are of high quality, and comply with applicable policies and statutes. OAM monitors the implementation and sustained effectiveness of each organization's plan through Quality Assessment Plan Oversight Reviews.

Noteworthy Achievements

To help keep EPA's competition practices strong, EPA's Competition Advocate proposed several important recommendations in an FY 2007 report. Examples of those recommendations are (1) completing the updates to the Contracts Management Manual to formalize changes requiring approval signatures, (2) ensuring accurate reporting of the EPA's competition statistics and orders over \$1 million, and (3) posting standard format examples of the varying sole source documents and working with the appropriate procurement staff to formalize a policy requiring that any order over \$1 million be submitted to the Competition Advocate for trend analysis.

Scope and Methodology

We conducted this performance audit from August 2007 through January 2008 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.

We selected a sample of 20 noncompetitive procurements from a universe of 178 awarded between October 2005 and June 2007 with net obligations over \$100,000. At the time of our sample, net obligations for the universe totaled over \$90 million. Sampled contracts were awarded from the following EPA Contracting Offices: Headquarters Procurement Operations Division; Research Triangle Park Procurement Operations Division; Cincinnati Procurement Operations Division; and EPA Regions 1, 3, 7, and 8.

We reviewed the contract file for each of the sampled items, and interviewed various contracting officers, project officers, service center managers, and OAM staff. We reviewed the Quality Assessment Plans for the Research Triangle Park Procurement Division and EPA Region 7, and obtained the oversight reviews conducted in FYs 2005 and 2006 for several OAM procurement operations divisions and regional offices. Included in our sample were sole source contracts awarded to Small Business Administration 8(a) firms. Since the FAR provides significant flexibility to federal agencies when awarding noncompetitive contracts to 8(a) firms, we only reviewed three such contracts. We also reviewed various contract guidance documents, including the FAR, the Competition in Contracting Act, and other statutes.

The EPA Office of Inspector General (OIG) has not conducted any recent reviews regarding EPA's competition practices. However, the Office of Management and Budget has reported that reviews from the U.S. Government Accountability Office and audits by Inspectors General have found that inadequate planning, insufficient market research, and poor coordination among program and acquisition offices are weaknesses that cause the government to frequently miss opportunities to take full advantage of competition.

Internal Control Structure

In planning and performing this audit, we reviewed and evaluated management controls related to our audit objective. This included reviewing EPA's policy and procedures for awarding sole source procurements as set forth in EPA's Acquisition Regulation, EPA's Acquisition Handbook, and the Contract Management Manual. We confirmed our understanding of these controls and procedures through interviews and documentation reviews. We also reviewed

documents EPA completed in compliance with the Federal Managers' Financial Integrity Act. This included a review of EPA's FY 2006 Performance and Accountability Reports, in addition to integrity assurance letters prepared by the Office of Administration and Resources Management for FYs 2006 and 2007. EPA did not report any material or Agency weaknesses related to its use and management of sole source procurements.

Chapter 2

EPA Can Improve Compliance with FAR Requirements

For the 20 procurements reviewed, EPA did not follow all FAR requirements in several cases. We identified JOFOCs that were not approved at the appropriate level and were missing required elements. Required synopses were not always published or did not contain required language. This situation occurred because either EPA did not have effective internal controls, or because existing controls were not followed. The FAR establishes the approval levels for JOFOCs and their required elements, and describes the requirements for publishing contract opportunities. When federal regulations and agency policies are not followed, EPA increases the risk that inappropriate sole source procurements will be awarded. By increasing competition, EPA saves money, improves contractor performance, curbs fraud, and promotes accountability for results.

FAR Requirements Were Not Always Followed

JOFOCs Did Not Have Proper Approval

JOFOCs for 4 of the 15 applicable sole source procurements² were not signed or approved at the appropriate levels required by the FAR. Two of these four JOFOCs were for procurements less than \$550,000 and should have been approved by the contracting officer. The two remaining JOFOCs were for procurements valued at over \$550,000 and should have been reviewed by both the service center manager and the Office of General Counsel, and then approved by the Competition Advocate. Further, one of the two procurements that should have been approved by the Competition Advocate had a total project cost estimate of \$12 million, which would have required the approval of the OAM Director.

