



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



Audit of the Federal Bureau of Investigation's Aircraft Lease Contract Awarded to Midwest Jet Center, LLC, DBA Reynolds Jet Management

**AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S
AIRCRAFT LEASE CONTRACT AWARDED TO
MIDWEST JET CENTER, LLC, DBA
REYNOLDS JET MANAGEMENT**

EXECUTIVE SUMMARY

The Department of Justice Office of the Inspector General (OIG) audited a sole source contract between the Federal Bureau of Investigation (FBI) and Reynolds Jet Management (RJM), an aircraft management and jet charter company, to lease a Gulfstream G-V (G5) jet.¹ The lease was for the 6-month period of January 31, 2016, to July 30, 2016, and the total amount expended was \$2.4 million. The FBI had previously leased this aircraft from RJM under a separate contract from October 2010 through January 30, 2016.

The objectives of this audit were to: (1) determine whether the FBI adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of the FBI's contract oversight, and (3) determine if RJM properly invoiced the government and complied with the terms and conditions of the contract award.

We identified several deficiencies with the FBI's awarding and oversight of the 6-month lease extension for the G5 aircraft, including non-compliance with the Federal Acquisition Regulation (FAR). We believe that these deficiencies signify inadequacies in the FBI's contract administration practices. Specifically, the FBI did not award the contract action in accordance with the FAR that requires the proper contracting personnel to approve a sole source justification prior to awarding the contract. Instead, the sole source justification documents were dated June 2016 – nearly 5 months into the 6-month lease. Further, the FBI did not formally award the contract until approximately 1 month after the period of performance began. Additionally, the FBI did not include specific performance metrics in the contract. During the contract period of performance, the leased G5 aircraft experienced significant downtime for unscheduled maintenance, which, based upon documentation provided by the FBI, negatively affected FBI missions. According to FBI aircraft log data, the leased G5 aircraft was unavailable for 44 days of the contract's period of performance, which we computed to equate to approximately \$580,000 of the total contract value. Because the contract did not include specific performance metrics, the FBI did not have any meaningful recourse for the significant unexpected downtime of the leased G5 aircraft. Nonetheless, RJM complied with the stated terms and conditions of the contract.

In addition to the weaknesses we identified with the FBI's actions in awarding the lease extension for the G5 aircraft, we also identified weaknesses with the FBI's execution of its contract administration responsibilities. For example, the FBI did

¹ The FBI awarded the contract to Midwest Jet Center, LLC, which was doing business as Reynolds Jet Management (RJM). We refer to the contractor as RJM throughout the report.

not complete a comprehensive bilaterally agreed-upon pre-inspection of the G5 aircraft. At the conclusion of the lease, RJM identified needed repairs to the aircraft that RJM deemed to be in excess of normal wear and tear, and submitted requests for equitable adjustment to the FBI for \$2.4 million. Without a documented pre-inspection agreed to by both parties, we could not determine the accuracy of RJM's requests for equitable adjustment. The FBI maintains these requests are excessive and include items that should be considered normal wear and tear. As of January 2017, the FBI and RJM had not reached an agreement regarding the request. We also determined that the FBI did not: (1) adequately review invoices, (2) pay invoices in a timely manner, (3) maintain sufficient documentation in the contract file to show a complete history of the contract action, or (4) enter accurate information into the Federal Procurement Data System – all of which are in non-compliance with the FAR.

We also identified issues related to the accuracy of the contractor's technical proposal and the completion of deliverables stated in that proposal. For example, the technical proposal listed a specific back-up aircraft that could be used if the leased G5 aircraft was unavailable for use for an extended amount of time. However, RJM officials told us that this specific aircraft would not have been available to the FBI if requested, but that a similar aircraft could have been provided.

While the deficiencies we identified were limited to the RJM contract action that we audited, we identified similar issues in a previous contract audit. In September 2016, the OIG issued an audit report examining certain FBI contracts for bulk fuel procurements.² During the previous OIG audit, we reported on several instances where the FBI did not comply with the FAR in its administration of the contracts, and many of the previously reported weaknesses are similar to those we identified on this audit. Our September 2016 report made several recommendations to the FBI to improve these aspects of its contract administration processes. Following the issuance of our previous report, the FBI provided evidence of corrective actions taken or planned to address the findings from our prior audit. Because the G5 aircraft lease we audited ended in July 2016, these corrective actions also impact our current findings. Therefore, we believe the FBI needs to assess the findings from this audit, our prior audit, and its corrective actions to determine what actions need to be taken to improve the FBI's compliance with the FAR and internal FBI policies.

