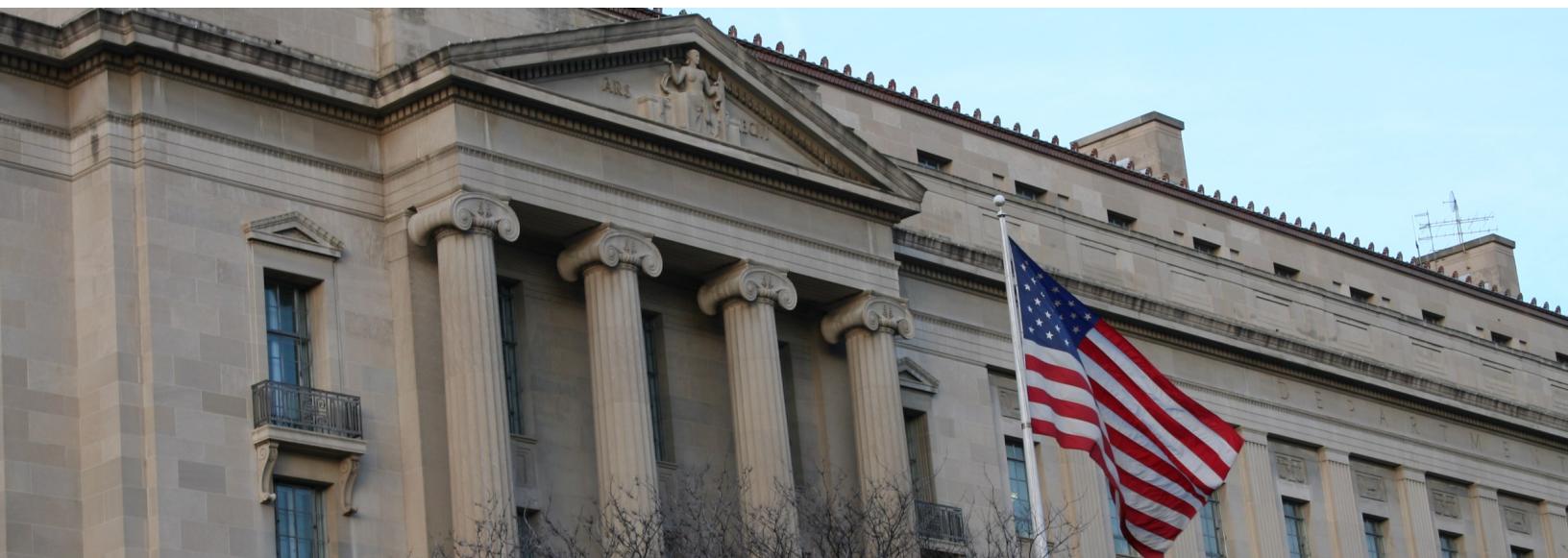




Office of the Inspector General

U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Audit of the United States Marshals Service Judicial Security Division's Court Security Officers Procurement Process



Executive Summary

Audit of the United States Marshals Service Judicial Security Division's Court Security Officers Procurement Process

Objective

The United States Marshals Service (USMS) is the primary provider of court security services to the federal judiciary. The USMS Judicial Security Division (JSD) administers the program that provides Court Security Officers (CSO) and security systems and equipment to help ensure the safety of federal court facilities and judicial proceedings. The Department of Justice Office of the Inspector General (OIG) conducted this audit to assess the USMS JSD's management of and processes for procuring CSO services contracts.

Results in Brief

We determined that the USMS JSD made certain changes to its CSO services contract procurement process to address issues identified in the OIG's 2009 Management Advisory Memorandum to the USMS. For example, in its contractor selection process, the USMS JSD more effectively utilizes a Technical Evaluation Board to analyze technical proposals. In addition, the Business Evaluation Team performs a price analysis, reviews the contractor's past performance, performs a financial analysis of each potential contractor, and no longer uses price as the overall determining factor when determining best value and selecting a contractor. Despite these improvements, we found that the USMS JSD had not implemented formal procedures related to court security procurements to ensure consistent execution of its current process and to mitigate the risk of repeating the procurement issues we previously identified.

Recommendations

Our report contains five recommendations to assist the USMS JSD in improving its CSO services procurement process. We requested and received a written response to our draft audit report from the USMS, which can be found in Appendix 4. The OIG's analysis of that response and actions necessary to close the report can be found in Appendix 5.

Audit Results

Our audit focused on the USMS JSD contracts with private security companies to provide CSOs for 440 federal court facilities nationwide. In 2015, the Judicial Facility Security Program's enacted budget for contracting CSOs totaled \$373 million.

Acquisition Planning - We found that CSO procurement actions are completed in a timely and competitive manner, and market research practices are adequate to assess whether CSO services are commercially available. However, a key procurement action, acquisition milestones, are not consistently documented in the contract files.

Contract Type - We determined that the time-and-material contract type vehicle was appropriate. However, we found that the USMS JSD did not consider and document in the contract file or the written acquisition plan the reasons why a firm-fixed-price (FFP) type contract was not the most advantageous contract type to the government and include a discussion on what actions are planned to minimize the use of other than FFP contracts in future solicitations.

Federal Acquisition Regulation Clauses - We found that the USMS JSD did not include two important Federal Acquisition Regulation clauses related to time-and-material contracts in recent CSO services contracts that allow the government to audit costs associated with the contract and identify allowable costs and payment procedures.

Contractor Selection and Responsibility Determination

Determination - We found that the USMS JSD adequately documented the basis for its contractor selection. However, we also found that the USMS JSD is not evaluating the necessary accounting controls to ensure prospective contractors meet standards required in the Federal Acquisition Regulation.

USMS JSD Contracting Offices and Procedures - We determined that the USMS JSD did not have formal written procedures for CSO services contract procurements during the period of our review that would help mitigate the risk of repeating current and past procurement issues. USMS JSD developed written procedures after we brought this to its attention.

**AUDIT OF THE UNITED STATES MARSHALS SERVICE
JUDICIAL SECURITY DIVISION'S
COURT SECURITY OFFICERS PROCUREMENT PROCESS**

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AUDIT OF THE UNITED STATES MARSHALS SERVICE JUDICIAL SECURITY DIVISION'S COURT SECURITY OFFICERS PROCUREMENT PROCESS

INTRODUCTION

One of the United States Marshals Service's (USMS) major responsibilities is to ensure the safety of federal court facilities, judicial proceedings, and protection of members of the federal judiciary.¹ The USMS's Judicial Facilities Security Program, which is administered by the Judicial Security Division (JSD), provides Court Security Officers (CSO) and security systems and equipment. The USMS JSD contracts with private security companies to provide CSOs, who are deputized as special Deputy U.S. Marshals, carry firearms, and are authorized to make arrests while on duty.

CSOs are located nationwide at 440 federal court facilities to: (1) enforce the courthouse entry and identification system, which includes operating security screening equipment for prohibited items; (2) guard stationary posts and patrol court facilities and grounds of the facility; (3) provide armed escort services for judges, court personnel, jurors, and other designated individuals; and (4) provide courtroom security during hearings, manage crowd control, and maintain the integrity of the judicial process.

In fiscal year (FY) 2015, the enacted budget portion associated with contracting CSOs comprised \$373 million, or 84 percent of the USMS's Judicial Facility Security Program budget. Each year the Administrative Office of the United States Courts transfers funding to the USMS JSD to administer this program, which covers the program's administrative costs and security systems obtained through a contract with a private provider. Individual CSO services contracts are awarded based on the geographic boundaries of the 12 circuits of the U.S. Court of Appeals. There are currently 14 individual CSO services contracts awarded to: (1) each of the 12 circuits of the U.S. Court of Appeals and (2) two 8(a) Small Businesses based on the geographic boundaries of 2 Federal Judicial Districts. Individual CSO services contract values range from several million to tens of millions of dollars annually. The Office of Security Contracts, located within the JSD, provides acquisition support for CSO services contracts.

OIG Audit Approach

The objective of our audit was to assess the USMS JSD's management of and processes for procuring CSO services contracts. Our audit timeframe focused on,

¹ The USMS coordinates with the Federal Protective Service (FPS), U.S. Department of Homeland Security to provide security at federal courthouses. While FPS has primary responsibility for perimeter security of federal courthouse facilities, the USMS has been assuming more responsibility in situations where the primary tenant(s) are at least one of the following federal organizations: (1) the court, (2) the USMS, or (3) the U.S. Attorney's Office.

but was not limited to, the period after FY 2013 to coincide with revisions that the USMS JSD made to its process for procuring CSO services contracts.

To accomplish this objective, we examined the USMS JSD's process for procuring CSO contract services and tested compliance with what we consider to be the most relevant contracting requirements. Unless otherwise stated in our report, the criteria we used to evaluate compliance and the procurement process are contained in the Code of Federal Regulation, the Federal Acquisition Regulation (FAR), and internal USMS JSD policies and procedures. We interviewed key USMS JSD contracting staff responsible for administering CSO services contract procurement. In addition, we reviewed contract documentation, including award documents, technical evaluations, and price negotiation memoranda to develop an understanding of the current CSO contract services procurement process.

In June 2009 the OIG issued a Management Advisory Memorandum (MAM) to the USMS JSD.² The MAM identified significant concerns associated with the USMS JSD's process for selecting and vetting Court Security Officer (CSO) services contractors. Specifically, we identified: (1) a lack of due diligence on the part of the USMS JSD in performing background investigations of key contract officials, (2) concerns that the USMS JSD did not adequately address issues associated with low bids prior to awarding the contracts, and (3) the USMS JSD Technical Evaluation Board not identifying significant contractor weaknesses. The USMS JSD took steps to address the issues identified in the MAM, and in this report we evaluate the implementation of actions relevant to this audit's objective.

² See Appendices 2 and 3 for the MAM and the USMS's responses to the MAM.

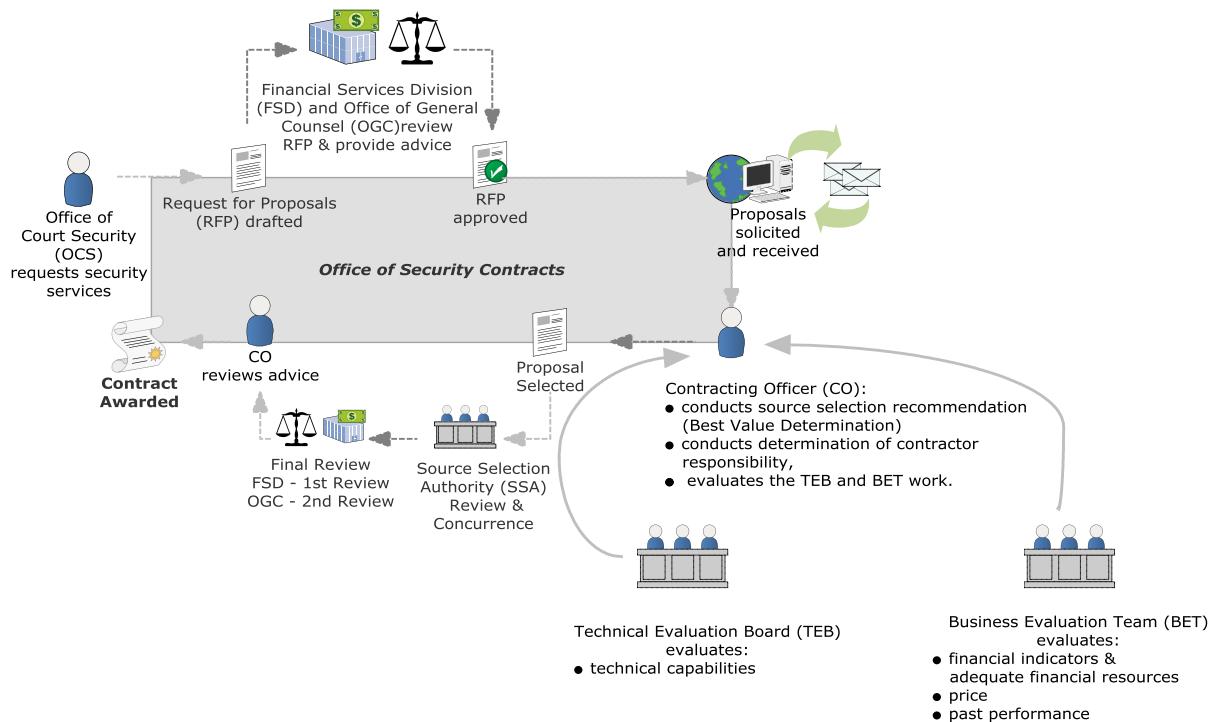
AUDIT RESULTS

The USMS JSD has improved its procurement process for awarding Court Security Officers (CSO) services contracts, including attaining its goal of awarding three judicial circuit contracts annually and revising its source selection strategy to include source selection factors that are designed to mitigate the risks related to awarding contracts based solely on price. However, we found that the USMS JSD could improve its CSO procurement process to ensure that the completion of acquisition milestones are consistently documented and the contract files include sufficient documentation in accordance with the FAR. Furthermore, we found that the USMS JSD entered into contracts without verifying that the contractor's accounting controls would provide adequate controls over the contract. Also, the USMS JSD did not include two important FAR clauses related to time-and-material (T&M) contracts in recent CSO services contracts, thereby limiting the USMS JSD's ability to monitor the costs associated with the contract and verify that the costs are allowable and allocable. Finally, although the CSO procurement process is meeting its current objective of three judicial circuits awarded competitively annually, we believe that formal written policies and procedures should be implemented to ensure the continuity of the CSO services procurement process in case of staff turnover in the contracting office.