In the latter case, the original purchase order was valued at \$1.6 million and had total obligations of over \$4.8 million over the life of the purchase order. This purchase order was one of three sole source procurements awarded to the vendor for the same project, none of which were approved by the Competition Advocate. Obligations for the project totaled over \$13 million and simplified acquisition procedures (SAP) were inappropriately used to acquire the services for the three separate purchase orders. The FAR allows SAP to be used as a test program for acquiring supplies and services up to \$5.5 million. The initial project cost was estimated at \$12 million, and the project was paid for using three separate purchase orders with obligations totaling under \$5 million each. This JOFOC was not approved by either the Competition Advocate or the OAM Director.

² JOFOCs were not needed for five of the procurements in our sample because either the FAR or federal law did not require them.

FAR 6.304 establishes the approval levels for JOFOCs. For a proposed contract not exceeding \$550,000, the contracting officer's written certification serves as approval. For a proposed contract over \$550,000, but not exceeding \$11.5 million, the JOFOC must be approved by the Competition Advocate. For those contracts requiring the Competition Advocate's approval, EPA's Approval Matrix requires the service center manager to review the JOFOC before submitting it to the Competition Advocate for approval. For a proposed contract over \$11.5 million, both the FAR and EPA guidance require that the JOFOC be approved by the head of the procuring activity, or a designee.

JOFOCs Did Not Have Required Elements

Written justifications existed in each contract file for limiting competition when needed. However, 8 of the 15 JOFOCs were not prepared in accordance with the FAR. In most cases, several of the required elements were missing from the JOFOCs. When limiting competition, the FAR requires federal agencies to justify the decision in writing. FAR Subpart 6.303-2 prescribes the contents that should be included in the JOFOC, including 13 required elements. The FAR also requires the contracting officer to finalize the JOFOC before negotiating and awarding a sole source contract. Examples of the missing elements included:

- Identification of the document as a "Justification for Other than Full and Open Competition";
- Agency and contracting activity;
- Statutory authority;
- A description of efforts made to ensure that offers were solicited from as many potential sources as is practicable, including whether a notice was publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR 5.202 applied;
- A listing of the sources, if any, that expressed, in writing, an interest in the acquisition;
- Estimated value of the procurement;
- Indication that the cost would be fair and reasonable;
- 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;
- Technical officer's certification; and
- Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Synopses Were Not Always Published When Required and Sometimes Contained Inconsistent Language

A synopsis of the proposed contract action was not published for one of the procurements where it was required by the FAR. For four of the procurements where a synopsis was published, the synopsis did not contain language that may

have encouraged interested firms to submit information regarding their capabilities to meet EPA's requirements. FAR Part 5 requires federal agencies to publish synopses of proposed contract actions and insert a statement in the synopses that all responsible sources may submit a bid, proposal, or quotation, which shall be considered by the agency.

Improved Internal Controls Needed

EPA did not always follow FAR requirements because it either did not have effective internal controls, or because it did not follow existing controls. For example, for the JOFOCs requiring the approval of the contracting officer, the contracting officers relied on the program offices to create the JOFOCs and did not adequately review and approve them as required by the FAR and EPA policies. These JOFOCs were often missing several required elements. Despite being incomplete, the contracting officers in several instances accepted the JOFOCs as submitted. One service center manager informed us that the JOFOCs were likely accepted because they somewhat resembled the requirements of the FAR. Internal controls in place (the requirement of the contracting officer approval) were not effectively implemented in these cases.

For the JOFOCs that the Competition Advocate should have approved, internal controls were ineffective or nonexistent. Checklists designed to ensure appropriate steps are taken when awarding contracts were not properly routed through the service center manager, or did not contain fields to ensure the service center manager's review. No internal controls existed to identify the existence of sole source procurements over \$550,000 and corresponding JOFOCs that did not contain the Competition Advocate's approval. The Competition Advocate agreed that new internal controls were needed and agreed to begin designing controls to detect such instances.

Another internal control also did not detect sole source procurements without proper approval. Quality Assessment Plans are designed to ensure quality, consistency, and accuracy in contract management. However, EPA allows each of its contracting offices to create its own unique Quality Assessment Plan. As a result, Quality Assessment Plans could differ between contracting offices. The Quality Assessment Plans for two of the contracting offices where the JOFOCs did not have proper approval did not contain requirements to review sole source procurements.