Our report contains seven recommendations that address the deficiencies we identified. We discuss our findings in detail in the Findings and Recommendations section of the report. The audit objectives, scope, and methodology are more fully described in Appendix 1. In addition, we discussed the results of our audit with FBI and RJM officials and included their comments in the report, as applicable. Further, we requested a written response to our draft report from the FBI and RJM. RJM's

² U.S. Department of Justice Office of the Inspector General, *Audit of the Federal Bureau of Investigation's Fuel Procurement Contracts Awarded to the Petroleum Traders Corporation*, Audit Report 16-25 (September 2016).

response is appended to this report as Appendix 2. The FBI's response is appended to the report as Appendix 3. Appendix 4 contains our analysis of RJM's and the FBI's responses and a summary of actions necessary to close the recommendations.

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AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S AIRCRAFT LEASE CONTRACT AWARDED TO MIDWEST JET CENTER, LLC, DBA REYNOLDS JET MANAGEMENT

INTRODUCTION

The Federal Bureau of Investigation's (FBI) Special Flight Operations Unit (SFOU) uses dedicated aircraft to conduct counterterrorism missions and other operations related to a variety of investigations, perform foreign transfers of custody, and provide executive travel for the FBI Director and the Attorney General. At the beginning of our audit, this fleet of aircraft consisted of four airplanes.³ The Department of Justice (DOJ) Office of the Inspector General (OIG) audited a contract between the FBI and Reynolds Jet Management (RJM) for the contract lease extension of a Gulfstream G-V (G5) aircraft, which was one of the airplanes in SFOU's fleet.⁴ RJM is a privately held partnership headquartered in Cincinnati, Ohio, that manages and leases aircraft to government and private clients.

In September 2010, the FBI leased a G5 aircraft from RJM to support SFOU's mission (shown in Figure 1). The original firm-fixed-price lease was for 1 year and 4 option years at a cost of \$360,000 per month (or a total of \$21.6 million). When this period ended in October 2015, the FBI extended the original lease for an additional 4 months at a cost of \$400,000 per month (or a total of \$1.6 million). At the end of the extended lease in January 2016, the FBI entered into a new 6-month lease with RJM for the same aircraft at \$400,000 per month (or a total of \$2.4 million). This new lease's period of performance was January 31, 2016, through July 30, 2016. Our audit focuses primarily on the most recent 6-month lease.

Figure 1

G5 Aircraft Leased from RJM



Source: DOJ OIG

A contracting officer in the FBI's Mission Support Contracts Unit generally handled the contracting activities for the most recent 6-month lease. The SFOU handled the day-to-day operations of the leased G5 aircraft. An official within the SFOU was also the technical point of contact for the contract and was involved in the review of invoices.

³ These four airplanes managed by SFOU are only a portion of the FBI's overall fleet of aircraft.

⁴ The FBI awarded the contract to Midwest Jet Center, LLC, which was doing business as Reynolds Jet Management (RJM). We refer to the contractor as RJM throughout the report.

OIG Audit Approach

Our audit objectives were to: (1) determine whether the FBI adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of the FBI's contract oversight, and (3) determine if RJM properly invoiced the government and complied with the terms and conditions of the contract award.

In conducting our audit, we tested compliance with what we consider to be the most important conditions of the contract action. Unless otherwise stated in our report, the criteria we used to evaluate compliance are contained in the Code of Federal Regulation, the Federal Acquisition Regulation (FAR), the Department of Justice Acquisition Regulation, the Department of Justice Procurement Guidance Documents, and internal FBI policies and procedures. We interviewed key FBI employees in the Finance Division and SFOU at FBI headquarters; Manassas, Virginia; and Quantico, Virginia, as well as RJM employees involved with the lease of the G5 aircraft in Cincinnati, Ohio. We also reviewed relevant documentation, including award documents, invoices, and aircraft maintenance records.

FINDINGS AND RECOMMENDATIONS

We identified several deficiencies with the FBI's awarding and oversight of the 6-month lease extension for the G5 aircraft, including significant instances of non-compliance with the FAR. Specifically, the FBI did not prepare a sole source justification or execute the contract before the contract award's period of performance began. In addition, the FBI did not incorporate specific performance metrics within the contract. As a result, the FBI did not have any meaningful recourse for significant unexpected downtime of the leased G5 aircraft. Moreover, the FBI was unable to provide a comprehensive bilaterally agreed upon pre-inspection document of the G5 aircraft at the beginning of the original lease to protect its interests in the event the contractor submitted unexpected repair claims, as ultimately occurred. We also found that the FBI did not adequately review and pay invoices timely in accordance with the FAR, thereby incurring a small amount of interest penalties. Finally, we determined that RJM complied with the terms and conditions of the contract, but did not submit to the FBI an accurate technical proposal, including a provision for a specific back-up aircraft that was not, in fact, available.