Acquisition Planning

Effective acquisition planning is one of several critical tenets of the Federal Acquisition System. The other tenets include: (1) timely delivery of contract requirements, (2) obtaining the best value product or service while maintaining the public's trust, and (3) fulfilling public policy objectives. During our audit, we reviewed significant steps in the USMS JSD's process plans for procuring CSO services contracts, including the cyclical pattern of awarding contracts by judicial circuit, the schedule for awarding individual contracts, and the performance of market research. Overall we found that: (1) CSO procurement actions are completed in a timely and competitive manner, (2) acquisition milestones are not consistently documented, and (3) market research practices are adequate to assess whether CSO services are commercially available and the availability of prospective contractors. Figure 1 depicts the USMS JSD's CSO services procurement process.

Figure 1
USMS JSD's CSO Services Procurement Process



Source: OIG

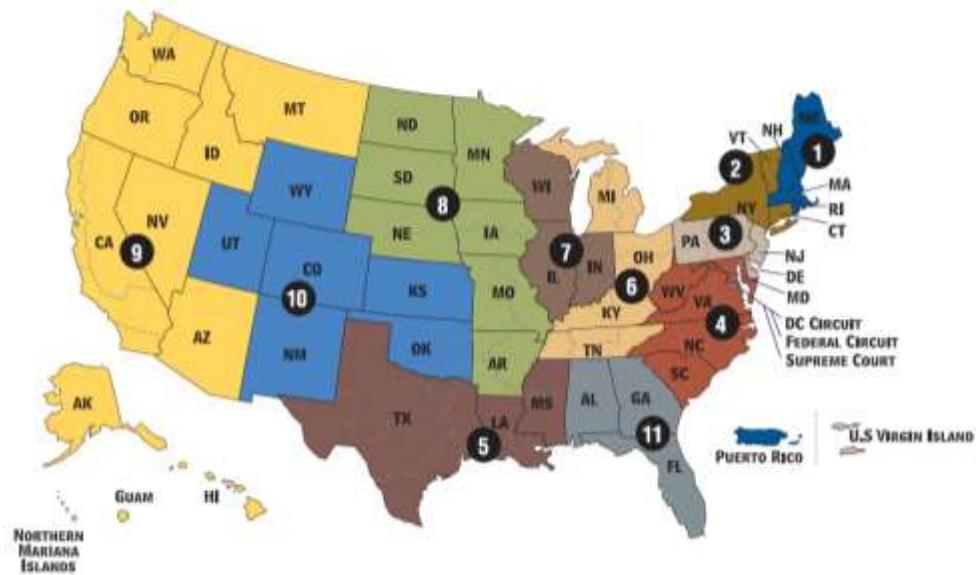
Pattern for Awarding Contracts

We found that CSO procurement actions are completed in a timely and competitive manner. The USMS JSD's standard period of performance for CSO services contracts is 5 years, which includes a base year and four 1-year options. In addition, the Federal Acquisition Regulation (FAR) allows for contract conditions that extend a contract up to an additional 6 months, which effectively makes the maximum potential period of performance 5.5 years.³

CSO services contracts are awarded by circuit to the 12 circuits of the U.S. Court of Appeals and an additional 2 contracts are awarded to 8(a) small business concerns. Because of the continuous need for court security, there can be no gaps between successive contracts without major disruption to court operations. It is therefore imperative that the USMS JSD award successor contracts for each judicial circuit prior to the expiration of the predecessor contracts. The USMS JSD attempts to adhere to a cyclical pattern of competing and awarding 2 to 3 of its 14 contracts each year.

³ According to FAR 52.217-8, *Option to Extend Services* (Nov 1999), the government may require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months.

Figure 2
**Geographic Boundaries of the United States Courts of Appeals and
United States District Courts**



Source: www.USCourts.gov⁴

We determined that, since FY 2012, the USMS JSD has taken steps to mitigate the risks associated with sole source and bridge contracting by completing procurement actions in a timely manner and competitively awarding three CSO contracts per year. According to the USMS JSD, from FYs 2008 through 2011 it was unable to maintain this pattern of awarding contracts by judicial circuit due to poor contract planning, an insufficient number of appropriately-warranted contracting officers, and protests to competitive acquisitions. As a result, the USMS JSD procured CSO services using noncompetitive actions, such as sole source and bridge contracts, to provide security coverage until a competitively-selected contract could be awarded. These types of noncompetitive procurements increase the risk that the government will pay unfair and unreasonable prices for goods and services.

Schedule for Awarding Individual Contracts

We found that the USMS JSD is not consistently documenting the completion of acquisition milestones in its court security procurement process. The USMS JSD uses a procurement schedule to track acquisition milestones for CSO services contracts in accordance with USMS Policy Directive 6.2. According to this policy, the USMS JSD Contracting Officer modifies the procurement schedule for individual acquisitions if unusual circumstances justify a longer or shorter period and documents the schedule in the CSO pre-award contract file. The USMS JSD has

⁴ The 12th Judicial Circuit is located in Washington, D.C. and is not depicted by number on the map.

established an approximate 9-month schedule with acquisition milestones to ensure CSO services contracts are awarded in a timely manner and to avoid contracts awarded using noncompetitive procurement practices, such as sole source and bridge contracts.

When we reviewed pre-award contract schedules for FYs 2013 through 2015, we found that the schedules were missing actual completion dates for key acquisition milestones. According to USMS JSD officials, the schedule is informally tracked and a master document showing completion of each acquisition milestone does not exist. Without actual acquisition completion dates the USMS JSD cannot determine which steps in its procurement process require additional time, which could ultimately affect future CSO services procurements by inaccurately estimating the length of time it takes to award a CSO services contract.⁵ This could lead to sole source or bridge contracting as a result of the USMS JSD's inability to meet its goal of awarding three contracts each year.

We recommend that the USMS JSD enhance its CSO services procurement process to ensure actual completion dates of all acquisition milestones are formally tracked and documented in the contract files.

Market Research

We determined that the USMS JSD's practices for market research for CSO services contracts are adequate to assess whether CSO services are commercially available and to gain an understanding of the marketplace for CSOs. Market research is a continuous process of gathering data related to product characteristics, supplier capabilities, and business practices and trends. The USMS JSD collects market information to: (1) determine whether CSO services are commercially available and (2) assess the availability of prospective contractors using Requests for Information (RFIs). Contracting officers may use RFIs to determine market price, identify standard delivery schedules, and obtain additional market information for review and analysis prior to issuing a Request for Proposal. After identifying contract requirements, early exchange of information among all interested parties is encouraged to facilitate the decision making process.

Through its market research, the USMS JSD determined that commercially-available services provided by armed security guards are distinctly different from those provided by CSOs. One significant distinction is the "special deputation" of CSOs that is not a commercial practice.⁶ As a result, the USMS JSD has

⁵ FAR 4.801(b), *Government Contract Files*, states that the documentation in the files shall be sufficient to constitute a complete history of the transaction for the purpose of: (1) Providing a complete background as a basis for informed decisions at each step in the acquisition process, (2) Supporting actions taken, (3) Providing information for reviews and investigations, and (4) Furnishing essential facts in the event of litigation or congressional inquiries.

⁶ 28 C.F.R. § 0.112, authorizes the USMS Director to deputize select employees of private security companies providing courtroom security for the federal judiciary to perform the functions of a Deputy U.S. Marshal in any district designated by the USMS Director.

traditionally categorized the services provided by CSOs as specialized. The USMS JSD documented its decision to categorize CSO services as specialized in the CSO pre-award contract files and listed CSO requirements in the solicitations. This decision included the comparison of officer qualifications, contract terms and conditions, and contract pricing.

We reviewed the RFIs that the USMS JSD posted to the Federal Business Opportunities website and selected a sample of the capability statements from interested contractors.⁷ The capability statements included the following contractor information: (1) company name, (2) Dun & Bradstreet Data Universal Numbering System Number, and (3) summary of past performance.

Table 1
USMS JSD Market Research Effectiveness

Award Fiscal Year	Number of RFI Responses	Number of Proposals Received
2013	15	9
2014	11	8
2015	10	7

Source: USMS JSD Records

As shown in Table 1, for FYs 2013 through 2015, the RFIs resulted in a minimum of 10 responses and 7 proposal submissions. In our opinion, the RFIs were effective because, after reviewing the results, the USMS JSD was able to compile a preliminary list of prospective contractors who could provide CSO services and satisfy key contract requirements.

Contract Type

The federal government has the flexibility to purchase a large variety and volume of goods and services using a wide selection of contract types. When selecting the appropriate type of contract, procurement officials should seek to award a contract that will provide the contractor with the greatest incentive for efficient and economical performance. During our audit, we evaluated the CSO services contract solicitations and price negotiation memoranda. The 2015 solicitation we reviewed stated that "This is an indefinite-delivery indefinite-quantity (ID/IQ) time-and-materials/labor hour contract for the services specified. Incidental commercial supplies are firm-fixed priced. CSO reimbursable travel is subject to the Federal Travel Regulations (FTR)." Direct labor hours are priced at specified fixed hourly rates that include wages, overhead, direct costs, indirect costs, and profit. Materials are commercial items – body armor, startup costs, and

⁷ The Federal Business Opportunities website (FBO.gov) is a central website where all federal contract solicitations with a value of at least \$25,000 are posted. This site includes information provided by the procurement officers about how and when contractors should respond to procurement opportunities.

SSO uniforms – and are competitively priced at fixed unit prices. We determined that the T&M contract type vehicle was appropriate.

Contract types vary according to the degree and timing of the responsibility assumed by the contractor for the costs of performance as well as the amount and nature of the profit incentive offered to the contractor for achieving specific goals. A firm-fixed-price (FFP) contract is generally preferred by the government because it places the responsibility of cost control and performance on the contractor and minimizes the need for monitoring contractor performance to provide reasonable assurance that efficient methods and effective cost controls are being used. However, when the amount of goods or services is uncertain, a T&M contract may be chosen because the Contracting Officer determines that it is not possible to accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence.⁸

The FAR encourages agencies to continually reevaluate whether contracts can be transitioned to FFP or other lower-risk contract types. Specifically, FAR 16.103(c) states that contracting officers should “avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.” In addition, when a contract type other than FFP is used, FAR 16.103(d) requires contracting officers to include documentation to address numerous facets of that decision, including actions planned “to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.”⁹

Despite these requirements, we determined that neither the Determination and Findings section of the USMS JSD contract files for CSO services contracts, nor the written acquisition plan contained the determinations related to maximizing the use of FFP contracts, or a discussion of the actions planned to minimize use of other than FFP contracts in the future.¹⁰ We reviewed USMS JSD contract files for the three most recent CSO services contracts awarded in FYs 2014, 2015, and 2016 and found that the USMS JSD procured ID/IQ T&M contracts for the CSO program because it was not possible to accurately estimate CSO hours given the additional and recurring, yet unpredictable, security needed for high-risk trials and court operations outside of normal business hours. While the contract files adequately supported USMS JSD decisions to use T&M-type contracts, they did not have sufficient documentation regarding the future use of FFP contracts.