In the case where we found a synopsis that was not published, the service center manager told us that the prior contracting staff were not completely knowledgeable of their job requirements, nor was their work adequately supervised and reviewed. A checklist designed to ensure all required steps were followed when awarding contracts was not used. Finally, synopses did not contain required language due to oversights or because the product being acquired

was proprietary in nature; the contracting officer did not feel the absence of this statement would preclude interested firms from responding.

Compliance Needed to Validate Decision to Limit Competition

Without the required approvals for the JOFOCs, EPA increases the risk that inappropriate sole source procurements are awarded. If JOFOCs do not contain all required elements, the rationale for awarding sole source contracts is incomplete and lacks specificity. JOFOCs establish the case for limiting competition and therefore should be comprehensive and precise. When EPA does not publish required synopses or excludes required language, some vendors may not submit information regarding their qualifications, thereby limiting competition. The benefits of competition are well documented. By increasing competition, EPA saves money, improves contractor performance, curbs fraud, and promotes accountability for results.

Recommendations

We recommend that the Assistant Administrator for the Office of Administration and Resources Management:

- 2-1 Document in the file for each contract that was not approved at the appropriate level the circumstances why the JOFOC was not approved at the appropriate level and the corrective actions taken. Require the Competition Advocate to review the documentation for those procurements where the JOFOC required such approval.
- 2-2 Ensure that internal controls designed to identify JOFOCs for sole source procurements over \$550,000 requiring the Competition Advocate's approval are developed and properly implemented.
- 2-3 Revise the Approval Matrix in the Acquisition Handbook to require that contracting staff one level above the Contracting Officer review and approve all JOFOCs to ensure they include required elements.
- 2-4 Ensure that Quality Assessment Plans include a review of sole source contracts. Specifically, the Quality Assessment Plans should ensure that the JOFOC was approved at the appropriate level, that the JOFOC includes all required elements, and that synopses of proposed sole source contracts are published when necessary and contain all required language.
- 2-5 Publish an OAM *Hot Tips* newsletter that reminds contracting staff of the approval thresholds for sole source procurements, the importance of using the required checklists and ensuring all applicable fields are completed, and the synopses requirements as set forth in FAR Part 5.

Agency Response and OIG Comments

EPA concurred with all of our recommendations and provided a plan of action with milestone dates for each recommendation. Specifically, EPA agreed to:

- Document in the contract files the circumstances why the JOFOC was not approved at the appropriate level. EPA also agreed to have the Competition Advocate review the documentation by June 30, 2008.
- Develop and implement internal controls to identify JOFOCs requiring the Competition Advocate's approval by July 31, 2008.
- Modify its Acquisition Handbook to require that contract staff one level above the Contracting Officer review and approve all JOFOCs to ensure they include required elements by July 31, 2008.
- Amend any Quality Assessment Plans that do not include elements related to sole source contracts by July 31, 2008.
- Publish in its *Hot Tips* newsletter a reminder to contracting officers of the approval thresholds for sole source procurements, the importance of using required checklists, and the synopsis requirements set forth in FAR Part 5.

The OIG concurs with EPA's plan of action and milestone dates.

Chapter 3

Improved Market Research May Lead to Increased Competition

For two of the procurements reviewed, EPA did not perform market research to identify additional sources, even though other sources of required services may have existed. EPA has encouraged competition by developing an Acquisition Forecast Database. This database, along with other efforts to improve market research, has resulted in EPA reporting that it competitively awards 82 percent of its acquisitions. However, improvements are still possible to improve competition for individual procurements. FAR Part 10 requires federal agencies to conduct market research appropriate to the circumstances. EPA did not conduct market research for these procurements because staff did not believe it was required or because EPA believed only one source existed. Identifying additional sources of required supplies and services may lead to competitive procurements.

Additional Sources Sometimes Not Actively Pursued

For two of the procurements we reviewed, EPA did not conduct market research although other sources for the required services may have existed. As set forth in FAR Part 1, one of the goals of the Federal Acquisition System is to promote competition. FAR Part 10 requires federal agencies to conduct market research appropriate to the circumstances.

For one procurement we reviewed, EPA awarded a contract to obtain the services of expert financial analysts and economists to support Superfund enforcement cases. These services were previously obtained by EPA via an Interagency Agreement with the Department of Justice. The project officer told the auditors that EPA awarded a sole source procurement because the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) statute allows agencies to obtain such services on a noncompetitive basis. As a result, EPA did not conduct market research to determine if other firms could have provided the required services, and simply awarded a contract to the vendor that had been providing the services to EPA under the previous Interagency Agreement. However, CERCLA allows agencies to obtain such services on a competitive or noncompetitive basis. Auditors conducted independent market research and found at least one other source that likely could have provided the required services.