Deficiencies in Contract Award Activities

SFOU manages a variety of aircraft that are a portion of the FBI's overall fleet. These aircraft support FBI investigations, perform foreign transfers of custody, and provide executive travel for the FBI Director and the Attorney General. In September 2010, the FBI entered into a lease for a G5 aircraft with RJM, making it the second long-range aircraft in SFOU's fleet. In September 2015, the FBI awarded a lease for a newer long-range aircraft to replace the G5 aircraft leased from RJM. FBI officials told us that the availability of this newer aircraft was affected by both a requirement to install an Executive Communication Package in this aircraft and a protest filed against the award of the new lease. Because of these factors, the FBI decided in January 2016 to extend the lease on the original G5 aircraft leased from RJM for an additional 6 months (January 31 through July 30, 2016) to ensure continuity of missions. As discussed in the following sections, we identified several deficiencies in the FBI's actions to execute the 6-month lease for the G5 aircraft.

Sole Source Justification Not Completed Prior to Award

According to the FAR, contracting officers shall not commence negotiations for a sole source contract without providing for full and open competition unless the Contracting Officer prepares a sole source justification and the proper contracting

personnel approve it in writing.⁵ The FBI's Contracting Officer and competition advocate did not sign and approve the justification until June 2016 – approximately 3 months after the contract was executed and 4.5 months after the period of performance began.⁶ As a result, the FBI did not appropriately award the delivery order because the sole source justification was not signed prior to the award and the FBI could not provide evidence that the task was performed at an appropriate time. We believe that the FBI needs to improve its contracting process to ensure sole source justifications are completed and approved prior to the awarding of contracts and contractor performance.

Contract Not Executed Timely

The Contracting Officer executed the contract lease extension more than 1 month after the period of performance began. According to documents in the contract file and the Federal Procurement Data System (FPDS), the Contracting Officer awarded a sole source delivery order for the G5 aircraft lease extension on March 7, 2016.⁷ However, the period of performance of the G5 aircraft lease was from January 31, 2016, through July 30, 2016.

According to the FAR, when a definitive contract cannot be executed in sufficient time to meet the government's needs, the Contracting Officer may use a letter contract.⁸ The FAR states that a letter contract should be as complete as possible at the time it is awarded, as well as: (1) document acceptance of the terms by the contractor, (2) outline the limitation of government liability, and (3) provide details regarding negotiation of the definitized contract.⁹ In lieu of an executed contract or letter contract, the Contracting Officer sent the contractor a notice of intent to proceed with the lease extension on February 1, 2016, which indicated the FBI's intent to extend the lease of the G5 aircraft through July 30, 2016, but did not contain any further details.

The FBI stated that it is better to ensure documentation is formally executed prior to the start of contract performance. Otherwise, once performance begins, an implied-in-fact contract may arise, which carries risk for both the government and

⁵ FAR 6.303-1(a) requires a Contracting Officer to obtain approval prior to negotiating on a sole source contract. FAR 6.304(a)(2) explains that for contracts between \$700,000 and \$13.5 million, this approval comes from the advocate for competition at a procuring activity.

⁶ FAR 6.502(a) defines competition advocates as agency personnel who are responsible for, among other duties, promoting full and open competition and challenging barriers to the acquisition of commercial items and full and open competition.

⁷ FPDS is a repository for government-wide procurement data.

⁸ According to the FAR, a letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. In lieu of a definitized contract, the FAR defines an additional option which is the completion of a letter contract.

⁹ FAR 16.603-2(a) states that a letter contract should be as complete and definite as feasible under the circumstances. FAR 16.603-4(b) outlines the required clauses that must be included within a letter contract.

the contractor because the absence of written terms can lead to disputes about the terms to which the parties have actually agreed. In this instance, the contract was not awarded timely, and while the FBI could have issued a letter contract, the FBI Contracting Officer did not do so. Therefore, we believe the FBI's formal award documentation did not comply with the FAR, and that the FBI needs to improve its contracting process by ensuring contracts are awarded prior to contractor performance when feasible. In those instances where it is not feasible, we believe the FBI should consider preparing and executing a detailed letter contract in accordance with the FAR until a final contract is executed.