Although we determined that FFP contracts presently are not suitable for procuring CSO services, the USMS JSD’s failure to include a written analysis of why

⁸ A labor hour contract is a type of T&M contract that excludes materials.

⁹ FAR 16.103(d)(1)(iv)(D).

¹⁰ A draft of this report recommended that the documentation be maintained in the Determinations and Findings section of the contract file. In its response to a draft of this report, the USMS JSD stated that it would capture these considerations in the written acquisition plan. As a result, we made that minor change to the recommendation for this final report as detailed in our analysis of recommendation 2 in Appendix 4.

the use of an other than FFP contract (e.g., cost reimbursement, time-and-materials, labor hour) is appropriate does not address the requirement in FAR 16.103(d) to minimize the use of other than FFP contracts in future acquisitions. As a result, we believe that not addressing this requirement creates a risk that the USMS JSD may continue to award riskier types of contracts in future acquisitions even if circumstances change that would justify the use of FFP contracts. We, therefore, recommend that the USMS JSD document in the written acquisition plan the reasons why an FFP contract was not the most advantageous contract type to the government and include a discussion on what actions are planned to minimize the use of other than FFP contracts in future solicitations.

Federal Acquisition Regulation Clauses

During our audit, we identified concerns regarding the USMS JSD's incorporation of FAR clauses into CSO services contracts awarded beginning in FY 2013. The first clause, FAR 52.215-2, gives the USMS JSD the right to examine and audit all records to reflect all costs claimed to have been incurred directly or indirectly in performance of the contract.¹¹ The second clause, FAR 52.216-7, requires the contractor to submit an indirect cost rate proposal annually with a schedule of cumulative direct and indirect costs claimed and billed by the contract and also defines proper invoicing policy, and reimbursement of costs.¹²

In a recent OIG audit of an individual CSO services contract awarded in FY 2013, we found that the USMS JSD included in the contract, but did not enforce, these two FAR clauses.¹³ In its response to that audit, the USMS JSD stated that the FAR clauses were erroneously included in the CSO services contract and that it was removing the FAR clauses from future CSO services acquisitions because the awards met the adequate price competition requirements of FAR 15.403-1. In connection with that audit, the USMS JSD told us that these FAR clauses were not required. However, we do not agree that the reasons offered by the USMS JSD provide a valid basis to depart from the FAR requirements.

During our current audit, USMS JSD officials continued to assert that FAR clauses 52.215-2 and 52.216-7 were not required for CSO services contracts. Regarding FAR 52.215-2, officials claimed an exemption based on FAR 15.209(b)(1)(iii) that states the clause is not required for contracts acquiring

¹¹ FAR 52.215-2(b), *Examination of costs*, states that if the contract is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract.

¹² 52.216-7, *Allowable Cost and Payment*.

¹³ U.S. Department of Justice Office of the Inspector General, [Audit of the United States Marshals Service's Judicial Facility Security Program Task Order DJM-13-A32-D-0066 Awarded to Akal Security, Inc.](#), Audit Report 16-27 (September 2016).

commercial items exempted under FAR 15.403-1.¹⁴ Although we agree that there are commercial items in the CSO contracts, as described in the Market Research and Contract Type discussion above, CSO services are non-commercial. As previously noted, the basis the USMS JSD provided for not completing documentation regarding the possible future use of FFP contracts was because CSO services are non-commercial.

In addition, FAR 52.215-2 explicitly states that for cost-reimbursement, incentive, T&M, labor hour, or any combination of these types of contracts the Contracting Officer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred.¹⁵ The right to examine records is necessary to monitor compliance with contract terms and conditions, such as reviewing the qualifications of officers and ensuring costs claimed have been incurred in performance of the contract. According to FAR 16.601 (c)(1), agencies are required to monitor contractor performance on T&M contracts to mitigate the inherent risks associated with these types of contracts.¹⁶ Therefore, we recommend that the USMS JSD work with JMD Procurement Staff to determine the appropriate inclusion of FAR clause 52.215-2 in current and future T&M contracts.

Regarding FAR 52.216-7, the USMS JSD told us that it considers contracts for CSO services to be labor hour contracts with fixed price components, and therefore FAR 52.216-7 is not required due to a regulatory stipulation in FAR 16.307(a)(1), which states that FAR 52.216-7 need only be included when the solicitation and contract is for a reimbursement or a T&M contract.¹⁷ As previously discussed, the FY 2015 solicitation states that the contract for CSO services is a T&M contract. In addition, there is language in FAR 16.307(a)(1) that specifically states FAR 52.216-7 applies to the portion of the contract that provides for reimbursement of materials at actual cost, such as travel expenses. According to FAR 16.601(a)(3), *Definitions for the purposes of Time-and-Materials Contracts* – “Materials” include “Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.).”

¹⁴ FAR 15.403-1, *Prohibition on Obtaining Certified Cost or Pricing Data*.

¹⁵ FAR 16.102(b), *Selecting Contract Types*, states that contracts negotiated under FAR Part 15 may be of any type or combination of types that will promote the government’s interest.

¹⁶ The USMS JSD stated that its surveillance of CSO service contracts includes oversight by Judicial Security Inspectors (JSI), who are contracting officer representatives assigned to each district to provide assurance that the contractor is using efficient methods and effective cost controls to mitigate the risks associated with T&M contracts.

¹⁷ FAR 16.307, *Contract Clauses* (a)(1) states “The contracting officer shall insert the clause at 52.216-7, *Allowable Cost and Payment*, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is a time-and-materials contract, the clause at 52.216-7 applies in conjunction with the clause at 52.232-7, but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232-7) at actual cost. Further, the clause at 52.216-7 does not apply to labor-hour contracts.”

According to FAR 31.205-46, travel costs for transportation, lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. Travel costs shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the FTR. USMS JSD officials stated that travel expenses are not FFP, but are reimbursed at regulated rates established in the FTR and not based on actual costs. In addition, USMS JSD officials stated that the FAR does not define travel as a material cost. However, as previously stated, material costs are defined by FAR 16.601(a)(3) to include travel expenses. Since there is a disparity in the interpretation of the FAR clauses, we recommend that the USMS JSD work with JMD Procurement Staff to determine the appropriate inclusion of FAR clause 52.216-7 in current and future T&M contracts.

Contractor Selection and Responsibility Determination

During our audit, we determined that the USMS JSD adequately documented in its files the basis for its contractor selection, which includes technical evaluation, past performance, and bid price, for each judicial circuit. We further found that the USMS JSD has an adequate process in place for evaluating a prospective contractor's financial capacity to satisfy the requirements stipulated in CSO services contracts for each solicitation and that it has a sufficient process for determining whether prospective contractors adequately meet business integrity and ethics requirements. However, we concluded that the USMS JSD is not evaluating the necessary accounting controls to ensure that prospective contractors meet standards required in the FAR.

CSO services contracts are awarded based on the USMS JSD's determination of best value through an assessment of competitive proposals submitted by prospective contractors. According to the FAR, when contracting in a competitive environment, the government should seek to minimize the complexity of the solicitation, foster an impartial and comprehensive evaluation, and select the contractor representing the best value to the government.¹⁸ In addition, CSO services, like all contracted federal products and services, must be purchased from responsible prospective contractors, as determined by the contracting officer. For purposes of this audit, we evaluated how the USMS JSD determined whether a prospective contractor was responsible in the following areas: (1) satisfactory performance record, (2) adequate financial resources, (3) satisfactory record of

¹⁸ FAR 15.002(b), *Competitive Acquisition*.

integrity and business ethics, (4) organization, (5) experience, (6) accounting and operational controls, and (7) technical skills.¹⁹

As previously discussed, each year the USMS JSD issues a single solicitation covering separate contracts for three judicial circuits or two 8(a) Small Business contracts for two Federal Judicial Districts. Although there is a single solicitation, the USMS JSD makes decisions related to contract awards separately. For example, in FY 2015, all three judicial circuit contracts were awarded to the same contractor, while in FYs 2014 and 2013 one contractor was awarded two judicial circuits while another was awarded the third judicial circuit.

Source Selection Factors

The source selection strategy used by the USMS JSD for FY 2015 and subsequent solicitations, includes consideration of: (1) technical factors, (2) past performance, and (3) price for each judicial circuit. The USMS JSD weighted the potential contractor's technical capability and past performance source selection factors the same and, when combined, weighted these factors significantly more than price. The prescribed source selection factors and the contracting official's concurrent documentation of those factors are designed to mitigate the risks related to awarding contracts based solely on price. For instance, pricing was the most heavily weighted source selection factor used to award the CSO services contract to US Protect in 2006, who ultimately filed for bankruptcy in 2008 leaving the USMS JSD scrambling to award the contract for critical services using a noncompetitive sole source bridge contract.

Technical Evaluation

We found that the justifications for technical evaluation ratings were adequately documented in USMS JSD contractor files. The USMS JSD convened a Technical Evaluation Board (TEB) to evaluate proposals based on the technical factors that included a Recruitment Program and Vetting Applicants, a Training and Qualification Program, and a Quality Assurance/Quality Control Plan. To ensure a comprehensive evaluation of offers, members of the TEB were selected based on their level of experience and technical proficiency.²⁰ The TEB evaluation was

¹⁹ There are seven factors related to the responsible source determination: (1) adequate financial resources to perform the contract, or the ability to obtain them; (2) ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; (3) satisfactory performance record; (4) satisfactory record of integrity and business ethics; (5) necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (6) necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see FAR 9.104-3(a)); and (7) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

²⁰ The Technical Evaluation Board (TEB) consists of three members – a TEB Chair and two staff members – from the Office of Court Security. They were chosen based on their level of contracting, legal, logistics, technical, and other acquisition expertise to ensure a comprehensive evaluation of offers.

documented using a color rating scheme.²¹ The TEB was responsible for selecting the rating that most clearly reflected the assessment of the proposal, based on the established evaluation criteria.

Past Performance and Experience

We found that past performance evaluations were adequately documented in the USMS JSD contractor files. The past performance ratings are based upon contractor information in the Past Performance Information Retrieval System, the Federal Awardee Performance and Integrity Information System, Government Audits, and Contractor Performance Assessment Reporting System. The USMS JSD also considers the contractor's references from previous agencies as an element of the rating. If the USMS JSD did not have past performance experience with a contractor, this factor is not utilized in the evaluation of the contractor's rating. The Chief of the USMS's Office of Security Contracts conducts an evaluation of the source selection process and the contractor's past performance by first reviewing the contractor's references related to performance on previous contract work with other agencies to determine whether they satisfied contract requirements and adhered to contract standards, and secondly, by reviewing the aforementioned government sites to determine the contractor's performance rating.

The Bid Price

We found that the USMS JSD is no longer using the lowest price as the sole determining factor in the CSO services contract award process. While it is important that government purchases be made at the lowest price for the service needed, the bid price should not be the only determining factor when awarding a contract. In a prior OIG audit, we found that in 2005 the USMS JSD awarded CSO services contracts based on offered prices that were insufficient to perform the requirements of the contract.²² Indeed, in 2008, the contractor filed for bankruptcy and was unable to continue providing CSO services in accordance with the terms of the contract.