For another of the procurements we reviewed, EPA awarded the National Academy of Sciences a sole source procurement to develop scientific and technical recommendations for improving the risk analysis approaches used by EPA. The contract file did not contain evidence of market research, although the

JOFOC stated that EPA staff had surveyed technical personnel, and concluded that EPA's needs could not be met by a service customarily available in the market place. federal agencies can award noncompetitive contracts to the National Academy of Sciences if they determine that it is the only source that can provide the required services. However, despite being advertised by EPA as a sole source procurement, one vendor responded to the synopsis informing EPA that the vendor could provide the required services, and provided a description of similar work it had done in the past for EPA and other clients. EPA reviewed the information submitted by the vendor and determined it did not meet the government's needs. EPA awarded this contract because it believed that only the National Academy of Sciences could provide the required services. However, without EPA conducting market research, other providers of the required services cannot be identified and evaluated to determine the vendor that can provide the best value.

By not conducting market research, EPA may not identify additional sources that are capable of satisfying the Agency's requirements. Identifying these sources can result in a competitive acquisition, allowing potential offerors the opportunity to compete for contracts. As stated above, other sources for the required services may have existed for both procurements. Competition is the cornerstone of the Federal Government's acquisition system, and its benefits are well-documented. By increasing competition, the government saves taxpayer money, improves contractor performance, curbs fraud, and promotes accountability for results.

Recommendations

We recommend that the Assistant Administrator for the Office of Administration and Resources Management:

- 3-1 Reinforce the requirement that the contract files for sole source procurements include evidence of market research when necessary.
- 3-2 Include in Quality Assessment Plans a review of the market research conducted and determine the appropriateness of awarding sole source procurements.

Agency Response and OIG Comments

EPA concurred with both recommendations and provided a plan of action with milestone dates for each recommendation. Specifically, EPA agreed to reinforce, through its *Hot Tips* newsletter, the requirement that sole source procurements include evidence of market research when necessary, and to include a review of the market research conducted as part of its Quality Assessment Plans. The OIG concurs with EPA's plan of action and milestone dates.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	8	Document in the file for each contract that was not approved at the appropriate level the circumstances why the JOFOC was not approved at the appropriate level and the corrective actions taken. Require the Competition Advocate to review the documentation for those procurements where the JOFOC required such approval.	O	Assistant Administrator, Office of Administration and Resources Management	06/30/08		
2-2	8	Ensure that internal controls designed to identify JOFOCs for sole source procurements over \$550,000 requiring the Competition Advocate's approval are developed and properly implemented.	O	Assistant Administrator, Office of Administration and Resources Management	07/31/08		
2-3	8	Revise the Approval Matrix in the Acquisition Handbook to require that contracting staff one level above the Contracting Officer review and approve all JOFOCs to ensure they include required elements.	O	Assistant Administrator, Office of Administration and Resources Management	07/31/08		
2-4	8	Ensure that Quality Assessment Plans include a review of sole source contracts. Specifically, the Quality Assessment Plans should ensure that the JOFOC was approved at the appropriate level, that the JOFOC includes all required elements, and that synopses of proposed sole source contracts are published when necessary and contain all required language.	O	Assistant Administrator, Office of Administration and Resources Management	07/31/08		
2-5	8	Publish an OAM <i>Hot Tips</i> newsletter that reminds contracting staff of the approval thresholds for sole source procurements, the importance of using the required checklists and ensuring all applicable fields are completed, and the synopses requirements as set forth in FAR Part 5.	O	Assistant Administrator, Office of Administration and Resources Management	07/31/08		
3-1	11	Reinforce the requirement that the contract files for sole source procurements include evidence of market research when necessary.	O	Assistant Administrator, Office of Administration and Resources Management	06/30/08		
3-2	11	Include in Quality Assessment Plans a review of the market research conducted and determine the appropriateness of awarding sole source procurements.	O	Assistant Administrator, Office of Administration and Resources Management	07/31/08		

¹ O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is undecided with resolution efforts in progress

Appendix A

Agency Response

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to Draft Audit Report: EPA Can Improve the Awarding of Noncompetitive Contracts