To avoid the problems associated with awarding a contract to a low bidder who is unable to adequately fulfill the needs of the contract, the USMS JSD began a process of analyzing the bid prices included in competitive proposals in order to establish price reasonableness. Specifically, the Business Evaluation Team (BET) within the USMS JSD creates a matrix for each solicitation that includes the total

²¹ In FYs 2013 and 2014, the technical evaluation was based on six factors: (1) Recruitment and Vetting Applicants; (2) Training and Qualifications Program; (3) Daily Time and Attendance System; (4) Quality Assurance/Quality Control Plan; (5) Key Personnel and Key Personnel Project Management Plan; and (6) past performance. In FY 2015, the past performance factor was separate and not included in the technical evaluation. The technical evaluation included only three factors: (1) Recruitment and Vetting Applicants; (2) Training and Qualifications Program; and (3) Quality Assurance/Quality Control Plan.

²² U.S. Department of Justice Office of the Inspector General [United States Marshals Service's Use of Independent Contractors as Guards](#), Audit Report No. 05-24 (May 2005).

proposed prices from all prospective contractors and a comparative price differential analysis from the lowest price bid.

Under this process, we found that price was not the sole determining factor in any of the nine circuit contracts awarded for FYs 2014, 2015, and 2016. The USMS JSD determined that the technical and past performance advantages of these awardees justified the government paying a price that was higher than the lowest priced solicitation. The highest differential from the lowest priced solicitation was a price differential of 4.41 percent and the lowest was 0.17 percent. We found that the price differential between the three solicitations we audited showed a relatively minor variance from the lowest bid as denoted in Table 2.

Table 2
Contractor Selections by Fiscal Year²³

FY Solicitation	Contractor Selected	Circuit	Price	Price Differential Between the Awardee and the Lowest-Priced Solicitation
2013	Inter-Con Security Systems	2	\$237,913,371	0.17%
		9	\$374,215,741	0.84%
	MVM, Inc.	10	\$94,009,890	2.00%
2014	Akal Security, Inc.	7	\$80,492,250	2.16%
		11	\$178,076,850	2.78%
	Walden	6	\$163,937,038	0% ^a
2015	Walden	1	\$74,966,155	4.41%
		5	\$166,413,641	2.57%
		8	\$111,292,334	1.73%

^a This awardee happened to submit the lowest bid, in addition to meeting other criteria evaluated.

Source: USMS JSD Contract Records

Responsible Source Determination Factors

In addition to evaluating prospective contractors' past performance record and whether they have the necessary technical skill to perform the contract, the USMS JSD has also established processes to determine whether the prospective contractor or offeror has: (1) adequate financial resources to perform the contract; (2) a satisfactory record of integrity and business ethics; and (3) the necessary organization, experience, accounting and operational controls.

²³ This table denotes the solicitations that were reviewed during the course of our audit, as well as the source selection, price bid, difference in price from the lowest bid in the solicitation, judicial circuit(s) awarded, and the year in which the solicitation occurred.

Adequate Financial Resources

In addition to evaluating price, the USMS JSD is required to ensure that prospective contractors have adequate financial resources to perform the services required under the contract. We found that the USMS JSD's current process is adequate to evaluate a prospective contractor's financial capacity to satisfy the requirements stipulated in CSO services contracts for each solicitation. For CSO services contracts, the USMS JSD has determined that the "apparent successful offeror" must demonstrate that it has financial assets to cover 3 months of payroll and other operating expenses. The BET analyzes prospective contractor debt ratios, profitability ratios, liquidity ratios, cash flow, and line of credit and compares them to USMS JSD financial capability standards to determine whether the contractor has adequate resources to perform the services required under the contract. We determined that the BET completed this analysis for all contract awards made in FYs 2013 through 2015 and that, as a result, three of the nine contracts were awarded to the second ranked offeror because the first "apparent successful offeror" did not meet the financial capability standards.

Satisfactory Record of Integrity and Business Ethics

We determined that the USMS JSD's process for determining whether prospective contractors adequately meet business integrity and ethics requirements is well designed and that the USMS JSD was performing record checks for prospective contractors. However, we found that the USMS JSD did not have formal written operating procedures that documented its CSO services procurement processes and that, as a result, there was an increased risk that the USMS JSD could fail to follow the processes properly and consistently and that it could repeat past procurement errors in the future.²⁴ At the conclusion of our audit USMS JSD officials provided us with written operating procedures for CSO services procurement that they told us were developed in response to our audit.

As previously mentioned, in June 2009 we issued a Management Advisory Memorandum (MAM) to the USMS in which we identified significant concerns associated with the USMS JSD's process for selecting and vetting CSO services contractors related to the selection of USProtect as a CSO service contractor, including its lack of compliance with the FAR and USMS JSD procurement policies, and its lack of response to an OIG Fraud Alert concerning USProtect.

In its response to the MAM, the USMS stated that it had established new measures to address the concerns. Specifically, the USMS stated that it would: (1) share all relevant information and concerns with members of the TEB; (2) seek counsel and advice from authorized program, procurement, and legal officials prior to award; and (3) require key personnel, including corporate officials

²⁴ We further discuss the USMS JSD's lack of formal written policies and procedures for CSO service contract procurements in the section entitled, "USMS Contracting Offices and Procedures," below.

and shareholders in closely held corporations, to undergo and pass a limited background investigation prior to final award.

However, we found that none of these measures were memorialized in written policies or operating procedures. We also found that the USMS JSD has either deviated from the measures or not yet employed them. For example, USMS JSD officials told us that conducting background investigations for all of the prospective contractor's key staff was time prohibitive due to the 6-month average investigation length performed on CSO candidates by the Office of Personnel Management. As a result, the USMS JSD has established a different process to evaluate contractor business integrity. USMS JSD officials told us that they evaluate a prospective contractor's record of integrity by checking the prospective contractor's record in the System for Award Management, Past Performance Information Retrieval System, and Federal Awardee Performance and Integrity Information System for indicators of questionable business integrity or business ethics. In addition, USMS JSD officials told us that sharing relevant information and concerns with members of the TEB and seeking counsel from the Office of General Counsel (OGC) hasn't been necessary since the USProtect contract award because there have not been Fraud Alerts or other reasons for doing so.²⁵

Because there were no formal written procedures in place during the time of the activities we audited for determining whether prospective contractors adequately meet business integrity and ethics requirements, including guidance on how to respond to Fraud Alerts or when to raise concerns to the TEB or seek OGC's counsel, it is unclear that such concerns would have been addressed appropriately had they occurred. However, during the time of our audit, the USMS JSD developed formal written operating procedures that address its process for evaluating prospective contractors' integrity and business ethics to mitigate the risk of repeating past procurement issues. The procedures memorialize a process for responding to Fraud Alerts or similar notifications and will help to prevent the selection of a contractor that cannot fulfill the entire term of the contract.

Necessary Accounting and Operational Controls

The assessment of contractor responsibility also includes a determination by the Contracting Officer that a contractor has the necessary accounting and operational controls in place to perform the contracted services.²⁶ We found that for each of the contracts awarded in FYs 2013 through 2015, the USMS JSD

²⁵ USMS JSD officials have stated that they would never fail to act on a Fraud Alert again.

²⁶ According to FAR 9.104-1(e), to be determined responsible, a prospective contractor must have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).

indicated in the related contract files that the contractor selected had the necessary accounting and operational controls.

However, we determined that the USMS JSD's process for determining CSO services contractor responsibility relative to accounting controls is not adequate. For T&M contracts, the FAR requires surveillance of costs by the government and an annual indirect rate cost proposal, including costs at the contract level, for the portion of the contract that provides for reimbursement of materials at cost, in order to provide assurance that efficient methods and effective controls are being used.²⁷ However, the USMS JSD told us that it does not consider it necessary to evaluate any CSO contractor's ability to accumulate, bill, and record costs in its accounting systems because the contract prices are established through a competitive process. In addition, USMS JSD officials told us that other types of analyses of proposals, completed by the TEB, BET, and Contracting Officer, provide an adequate basis for their conclusions regarding contractor responsibility in this area. We do not believe that these types of analyses provide adequate assurance that the contractor's accounting system has the ability to track costs at the contract level because these analyses look more broadly at the contractor's technical capabilities, financial indicators and resources, and past performance. They do not track the contractor's ability to accumulate, bill, and record costs at the contract level.

In addition, FAR 52.215-2 reserves the Contracting Officer's right "to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract." The current USMS JSD process increases the risk that it is entering into CSO services contracts with companies whose accounting system lacks the ability to track costs at the contract level. If a CSO services contractor's accounting system does not have the ability to track costs at the contract level, the government will not have the ability to monitor the allowability, allocability, and reasonableness of these costs. We therefore recommend that the USMS JSD implement and adhere to a process that evaluates the accounting systems of entities that submit proposals for CSO services contracts to ensure that the systems are capable of accumulating, billing, and recording costs at the contract level.

USMS JSD Contracting Offices and Procedures

As stated earlier in the Satisfactory Record of Integrity and Business Ethics section of this report, we determined that the USMS JSD did not have formal written procedures in place for CSO services contract procurements during the period of our review to address issues we identified during this and previous audits. Formal procedures, which were only developed during the course of this audit, would have mitigated certain risks, such as missing audit clauses, a lack of documentation in the contract files, and not tracking milestone dates for award completion.

²⁷ FAR 52.216-7(d)(2).

The authority to procure CSO services contracts rests with the USMS JSD. The USMS JSD is one of four USMS division offices that receive funding to enter into contracts with sources other than those identified in the USMS's annual appropriation and maintains contracting offices that do not report directly to the USMS Procurement Executive. Although the USMS Procurement Executive does not have direct authority over USMS JSD contracting, USMS JSD officials told us that they adhere to the procurement directives that apply to all USMS contracting functions, which includes reviews by the Policy Oversight Branch (POB) and OGC for all solicitations and contracts expected to exceed \$500,000.

During this audit, we reviewed the contract files for the CSO services contracts awarded for FYs 2014 through 2016 and found that the USMS JSD addressed all comments and questions, and followed the recommendations made by POB and OGC during those reviews. We also determined that while CSO services contract procurement follows the USMS-wide Procurement Directive, the USMS JSD had not developed formal written procedures specific to the USMS's Judicial Facility Security Program during the period reviewed.

However, since we initiated this audit, the USMS JSD developed written procedures that were provided to us after the conclusion of our fieldwork. We believe implementation of this formal governance will help mitigate the risk of the USMS JSD repeating past procurement issues, such as not following the three-award per year cycle or selecting a contractor that cannot fulfill the terms of the contract. Because we were not provided documentation demonstrating the implementation of the procedures, we cannot determine whether our concerns regarding formalized procurement procedures have been adequately addressed. As a result, we recommend that the USMS JSD implement and adhere to these procedures going forward.

CONCLUSION AND RECOMMENDATIONS

Since FY 2012, the USMS JSD has avoided noncompetitive procurements such as sole source and bridge contracts that were routine in the program between FYs 2008 and 2011 by adhering to a pattern of awarding 2 to 3 CSO services contracts annually for the 14 CSO service contracts. The USMS JSD has also been able to procure CSO services in a competitive environment, and has complied with the FAR in many of the areas we examined such as market research, selecting the appropriate contract type, and designing contractor selection methods.

However, we identified areas where the USMS JSD can improve its CSO services contract procurement process, such as complying with sections of the FAR that concern documenting the decision to award T&M contracts, and including contract clauses that make it possible to monitor contractor costs at the contract level. We also believe that the USMS JSD should implement recently-developed written procedures specific to CSO services contract procurements to ensure consistency in documenting and evaluating the contract proposals, and to mitigate the risks of disruptions during the procurement process in the event of staff turnover in the contracting office.

We recommend that the USMS JSD:

1. Enhance its CSO services procurement process to ensure actual completion dates of all acquisition milestones are formally tracked and documented in the contract files.
2. Document in the written acquisition plan the reasons why an FFP contract was not the most advantageous contract type to the government and include a discussion on what actions are planned to minimize the use of other than FFP contracts in future solicitations.²⁸
3. Work with JMD Procurement Staff to determine the appropriate inclusion of FAR clauses 52.215-2 and 52.216-7 in current and future T&M contracts.
4. Implement and adhere to a process that evaluates the accounting systems of entities that submit proposal for CSO services contracts to ensure that the contractor has the ability to accumulate, bill, and record costs in its accounting system at the contract level.
5. Implement and adhere to the formal written standard operating procedures for CSO services contract procurements the USMS JSD developed that addresses both its process for evaluating prospective contractors' integrity

²⁸ A draft of this report recommended that the documentation be maintained in the Determinations and Findings section of the contract file. In its response to a draft of this report, the USMS JSD stated that it would capture these considerations in the written acquisition plan. As a result, we made that minor change to the recommendation for this final report as detailed in our analysis of recommendation 2 in Appendix 4.

and business ethics and its process for responding to Fraud Alerts or similar notifications.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the USMS JSD's internal controls was not made for the purpose of providing assurance on its internal control structure as a whole. USMS JSD's management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in the USMS JSD's internal controls that are significant within the context of the audit objective and based upon the audit work performed that we believe adversely affect the USMS JSD's ability to ensure that it maintains proper documentation in the contract files and that its contracts contain necessary and required FAR clauses.

Because we are not expressing an opinion on the USMS JSD's internal control structure as a whole, this statement is intended solely for the information and use of the USMS JSD. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that USMS JSD's management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. USMS JSD's management is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objective:

- Federal Acquisition Regulation (FAR) 10.001(a)(3), *Results of Market Research*
- FAR 16.103(c) and (d), *Negotiating Contract Type*
- FAR 4.801(b), *Government Contract Files*
- FAR 15.002(b), *Competitive Acquisition*
- FAR 52.215-2, *Audit and Records*
- FAR 52.216-7, *Allowable Cost and Payment*
- FAR 52.217-8, *Option to Extend Services*

Our audit included examining, on a test basis, the USMS JSD's compliance with the aforementioned laws and regulations that could have a material effect on the USMS's operations, through inspection of contract files and interviews with USMS CSO contract personnel. As noted in the Findings and Recommendations section of this report, we found that the USMS JSD did not comply with FAR 16.103(c) and (d), 4.801(b), 52.215-2, and 52.216-7, which were required based on the Indefinite Delivery/Indefinite Quantity contracts we reviewed.

OBJECTIVE, SCOPE, AND METHODOLOGY**Objective**

The objective of this audit was to assess the United States Marshals Service (USMS) Judicial Security Division's (JSD) management of and processes for procuring Court Security Officers (CSO) services contracts.

Scope and Methodology

We conducted this contract audit in accordance with generally accepted government auditing standards. These 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 objective.

Our audit focused on USMS JSD procurement activities and related controls we considered most important to the award of CSO services contracts in FYs 2014, 2015, and 2016. Specifically, we reviewed acquisition planning, contract type and clauses, contractor selection and responsibility determinations, and anti-competitive risks posed by former employees. We performed our audit by conducting interviews of USMS JSD procurement, operational, and legal staff, reviewing USMS JSD policies and procedures, and analyzing USMS JSD records at USMS offices in Arlington, Virginia.

OIG MANAGEMENT ADVISORY MEMORANDUM



**U.S. Department of Justice
Office of the Inspector General**

June 17, 2009

MANAGEMENT ADVISORY MEMORANDUM FOR:

JOHN F. CLARK
DIRECTOR
UNITED STATES MARSHALS SERVICE

FROM: 
RAYMOND J. BEAUDET
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

SUBJECT: Immediate Improvements Necessary for the Judicial Security
Division's Court Security Procurement Process

This memorandum is to advise you of significant issues identified during the course of our ongoing audit of the United States Marshals Service's (USMS) oversight of court security. We began our audit on January 15, 2009, and since that time have identified significant concerns relating to the USMS's procurement practices. We also learned that the USMS is in the process of developing solicitations for future court security contracts to be awarded later this year. Although our audit has not yet concluded, this memorandum provides early notification of significant issues that we have identified to date. We believe that these are serious concerns that require the USMS's immediate attention and corrective action. We plan to include in our audit report the information presented in this memorandum, along with any corrective actions that the USMS has implemented before our report is issued. Therefore, we request that within 30 days of this memorandum, the USMS provide us with a written response describing how the USMS plans to address the concerns described below.

Background

The USMS Judicial Security Division's Office of Court Security is responsible for ensuring the safety of the judiciary at federal court facilities throughout the country. The Court Security Officer (CSO) program is the primary mechanism used to accomplish this goal. Within the Office of Court Security, the Office of Security Contracts is responsible for procuring the

services of roughly 4,700 CSOs that are deployed at over 400 facilities nationwide.

The CSO contracts are structured as multi-million dollar contracts with security guard vendors that include providing protection through CSOs at court facilities in each of the 12 judicial circuits. For example, the CSO contract for the 9th Judicial Circuit includes federal court facilities in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, the Northern Mariana Islands, Oregon, and Washington. Therefore, problems associated with a particular vendor or contract may affect the safety of court operations in numerous court facilities throughout the country.

In September 2006, the USMS awarded 3 of its 12 CSO contracts to a security guard company, USProtect Corporation (USProtect). The three CSO contracts awarded to USProtect totaled \$300 million to provide court security officers for the 3rd, 5th, and 12th Judicial Circuits.¹ Each contract was for 1 base year with four 1-year options. The contracts for the 3 judicial circuits encompassed federal court operations within 15 USMS districts and involved the hiring, training, and supervision of roughly 800 contract guards to be deployed to the numerous federal court facilities within the 3 judicial circuits.

On March 16, 2008, USProtect filed for Chapter 7 bankruptcy protection after the USMS Office of Security Contracts decided not to renew their contracts with USProtect and other federal agencies terminated their contracts with the company amid allegations of fraud and mismanagement. USProtect's financial collapse left many CSOs without compensation for their services. In the months leading up to the contract renewal award, the Office of Security Contracts began taking steps to re-bid the CSO contracts for the 3rd, 5th, and 12th Judicial Circuits, which succeeded in minimizing the disruption of security services when the USMS did not renew its contract with USProtect. However, our audit determined the USMS Office of Security Contracts was aware of USProtect's problems even before the initial contracts were awarded, yet ignored them.

Upon learning of the USProtect issue, we set out to determine how the USMS managed its procurement process with regard to USProtect, whether it complied with the Federal Acquisition Regulation (FAR) and its own procurement policies, and whether the situation described above could have been avoided. To accomplish this task, we interviewed USMS employees

¹ The 3rd Judicial Circuit includes federal court facilities in the states of Delaware, New Jersey, and Pennsylvania, as well as the U.S. Virgin Islands. The 5th Judicial Circuit includes federal court facilities in the states of Louisiana, Mississippi, and Texas. The 12th Judicial Circuit includes court facilities in the District of Columbia and the Northern Virginia Judicial District.

related to the CSO procurement process, including the Office of Security Contracts and Office of General Counsel.² In addition, we reviewed the documents that were available in the solicitation and contract files. Our focus was on actions, or the lack of actions taken, before the CSO contracts were awarded to USProtect.

We identified significant concerns relating to the USMS's procurement practices leading up to its selection of USProtect as a CSO vendor including its lack of compliance with the FAR and USMS procurement policies. Specifically, these concerns relate to the USMS's: lack of adequate background research on USProtect, an inadequate determination of responsibility of USProtect, selection of USProtect despite concerns with bids that were disproportionately low in comparison to other bids, and an inadequate technical review by the Technical Evaluation Board. Had the USMS complied with the FAR and its required procurement practices, we believe that it could have avoided the situation brought about by the collapse of USProtect. The following paragraphs discuss these issues in more detail.

Lack of Due Diligence in USMS's Background Research

We identified a lack of due diligence on the part of USMS employees within the Office of Security Contracts and Office of General Counsel in researching available information regarding USProtect. On July 17, 2006, the U.S. Department of Justice Office of the Inspector General (OIG) issued Fraud Alert 2006-02 to the USMS concerning USProtect, formerly known as Holiday International Security, Inc. (Holiday International), and its Chief Financial Officer, Richard Hudec. This fraud alert contained a prior fraud alert issued in May 2005 by the Social Security Administration Office of the Inspector General (SSA OIG) concerning Mr. Hudec. The SSA OIG memorandum detailed a string of criminal convictions and civil judgments against Mr. Hudec occurring over a 12-year period, all of which were related to fraud.³ The final civil judgment

² The USMS Office of Security Contracts is responsible for awarding and managing the CSO contracts. The Office of General Counsel reviews vendor selections and other legal matters related to the CSO contracts in order to protect the USMS's interests.

³ The SSA OIG fraud alert identified the following incidents of fraud committed by Mr. Hudec:

1. In 1990, Mr. Hudec pled guilty to mail fraud for submitting a false insurance claim. He was placed on 5 years probation and ordered to make restitution of \$27,139.
2. In 1991, Mr. Hudec pled guilty to mail fraud for submitting another false insurance claim. He was sentenced to 6 months in prison and 5 years of probation.
3. In 1998, Mr. Hudec pled guilty to bank fraud for falsifying documents, forging signatures on a check, and depositing the check into an account from which he withdrew the money. He was sentenced to 28 months in prison, followed by 5 years of supervised release, and ordered to pay \$168,000.

occurred in March 2002. According to the SSA OIG's fraud alert, Mr. Hudec held various executive positions in USProtect since 2001, including Chief Financial Officer. The alert ended with the following advisory statement: "The Purpose of this memo is to make you aware of this issue and recommend you review any contracts you may have with USProtect for potential fraud, such as false statements."

The FAR Subpart 15.305(a)(2)(iii) requires that the evaluation of prospective vendors "should take into account past performance information regarding predecessor companies, key personnel who have relevant experience . . ." According to the fraud alert, Mr. Hudec had been a principle in Holiday International. The alert noted that Mr. Hudec's wife purchased 100 percent of that company's assets and renamed the company USProtect Corporation. Further, the fraud alert indicated that Mr. Hudec continued to hold various management positions in USProtect.

Despite these facts, we found no evidence in our review of USMS's contract files and interviews with USMS personnel of any research conducted on Holiday International or its key personnel, including Mr. Hudec. Instead, we found that the USMS officials responsible for awarding the contract accepted at face value USProtect's statement that Mr. Hudec was not involved in any way with the company owned by his spouse, even though USProtect's statement was contradicted by the fraud alert's statement that Mr. Hudec continued to hold various management positions in USProtect. We believe that the fraud alert forwarded by the DOJ OIG warranted a review of USProtect and its predecessor company, Holiday International. If such a review were performed, it would have become apparent to the USMS that the principal officers with Holiday International remained active with USProtect. This information would have provided justification to award the contract to another vendor, avoiding the situation that occurred in March 2008 when USProtect filed for bankruptcy protection after the USMS did not renew its contracts, leaving many CSOs without compensation for their services.

Determination of Responsibility

The FAR Subpart 9.105-1 requires that "before making a determination of responsibility, the Contracting Officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the

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4. In April 1999, Mr. Hudec had five civil judgments entered against him for receiving money, services, and credit based on false pretenses, false representations, and actual fraud. The five civil judgments amounted to a total of \$1,282,016 in favor of five banks.
 5. In March 2002, Mr. Hudec had a civil judgment entered against him for \$191,437 in favor of a bank.

applicable standards in 9.104.⁴ We found that the Office of Security Contracts lacked sufficient information to make a "determination of responsibility" for USProtect, and therefore lacked the proper justification for awarding the CSO contracts to USProtect. Given the severity of the charges contained in the OIG fraud alert and Mr. Hudec's suspected involvement in USProtect's operations, the USMS Contracting Officer should have obtained more information regarding Mr. Hudec's involvement with the company and its principles before making a determination of responsibility.

According to the USMS Contracting Officer, during contract negotiations she requested from USProtect an explanation as to whether Mr. Hudec was involved with the company. The Contracting Officer received in response a written statement from USProtect stating "Mr. Hudec is the Spouse of USProtect's 100% shareholder. Mr. Hudec is not a corporate officer or employee of USProtect Corporation." Based on this short disavowal of Mr. Hudec's involvement in USProtect, the Contracting Officer dismissed the information in the OIG's and SSA OIG's fraud alerts. No further documentation was requested by the Office of Security Contracts or the Office of General Counsel, nor was any provided by USProtect. Further, we determined through interviews with the USMS Contracting Officer and Associate General Counsel that neither the Office of General Counsel nor the Office of Security Contracts contacted the OIG or the SSA OIG regarding the information contained in the fraud alert. Given the serious nature of the information and the concerns regarding potential fraud including false statements, we believe that the USMS should have requested additional information in order to protect the USMS's interest and ensure that the company was responsible.