FROM: Luis A. Luna
Assistant Administrator

TO: Michael Petscavage
Acting Director, Contract Audits

Thank you for the opportunity to comment on the draft report entitled, “EPA Can Improve the Awarding of Noncompetitive Contracts,” dated April 29, 2008. We generally agree with your findings regarding the need to take additional measures to improve how we process and award noncompetitive contracts. We also greatly appreciate the positive tone of the report, including your listing of our recent noteworthy accomplishments, as well as acknowledging our competition rates for FY 2006 and 2007. We offer the following comments on your recommendations:

Recommendation 2-1 – The Assistant Administrator for the Office of Administration and Resources Management document in each contract file the circumstances why the JOFOC was not approved at the appropriate level and the corrective action taken. Require the Competition Advocate to review the documentation for those procurements where the JOFOC required such approval.

Response: We concur with this recommendation, but suggest that you reword it to make it clear that it covers the specific contract files addressed in Chapter 2 of the report only, and not all contract files. We believe this is needed, because all other recommendations made in this report appear to cover EPA’s contracting program in general. The appropriate contract files will be documented, and the Agency’s Competition Advocate (ACA) will review the documentation by June 30, 2008.

Recommendation 2-2 – The OARM AA ensure that the internal controls designed to identify JOFOCs for sole source procurements over \$550,000 requiring the Competition Advocate’s approval are developed and properly implemented.

Response: We concur with this recommendation, and will develop and implement such internal controls by July 31, 2008. First and foremost among any new controls will be a level above review of pre-award documentation, by a second set of eyes, to

determine that the required signatures have been obtained. Additionally, the ACA is developing post-award automated reports to identify contract actions that required the ACA's signature. Based on the ACA's review of these new reports, we will be able to validate if our proposed pre-award control is working effectively.

Recommendation 2-3 – The OARM AA review the Approval Matrix in the Acquisition Handbook to require that contracting staff one level above the Contracting Officer review and approve all JOFOCs to ensure they include required elements.

Response: Please see our Response to Recommendation 2-2 above. The Acquisition Handbook will be changed to reflect the level above review by July 31, 2008.

Recommendation 2-4 - The OARM AA ensure that Quality Assessment Plans include a review of sole source contracts. Specifically, the Quality Assessment Plans should ensure that the JOFOC was approved at the appropriate level, that the JOFOC includes all required elements, and that synopses of proposed sole source contracts are published when necessary and contain all required language.

Response: Although we believe most Quality Assessment Plans (QAPs) already include oversight elements related to this recommendation, we will reinforce this via a Flash Notice to EPA's COs by June 30, 2008. Also, if QAPs do not already include oversight elements related to sole source contracts, they will be amended by July 31, 2008.

Recommendation 2-5 - The OARM AA publish an OAM "Hot Tips" newsletter that reminds contracting staff of the approval thresholds for sole source procurements, the importance of using the required checklists and ensuring all applicable fields are completed, and the synopsis requirements as set forth in FAR Part 5.

Response: We concur with this recommendation, and will address it in our next issue of Hot Tips by July 31, 2008.

Recommendation 3-1 - The OARM AA require that contract files for sole source procurements include evidence of market research when necessary.

Response: We concur with this recommendation, and will reinforce it via a Flash Notice by June 30, 2008.

Recommendation 3-2 – The OARM AA include in Quality Assessment Plans a review of the market research conducted and determine the appropriateness of awarding sole source procurements.

Response: We concur with this recommendation, but believe the wording should be changed slightly. “Determine the appropriateness” should be changed to “Determination of the appropriateness,” since this refers to documentation that should be included in each QAP, and not an action to be taken by the OARM AA. We intend to reinforce this recommendation via Flash Notice by June 30, 2008. If QAPs do not already include a review of market research efforts, they will be amended by July 31, 2008.

We look forward to receiving your final report. Should you have any questions, please contact Kerrie O’Hagan, Director, Policy, Training, and Oversight Division in the Office of Acquisition Management, at (202) 564-4315.

cc: Denise Benjamin Sirmons
Celia Vaughn
Joan Wooley
Kerrie O’Hagan
John Oliver
Valen Wade

Appendix B

Distribution

Office of the Administrator
Assistant Administrator for Administration and Resources Management
Agency Competition Advocate
Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
Audit Follow-up Coordinator, Office of Administration and Resources Management
Office of General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Deputy Inspector General