⁴ The FAR Subpart 9.104 includes the following general standards: To be determined responsible, a prospective contractor must—

- (a). Have adequate financial resources to perform the contract, or the ability to obtain them;
- (b). Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c). Have a satisfactory performance record. A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
- (d). Have a satisfactory record of integrity and business ethics.
- (e). Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).
- (f). Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (g). Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Further, the Office of Security Contracts disregarded internal concerns raised during a pre-solicitation review conducted by the USMS Procurement Policy Oversight Team (PPOT). USMS Procurement Policy 04-1 requires that all solicitations, invitation for bids, and request for quotations with a total life cost over \$100,000 be reviewed by the PPOT prior to execution. In addition, the same USMS policy requires that all actions with a life cycle cost over \$500,000 be reviewed first by PPOT and then by the USMS Office of General Counsel. The three CSO solicitations ranged in value from \$94 million to \$128 million, and thus each was valued at well over \$500,000.⁵ The purpose of the PPOT review is to ensure the USMS complies with the FAR and internal USMS policies before the USMS awards a contract. As part of the PPOT, the USMS Procurement Chief reviews contracts and solicitations for potential concerns and issues a memorandum to the Contracting Officer that includes, if necessary, findings and recommendations that need to be addressed in writing before the Contracting Officer awards the contract.⁶

The PPOT completed its review of the three solicitations and issued to the Office of Security Contracts its written findings in a memorandum, dated September 21, 2006, signed by the USMS Procurement Chief. This memorandum titled, "Pre-Solicitation Review for contract DJMS-07-D0001, 0002, and 0003 3rd, 5th & 12th Circuit Contracts for CSOs," detailed eight significant issues that should have precluded a "determination of responsibility" for USProtect. The memorandum referenced the FAR Subpart 9.103, which requires that, "in absence of information clearly indicating that the prospective contractor is responsible, the Contracting Officer shall make a determination of non-responsibility."

Specifically, the PPOT's memorandum questioned the lack of information used to make a determination of responsibility regarding USProtect. The memorandum stated that USProtect's "self-serving statement" was not sufficient to address the concerns raised in the OIG fraud alert. Our file review found no indication that the PPOT's concerns were addressed by the Office of Security Contracts or the Office of General Counsel or that these offices followed up on the fraud alert. The USMS's procurement policies require that, "Contracting officers/Contract Specialists must address all findings either by making the necessary changes or by preparing written justification for not accepting the findings. The written justifications will cite applicable policies, regulations, and/or status." Further the policy requires that, "[b]efore

⁵ The solicitation for the 3rd Circuit had an Independent Government Cost Estimate (IGCE) totaling approximately \$107 million for the 5-year life of the contract. Further, the IGCE for the 5th Circuit totaled over \$128 million and the 12th Circuit totaled approximately \$94 million. Therefore, all three solicitations required PPOT and Office of General Counsel review.

⁶ USMS Procurement Policy 04-1 requires that PPOT findings need to be addressed in writing, but there is no requirement for the written response to be provided back to the PPOT.

proceeding with the action, the file must contain a copy of the findings, documentation of the changes made, and the written approval for the Contracting Officer's/Contract Specialist's supervisor for any decision not to accept a finding or findings." We reviewed all of the solicitation and award files and found no written response, justification, or approval by the Contracting Officer's supervisor to disregard PPOT findings as required by the USMS's procurement policies.

With regard to the Associate General Counsel's review, we were unable to verify whether it received a copy of the PPOT memorandum prior to its determination that there were "no legal impediments" to awarding the CSO contracts to USProtect. The Associate General Counsel stated that he normally would receive the PPOT review with the file, but could not recall whether he had reviewed the PPOT memorandum for the USProtect contracts. An e-mail confirms that the USMS Associate General Counsel provided approval of the contract on the morning of September 22, 2006, after asking if the PPOT review had been completed on September 21, 2006. However, there was no indication that the USMS Office of General Counsel received or reviewed the PPOT's review prior to communicating his approval to award the contracts. According to the USMS Procurement Chief, she indicated that she had not been contacted by the Office of General Counsel to discuss her findings.

The legal concerns raised in the PPOT memorandum should have alerted the Office of General Counsel and prompted the Associate General Counsel to look into this matter before giving his concurrence on USProtect's selection for the three CSO Contracts. The only documentation we found in our file review showing any involvement from the Office of General Counsel were: (1) a Memorandum For Record prepared by the Office of Security Contracts and edited by the Associate General Counsel before the PPOT conducted its review, which included instructions from the Associate General Counsel for the Office of Security Contracts to seek additional clarification on Mr. Hudec's involvement with USProtect; and (2) an email sent after the PPOT review from the Associate General Counsel to the Contracting Officer stating that the Associate General Counsel saw no legal impediment to awarding the contract to USProtect.

The failure to address and further research each of the issues detailed in the PPOT memorandum issued by the USMS Procurement Chief raises serious concerns about the USMS's court security procurement process. In this instance, there were incidents of fraud that were not taken into consideration by USMS staff before awarding the three contracts totaling approximately \$300 million to USProtect. Based on the lack of documentation and the responses we received during our interviews, we believe that the USMS did not conduct a proper investigation or background research on USProtect. Also, the USMS Office of Security Contracts did not properly address the concerns raised in the PPOT memorandum. Had these actions been taken, there would have

been sufficient justification to select another vendor, thereby avoiding the financial and security risks associated with the collapse of USProtect.

As a result, we found that the USMS did not exercise due diligence in its awarding of CSO contracts for the 3rd, 5th, and 12th Judicial Circuits to USProtect. In our judgment, the Office of Security Contracts and the Office of General Counsel dismissed without sufficient research serious concerns raised by the OIG fraud alert and the USMS's PPOT regarding the USMS Contracting Officer's determination of responsibility. In not acting upon the concerns that were raised, the Office of Security Contracts chose to rely on USProtect's self-serving statement, which was insufficient justification for awarding the contracts.

USProtect's Price was Insufficient to Cover Program Costs

The FAR requires that contracting officers perform a cost estimate to ensure that the vendors' bids and proposed costs are sufficient to cover the cost of the program and perform the services they are contracting to perform. The FAR Subpart 15.305 states, in part, "[w]hen contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract." The CSO contracts are bid as cost reimbursement contracts.

We interviewed USMS officials who were involved with the evaluation and selection process for the three USProtect contracts. In addition, we reviewed the evaluation documents and pricing information that were contained in the solicitation files. As result of our preliminary review, we found that there was significant concern raised within the USMS over whether USProtect's bids were too low to cover their costs, based on USMS knowledge of and experience with the CSO program. However, we found no evidence that the Office of Security Contracts adequately addressed these issues prior to awarding the contracts to USProtect.

We reviewed the Technical and Price Negotiation Memorandum written by the Contracting Officer, dated September 14, 2006, in which the Contracting Officer stated repeatedly that USProtect's quoted start up costs were lower than the competing bids and were too low to cover actual start-up costs for all three Judicial Circuits. USProtect's bids on the three Judicial Circuits were well below both the Independent Government Cost Estimates (IGCE) and the bids submitted by competing vendors. USProtect's bid prices were approximately \$4 million to \$7 million less than the other bids received in each of the three circuits. The other two vendors were familiar with the costs of the program because they had prior experience with CSO contracts; USProtect had no previous experience with the CSO Program.

The Contracting Officer believed that USProtect's bid was insufficient to cover the costs of the program. In addition, the former Chief of the Office of Court Security indicated that the bids should be close to one another because the only variable costs associated with the contracts were administrative overhead and profit. He further stated that USProtect's resulting financial problems may have stemmed from providing overly low bids.

The Contracting Officer stated, after further negotiations with USProtect, that the company was confident that its start-up rates were sufficient, despite the concerns raised in her Technical and Price Negotiation Memorandum, dated September 14, 2006. The Contracting Officer accepted USProtect's claim that its prices were adequate and ultimately awarded the contract to USProtect. As with questions regarding Mr. Hudec's involvement with the company, the Office of Security Contracts again relied on self-serving statements from USProtect and dismissed legitimate concerns about USProtect's ability to provide contracted services at its overly low bid price.

We believe that the difference in amounts between USProtect's bids and competing bids was cause for serious concern regarding whether USProtect understood the requirements of the contract and if it had the financial means to cover the costs to run the CSO Program in each Judicial Circuit for which it bid. Yet, USProtect was awarded the CSO Contracts in all three circuits despite the Contracting Officer's concerns about the inadequate contract price, unanswered concerns by the PPOT, and an OIG fraud alert. The acceptance of the comparatively low bid prices despite these multiple indicators of problems raises concerns about the evaluation and award process conducted by the USMS Office of Security Contracts.

Technical Evaluation Board Lacked Evidence of a Thorough Review

The purpose of a Technical Evaluation Board (TEB) review is to provide the Contracting Officer with the information necessary to make the best selection possible. We examined the work performed by the TEB that led to the selection of USProtect. Specifically, we reviewed the individual rating sheets completed by each of the team members. We found that the review was not well-documented and that the TEB was not provided all relevant information. As a result, the TEB failed to point out significant weaknesses with USProtect that may have led to the selection of more qualified vendors.

The FAR Subpart 15.303(b)(1) states that "[t]he selection authority shall establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers." In this instance the

Contracting Officer was the selection authority, and she appointed five USMS employees to serve on the TEB.⁷ The TEB met from June 5, 2006, through June 16, 2006, at USMS Headquarters in Arlington, Virginia, to review the initial bid responses. The board reconvened via teleconference on August 29, 2006.

Each of the three vendors was evaluated based on three criteria weighted on a 100-point scoring system: (1) past performance weighted at 45 points, (2) contract management at 35 points, and (3) technical ability to meet the requirements in the statement of work at 20 points. The members of the TEB rated each vendor and gave them a score for each criterion. In addition, the evaluation forms provided space to document strengths, weaknesses, deficiencies, and clarifications. However, we found that in many instances, even though USProtect did not receive the full points allowed for a particular criteria, the evaluation form contained no explanation of any deficiencies or weaknesses that would cause a lower than maximum score for that criteria.

Further, the written evaluations contained no references to the OIG fraud alert. In addition, the Contracting Officer confirmed that the fraud alert was not given to members of the TEB at any time during their evaluation process. While the initial meeting of the TEB took place prior to the OIG's issuance of the fraud alert in July 2006, the USMS was in possession of this information prior to the TEB's follow-up meeting on August 29, 2006. This information should have been provided to the TEB since the Fraud Alert should have been taken into account in scoring the contractor for past performance and contract management.

Conclusion

We reviewed the USMS's awarding of CSO contracts to USProtect and identified significant concerns with its procurement process. We believe that these concerns stem from USMS's lack of adherence to the FAR and its own procurement policies. This lack of adherence to established policies and regulations resulted in the USMS's selection of USProtect as being the "best value" to the government despite ample and persuasive evidence to the contrary.

Specifically, we found a significant failure on the part of the USMS's Office of Security Contract's and Office of General Counsel to exercise due diligence in following up on the OIG fraud alert issued 2 months prior to the awarding of the contracts. Further, we do not believe that the USMS conducted the necessary research on USProtect that was required by the FAR, nor did it gather the necessary information to be able to determine whether

⁷ The board consisted of a U.S. Marshal, a Chief Deputy U.S. Marshal, two Deputy U.S. Marshals, and one employee from the USMS Judicial Security Division.

USProtect was a responsible vendor. Also, the USMS failed to address in writing, as it was required to do, concerns from the USMS Procurement Chief related to its selection of USProtect. In addition, despite the fact that the Contracting Officer identified USProtect's bids as being unrealistically low, the contract was awarded to USProtect. Lastly, the Technical Evaluation Board failed to adequately document its review of USProtect and the Contracting Officer failed to make the OIG fraud alert available to the Board for use in its evaluation of the contractor.

We believe that these failures on the part of the USMS led to three CSO contracts being awarded to USProtect, a less than responsible vendor that ultimately collapsed. USProtect's collapse placed the security of many court facilities at risk, something that could have been avoided had the USMS performed its due diligence and adhered to established policies and regulations. It also led to many CSOs not receiving timely payment for their services because the vendor filed bankruptcy. We recommend that the USMS implement immediate corrective action to address the concerns contained in this memorandum and ensure that the solicitation and award process to replace the soon-to-expire CSO contracts for the 12 judicial circuits are properly handled in accordance with the FAR and its procurement policies.

cc: Michael J. Prout
Assistant Director
Judicial Security Division
United States Marshals Service

Steven Conboy
Deputy Assistant Director
Judicial Security Division
United States Marshals Service

Gerald M. Auerbach
General Counsel
United States Marshals Service

Anita K. Maldon
Procurement Chief, Procurement Office
United States Marshals Service

Isabel Howell
Audit Liaison
United States Marshals Service

James W. Johnston
Director, Procurement Support Staff
Justice Management Division

Richard P. Theis
Assistant Director
Audit Liaison Group
Justice Management Division

THE USMS'S RESPONSES TO THE OIG MANAGEMENT ADVISORY MEMORANDUM AND DRAFT AUDIT REPORT OF THE USMS'S OVERSIGHT OF ITS JUDICIAL FACILITIES SECURITY PROGRAM



U.S. Department of Justice

United States Marshals Service

Office of the Director

Washington, DC 20530-1000

July 28, 2009

MEMORANDUM TO: Raymond J. Beaudet
Assistant Inspector General
for Audit

FROM: John F. Clark 
Director

SUBJECT: Immediate Improvements Necessary for the Judicial Security
Division's Court Security Procurement Process

This memorandum is in response to your June 17, 2009, memorandum regarding issues identified during the course of the ongoing Office of the Inspector General (OIG) audit of the United States Marshals Service (USMS), Judicial Security Division, court security procurement process. The USMS has considered your concerns related to a contract award from 2006, and agrees that immediate improvement of the court security procurement process is imperative. In the past few months, the USMS has developed and implemented new measures to ensure that selections for future court security procurements are executed in a more judicious manner. Specific responses to each of the concerns outlined in your memorandum are described in the attached document.

These corrective actions will improve the USMS court security procurement process. Should you have any questions or concerns about this matter, please contact Assistant Director Michael Prout at 202-307-9500.

Attachment

cc: David J. Gaschke
Regional Audit Manager
San Francisco Regional Audit Office
Office of the Inspector General

Michael J. Prout
Assistant Director
Judicial Security Division

Isabel Howell
Audit Liaison

James W. Johnston
Director, Procurement Support Staff
Justice Management Division

Richard P. Theis
Assistant Director, Audit Liaison Group
Justice Management Group

Lack of Due Diligence in USMS Background Research

Procurement officials will diligently comply with all USMS procurement policies and procedures. The Contracting Officer (CO) or source selection authority will share all relevant information and concerns with members of the technical evaluation board. Counsel and advice will also be sought from authorized program, procurement, and legal officials prior to award. In the event the decision of the CO or source selection authority differs from the USMS Procurement Policy and Oversight Team's findings, the CO will address concerns or recommendations by making the necessary changes, or by preparing written justification to explain why the concerns or recommendations were not accepted. When feasible, all involved parties will meet to discuss and resolve any differences. Precautionary measures have also been set in place to ensure suitability of key contract officials. Effective immediately, all future court security solicitations will require key personnel, including corporate officials and shareholders in closely held corporations, to undergo and pass a limited background investigation prior to final award.

USProtect's Price was Insufficient to Cover Program Cost

In retrospect, the USMS agrees that USProtect's price was insufficient to perform the requirements of the contract, and that the CO should have used better judgment in this area. Since that time, the USMS has hired a more experienced CO to manage and administer the Office of Security Contracts. We are confident that the current CO will exercise extreme caution in rendering responsible determinations.

Technical Evaluation Board Lacked Evidence of a Thorough Review

Without revealing specifics of the procurement process, the source selection plan and new evaluation material have been developed to improve and streamline the evaluation process. Under the new plan, the technical evaluation board members will be involved in a more structured process and they will receive clearer guidance and support from the CO and legal advisors. In addition, all members assigned to the technical evaluation board will receive training from a qualified procurement instructor before the evaluation process occurs. The technical evaluation board will receive a comprehensive briefing to ensure that they understand their role and responsibility during the source selection process. Each member of the technical evaluation board will also be granted adequate time to review and familiarize themselves with the solicitation, the source selection plan, and the evaluation material. The CO and a legal advisor have also been directed to work closely with the members during the entire evaluation process.



U.S. Department of Justice
United States Marshals Service
Office of the Associate Director

Alexandria, Virginia 22301-1025

October 29, 2010

MEMORANDUM TO: Raymond J. Beaudet
Assistant Inspector General
for Audit

FROM: Robert J. Finan II 
Associate Director
for Operations

SUBJECT: Response to Draft Audit Report:
United States Marshals Service's Oversight of its
Judicial Facilities Security Program

The United States Marshals Service (USMS) is statutorily responsible for the security of the security of the Judicial Branch. Based on a longstanding Memorandum of Understanding (MOU) with the Administrative Office of the United States Courts (AOUSC) and the Federal Protective Service (FPS), the USMS is also responsible for security at facilities housing components of the United States Courts. The security of over 800 facilities, including more than 400 where approximately 5,000 Court Security Officers (CSOs) are posted, is of the utmost importance to the USMS.

In reviewing your report, where you identify weaknesses related to concerns of the judiciary for the security of facilities, it is important to highlight a few points that were either not recognized, or were not included as part of this audit. I appreciate and will direct whatever action possible to address the concerns of the Chief Judges interviewed for the audit. It is noteworthy that the USMS is not the determining party as it relates to the budget for staffing or physical security. The USMS and the AOUSC work closely to address concerns and risk, and have seen progressive and positive increases in budgetary resources. While it is a concern that three of six Chief Judges interviewed expressed concern, I am heartened that in a recent audit of the USMS conducted by your agency (I-2207-010), over 85% of judges responding to your survey expressed they were either satisfied, or highly satisfied with their security and the USMS.

I note and appreciate your emphasis of the need for an active Court Security Committee in each district. It is likewise noteworthy that the Court Security Committee, which is a requirement of the Judicial Conference of the United States, is led by or responsible to the Chief District Judge; and while the USMS has a role, it is one of support to the Chief

District Judge. The Chief District Judge is responsible for maintaining an active Court Security Committee. The USMS will continue to encourage the same across all districts.

The USMS responses to the recommendations contained in the subject draft audit report are listed below:

Recommendation 1: Ensure that all USMS district offices regularly review and update their Continuity of Operations Plans and ensure that annual security surveys are performed at each district and that all judicial security plans are updated as required.

Response (Concur): The Assistant Directors for Judicial Security and Tactical Operations will emphasize this requirement to all United States Marshals and Chief Deputy United States Marshals, and will ensure it is a component of the District Audit Program and the annual District Self Assessment.

The below comments refer only to the Continuity of Operations Plan as referenced throughout the draft report:

1. p. iii, note 4: The note states that HSPD 20 requires that all federal departments and agencies maintain a Continuity of Operations Plan. The correct language from NSPD 51/HSPD 20 source document reads: all executive departments and agencies... http://www.dhs.gov/xabout/laws/gc_1219245380392.shtml#1. This does not change the intent of the comment or the impact upon the USMS.
2. p. iv, note 5: The draft report cites Federal Preparedness Circular (FPC) 65 as its reference. FPC 65 was superseded by Federal Continuity Directive (FCD) 1, in February 2008 (<http://www.fema.gov/pdf/about/offices/fcd1.pdf>). However, the updating requirements did not change with the adoption of FCD 1.
3. p. 5, first full paragraph: same as number 1, above.
4. p. 5, note 18: same as number 2, above.
5. p. 31: same as number 2, above.

The USMS District COOP Template, Annex A, Section 6.3 states that:

“The COOP Program Point of Contact (POC) develops district COOP plans in accordance with USMS policies and procedures. The POC performs an annual review of the COOP plan and makes updates and changes as necessary.”

Additionally, the annual review is an FCD 1 requirement that is taught in the USMS COOP Managers Class, which is available annually to all districts. Since 2007, more than 182 district and headquarters personnel have completed this training class. Additionally, a template COOP plan is available for district personnel to utilize that covers all requirements of FCD 1.

The Tactical Operations Division, Office of Emergency Management, will continue to support any USMS district that requests assistance with the preparation, training, testing or exercising of a COOP plan.

Recommendation 2: Ensure that all of its district offices assign a principal coordinator to the district Court Security Committee and encourage the local judiciary to lead regular meetings.

Response (Concur): The Assistant Director for Judicial Security will emphasize this requirement to all United States Marshals.

The existing policy directs the United States Marshal to serve as the principal coordinator, and for Judicial Security Inspectors to attend and participate in Court Security Committee meetings. They are reminded during various training sessions to discuss with the judiciary the need for those meetings.

Recommendation 3: Ensure that all Judicial Security Inspectors and CSOs are appropriately trained before entering on duty. The USMS should also develop a process to ensure that all Judicial Security Inspectors and CSOs are adequately trained on newly deployed screening systems.

Response (Concur): The USMS selects personnel for the Judicial Security Inspector (JSI) position in accordance with a merit promotion selection process. Training on the role and duties of the position is conducted after the regulation required time-period for the promotion. Judicial Security Inspectors are required to obtain Contracting Officer's Technical Representative (COTR) certification immediately upon assuming the JSI position. They are also required to attend in-service training at the next scheduled session. JSIs were also required to complete an online x-ray operator training course this past fiscal year.

CSOs must currently complete Phase I and firearms qualification before assuming the duties of a CSO. The Office of Court Security (OCS) has revised the CSO Orientation Program and will implement the new program in Fiscal Year 2011. Under the revised program, the contractor must schedule and ensure that every CSO complete a 40 hour on-the-job standardized program as part of Phase I. Upon completion of Phase I requirements, a CSO may then be assigned to work alone. However, CSOs will not be permitted to operate any screening equipment until they have successfully completed the Phase II requirements and have completed a second 40 hour on-the-job training program specific to screening equipment. Once a CSO has completed all of the Phase II requirements, the CSO may be assigned to a post without any duty limitations. Training on newly deployed screening systems is performed by the vendor when installed.

Recommendation 4: Ensure that its district offices perform the required quarterly unannounced tests to determine if CSOs are adequately screening visitors, packages, and mail that are delivered to the courthouse and maintain records of the results.

Response: (Concur): The USMS regularly reminds and encourages its district offices of the requirements of conducting quarterly unannounced facility screening tests. This guidance is provided during training sessions, through internal communication, and is contained in USMS

Policy Directive 10.4, *Judicial Facility Security*. The USMS has developed an internal database to maintain and track these records and regularly reviews the results to identify security deficiencies.

Recommendation 5: Ensure that all district offices report incidents and arrests at courthouse facilities as required and conduct a coordinated periodic analysis of the data each fiscal year.

Response (Concur): The USMS regularly reminds and encourages its district offices of the requirements of ensuring the contractor reports and documents incidents and arrests at courthouse facilities. This guidance is provided during training sessions, through internal communication, and is contained in the post orders and CSO contract. The USMS maintains these reports in a database and regularly reviews these reports.

The USMS is currently developing an internal database which will be used to report, track, and analyze incidents and arrests that occur at its courthouse facilities.

Recommendation 6: Continue to evaluate its current contract file maintenance practices and develop procedures to ensure that all necessary documentation is maintained in a consistent manner.

Response (Concur): The USMS has developed procedures necessary to ensure contract file documentation is maintained in a consistent manner. A contract file checklist is required and included with every contract action. The checklist will standardize contract files and ensure that every file is consistent.

Recommendation 7: Seek to streamline its current timekeeping practices for CSOs.

Response (Concur): The USMS met with the vendors individually to modify the existing time and attendance form used and reported to the USMS. Additionally, the USMS will conduct training for all Judicial Security Inspectors in November 2010. During this training, Judicial Security Inspectors will be reminded of their responsibility for monitoring and approving CSO work hours.

Recommendation 8: Perform a comprehensive review of its background investigation process for CSOs and seek to ensure that these investigations are completed in a timely manner.

Response (Concur): The USMS will review the entire process of background investigations from the request that the investigation be conducted through the adjudication. The USMS already monitors the receipt of background investigations using a database and sends reminders when the investigations are overdue. Additionally, the processing of background investigations is a part of the district's Self-Assessment Guide (SAG), which holds them responsible for timely completion.

Recommendation 9: Develop a method for analyzing its performance violation data to better understand violation trends and potential training needs among its CSO workforce.

Response (Concur): The USMS has implemented a tracking database spreadsheet for all performance standard violations. The database allows for sorting of information to include contractor name, Circuit, District, performance standard numbers violated, proposed disciplinary action, et cetera. The database can generate reports that will allow for analysis of violation trends and potential training needs. The database will allow the USMS to identify potential training needs based on documented performance violation trends and other information.

Recommendation 10: Provide additional guidance to district Judicial Security Inspectors to ensure that all CSO performance violations are documented and reported to the Office of Court Security.

Response (Concur): The USMS regularly provides additional guidance to its districts on the requirements of reporting and documenting performance violations. This guidance is provided during training sessions, through internal communication, and is stated in the CSO contract.

It is the responsibility of the district Judicial Security Inspector, who serves as the Contracting Officer's Technical Representative (COTR) for the CSO contract, to ensure that the contractor remains in compliance with the terms and conditions of the contract and that the Government receives full measure of the goods and/or services required of the contract. Additionally, as required in the CSO contract, the contractor must immediately notify the Contracting Officer and the COTR in writing when a CSO engages in, or is suspected of, violating any of the performance standards stated in the contract.

Recommendation 11: Evaluate its CSO personnel file maintenance practices and develop procedures to ensure that all necessary documentation, such as medical and firearms qualifications, is adequately maintained and up to date. In addition, the USMS should assess the feasibility of implementing an automated system for tracking important dates in the database to ensure that CSOs satisfy their qualification requirements in a timely manner.

Response (Concur): The USMS will reevaluate the CSO personnel file maintenance to improve the processing, timeliness, and storage of personnel records. The USMS already monitors important dates in a database to ensure qualification requirements, but will seek to improve oversight of these requirements.

Recommendation 12: Require district offices to supervise and verify labor hours claimed by contractors to help ensure that it is not being over billed under the nationwide security systems contract.

Response (Concur): The USMS, with the required financial support of the AOUSC, will require district offices to verify labor hours if the nationwide security systems contract is labor hour based. The USMS recently switched from a Time and Materials type contract to a Firm Fixed Price type contract, negating the need to track contractor labor hours expended.

Recommendation 13: Assess the feasibility of district offices maintaining their own security system equipment inventories of equipment maintained by the contractor so that comparisons can be made to the contractor's inventory to avoid unwarranted maintenance fees.

Response (Concur): The USMS has implemented a tracking database spreadsheet for all performance standard violations. The database allows for sorting of information to include contractor name, Circuit, District, performance standard numbers violated, proposed disciplinary action, et cetera. The database can generate reports that will allow for analysis of violation trends and potential training needs. The database will allow the USMS to identify potential training needs based on documented performance violation trends and other information.

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Recommendation 13: Assess the feasibility of district offices maintaining their own security system equipment inventories of equipment maintained by the contractor so that comparisons can be made to the contractor's inventory to avoid unwarranted maintenance fees.

Response (Concur): The USMS will evaluate options and logistics associated with districts having some inventory tracking capability. As a partial solution to the inventory issue, the USMS intends to reduce the number of security equipment items subject to maintenance fees in the new contract, the solicitation for which is now in development. This approach would also reduce the burden on district personnel, who are already working beyond available resources supporting the Judicial Facility Security Program.

Recommendation 14: Track the cost of repairs for its screening equipment and the impact of downtime on court security in order to periodically assess whether a maintenance plan for its screening equipment would be cost effective.

Response (Concur): The USMS has implemented a methodology for tracking screening equipment repair costs. The USMS will expand that methodology to also collect downtime data, and will continue to conduct market research on maintenance plan options.

Recommendation 15: Require the Office of Security Contracts to prepare past performance and interim evaluations in accordance with the Federal Acquisition Regulation.

Response (Concur): The USMS will prepare past performance and interim evaluations in accordance with FAR Subpart 42.15 - Contractor Performance Information.

THE USMS JSD'S RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

United States Marshals Service

Judicial Security Division

Washington, DC 20530-0001

March 14, 2018

MEMORANDUM TO: Thomas O. Puerzer
Regional Audit Manager
Office of the Inspector General

FROM: John O. Bolen
Assistant Director 

SUBJECT: Response to Draft Audit Report: Audit of the United States Marshals Service Judicial Security Division's Court Security Officers Procurement Process

This memorandum is in response to correspondence from the Office of the Inspector General (OIG) requesting comment on the recommendations associated with the subject draft audit report. The United States Marshals Service appreciates the opportunity to review the Report and concurs with the recommendations therein. Our response to each of the recommendations is attached.

Should you have any questions or concerns regarding this response, please contact Krista Eck, Audit Liaison, at 540-336-6698.

Attachments

cc: Tonya Morrison
Program Manager, Office of Operations
Office of the Inspector General

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Associate Deputy Attorney General
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Memorandum from Assistant Director John O. Bolen

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Subject: Response to Draft Audit Report: Audit of the United States Marshals Service Judicial Security Division's Court Security Officers Procurement Process

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**Audit of the United States Marshals Service Judicial Security Division's Court Security Officers
Procurement Process
USMS Responses to OIG's Recommendations
03/08/2018**

1. Enhance its CSO services procurement process to ensure actual completion dates of all acquisition milestones are formally tracked and documented in the contract file.
 - a. Response: Agreed. Although the procurement action lead time is already addressed in the written acquisition plan, the USMS JSD will formally track and document actual completion dates of acquisition milestones. Implementation of this process will ensure internal milestones are met, offices are accountable for actionable items, the record is included in the solicitation file, and the record is available for reference.
2. Document in the Determinations and Findings section of the contract file, the reasons why an FFP contract was not the most advantageous contract type to the government and include a discussion on what actions are planned to minimize the use of other than FFP contracts in future solicitations.
 - a. Response: Policy and the FAR 16.103(c) and (d) do not require a Determinations and Findings to address these considerations. See FAR 16.103(d)(1) "This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures." The USMS will capture these considerations in the written acquisition plan.
3. Work with JMD Procurement Staff to determine the appropriate inclusion of FAR 52.215-2 and 52.216-7 clauses in current and future T&M contracts.
 - a. Response: Agreed. The Attorney General has delegated broad authority to the Directors of each component agency within the Department to manage the contracting functions with coordination by the Justice Management Division (JMD) Procurement Staff. The USMS Director has subsequently re-delegated the authority to act as the Head of the Contracting Agency (HCA) to the USMS Procurement Executive. The Judicial Security Division's procurement authority to procure goods and services is designated through the authority of the USMS Procurement Executive. JSD will, therefore, work with the USMS Procurement Executive or designee to liaise with the JMD Procurement Staff accordingly on determining the appropriateness of using these clauses.
4. Implement and adhere to a process that evaluates the contractor's accounting system of CSO services contractors to ensure that the contractor has the ability to accumulate, bill, and record costs in its accounting system at the contract level.
 - a. Response: Agreed. The USMS will ensure that contractors are in compliance with FAR 9.1, *Determination and Responsibility*, before award. Specifically, the USMS will require offerors to demonstrate in their business proposals their capability to implement the necessary organization, experience, accounting and operational controls and detail their accounting system structure as it pertains to the CSO contract.
5. Implement and adhere to the formal written standard operating procedures for CSO services contract procurements the USMS JSD developed that addresses both its process for evaluating prospective contractors' integrity and business ethics and its process for responding to Fraud Alerts or similar notifications.
 - a. Response: Agreed. The drafted Standard Operating Procedure ensures continuity of service is captured and preserved. The USMS JSD will defer to the FAR, JAR, and

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agency policy if they deviate from the USMS JSD Standard Operating Procedure (SOP) for CSO procurement, and will update the SOP to conform to these sources as needed.

**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The Office of the Inspector General (OIG) provided a draft of this audit report to the United States Marshals Service Judicial Security Division (USMS JSD). The USMS JSD's response is incorporated in Appendix 4 of this final report. In response to our draft audit report, the USMS concurred with our recommendations, and as a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for the USMS JSD:

- 1. Enhance its CSO services procurement process to ensure actual completion dates of all acquisition milestones are formally tracked and documented in the contract files.**

Resolved. The USMS JSD agreed with our recommendation. The USMS JSD stated in its response that it will formally track and document actual completion dates of acquisition milestones.

This recommendation can be closed when we receive evidence demonstrating that the USMS JSD has implemented a process to formally track and document the completion dates of acquisition milestones in the contract files.

- 2. Document in the written acquisition plan the reasons why a FFP contract was not the most advantageous contract type to the government and include a discussion on what actions are planned to minimize the use of other than FFP contracts in future solicitations.**

Resolved. The USMS JSD agreed with our recommendation and stated that it will capture these considerations in the written acquisition plan.

The USMS JSD expressed concern regarding a revision made to the draft report related to the FAR requirement applicable to documenting decisions regarding the use of firm fixed price contracts. In response to this concern, we updated this recommendation and applicable sections of the report to recognize the written acquisition plan as the appropriate document to capture decisions regarding the use of firm fixed price contracts.

This recommendation can be closed when the USMS JSD provides evidence that its written acquisition plan captures the reasons why a firm fixed price contract was not the most advantageous contract type to the government, including a discussion on what actions are planned to minimize the use of other than firm fixed price contracts in future solicitations that are now being formally documented in its written acquisition plan.

3. Work with JMD Procurement Staff to determine the appropriate inclusion of FAR clauses 52.215-2 and 52.216-7 in current and future T&M contracts.

Resolved. The USMS JSD agreed with our recommendation. The USMS JSD stated in its response that it will work with the USMS Procurement Executive or designee to liaise with the JMD Procurement Staff on determining the appropriateness of using these clauses.

This recommendation can be closed when the USMS JSD provides evidence of collaboration with the JMD Procurement Staff, such as meeting minutes or correspondence, and that indicates whether a determination on the inclusion of FAR clauses 52.215-2 and 52.216-7 in current and future T&M contracts has been made based on this collaboration.

4. Implement and adhere to a process that evaluates the accounting systems of entities that submit proposal for CSO services contracts to ensure that the contractor has the ability to accumulate, bill, and record costs in its accounting system at the contract level.

Resolved. The USMS JSD agreed with our recommendation. The USMS JSD stated in its response that prior to award it will require offerors to demonstrate in their business proposals their capability to implement the necessary organization, experience, accounting and operational controls, and detail their accounting system structure as it pertains to the CSO contract.

This recommendation can be closed when we receive evidence that the USMS JSD has implemented and adheres to the requirement that the accounting and operational controls of a potential contractor are evaluated and formally documented in its contract files.

5. Implement and adhere to the formal written standard operating procedures for CSO services contract procurements the USMS JSD developed that addresses both its process for evaluating prospective contractors' integrity and business ethics and its process for responding to Fraud Alerts or similar notifications.

Resolved. The USMS JSD agreed with our recommendation. The USMS JSD provided a draft Standard Operating Procedure designed to ensure continuity of operations. Additionally, the response stated that the USMS JSD will defer to the FAR, Justice Acquisition Regulation, and agency policy if it deviates from the USMS JSD Standard Operating Procedure (SOP) for CSO procurement, and will update the SOP to conform to these sources as needed.

This recommendation can be closed when we receive the USMS JSD's final Standard Operating Procedures that address the process for evaluating prospective contractors' integrity and business ethics and its process for

responding to Fraud Alerts or similar notifications for CSO services contract procurements.



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