Performance Metrics Not Included in the Aircraft Lease

In addition to not completing certain contract actions prior to the beginning of the period of performance, we determined that the FBI did not include specific performance metrics in the awarded contract. Without measurable performance metrics, the FBI could not hold the lessor accountable for unscheduled maintenance that affected FBI missions. The 6-month lease extension states "all services shall be provided in accordance with the terms and conditions set forth in [the contract]." However, the contract did not provide any specific terms or conditions. Instead, it simply states "GV lease extension through July 2016." Further, the FBI's request for proposal did not contain any specific performance requirements other than a statement that the aircraft should be available to the maximum extent practicable for FBI use when taking into account maintenance and inspections. Based upon the stated terms, RJM complied with the contract.

Prior to this contract action, the FBI had experienced unscheduled maintenance issues on the leased G5 aircraft during the previous lease period. According to a March 2016 e-mail from SFOU to the Contracting Officer, a number of FBI operational activities between December 2014 and January 2016 were negatively impacted due to maintenance issues with the leased G5 aircraft. For example, this e-mail states that in December 2014 the leased G5 aircraft experienced "steering failure" during the first leg of the FBI Director's trip, which resulted in the FBI Director having to wait for a replacement aircraft to complete the intended mission.¹⁰ The e-mail also states that on October 6, 2015, a computer failure caused the aircraft to become inoperable during an overseas mission – halting the mission and requiring FBI personnel to spend an additional 4 days in Cypress. The e-mail also indicates that the FBI had to cancel a flight related to an on-going high-profile mission during this period. The FBI maintains that the cancellation of a flight, whether executive or investigative, does not mean the overall missions were not completed via other means.

¹⁰ SFOU flight information is maintained in two systems – the Professional Flights Management (PFM) system and the Bureau Aviation Operations (BAO) system. According to FBI personnel, these systems do not always include details showing the impact that unavailable aircraft had on specific FBI missions. Auditing these FBI flight systems was not within the scope of our audit. As a result, in evaluating the impact of the performance of the aircraft, we used the contents of the March 2016 e-mail that listed various missions affected by the leased G5 aircraft's maintenance issues. The e-mail predated the announcement of our audit in July 2016.

Using FBI aircraft log data, we determined that between October 1, 2015, and January 30, 2016, (the period of the lease extension awarded immediately prior to the 2016 lease extension of the G5 aircraft), the leased G5 aircraft was unavailable due to maintenance for 23 of 122 total days, or 19 percent of the time. In summarizing the maintenance issues, the SFOU employee who prepared the March 2016 e-mail stated that the leased G5 aircraft had three times as many maintenance issues as the FBI-owned G5 aircraft, and that the leased G5 aircraft had major or many malfunctions on every mission in the first quarter of 2015. Both RJM and FBI officials stated that aging aircraft, such as this G5, have a higher probability for increased maintenance issues.

According to the same March 2016 e-mail, the FBI continued to encounter unscheduled maintenance issues during the lease extension that started in January 2016. The e-mail indicated that at the start of the lease on January 31, 2016, the aircraft was out of service because "elevator actuator and hard over protection" failures occurred on January 28, 2016, during the Attorney General's trip to Zurich. According to the FBI, this issue resulted in the aircraft being in and out of maintenance for the next 34 days, and we were told that it caused the cancellation of the FBI Director's travel on a high-profile mission. In total, we found that the aircraft was unavailable for 44 of the 182 days, or almost one quarter of the period from January 31, 2016, to July 30, 2016, including 87 percent (27 days) of the initial 31 days covered by this contract action. Based on the total contract value and period of performance, the cost per day of the leased G5 aircraft was \$13,187. Consequently, the contract value for the 44 days the aircraft was unavailable was approximately \$580,000.

Following discussions about our preliminary findings, the FBI questioned our computation that the aircraft was unavailable for 44 days during the most recent 6-month lease extension. The FBI said that at times, it dropped off the aircraft a few days in advance of the actual maintenance, and therefore, the FBI asserts the aircraft was not truly unavailable for 44 days. However, the FBI did not have any documentation to support its claim other than the FBI's aircraft log that supports our 44-day computation. Instead, the FBI said the only way to determine the number of days the aircraft was down was to look at the maintenance records, which were returned to the owner of the aircraft.¹¹ Moreover, in August 2016, the FBI submitted to RJM an official letter related to the aircraft's unavailability, and the downtime of the aircraft cited in that letter was consistent with our calculations.¹²

¹¹ At the formal exit conference, RJM officials told us that it also believed our computation of the aircraft being down for 44 days was inaccurate. RJM subsequently estimated the downtime of the leased G5 aircraft at 32 days, which was not consistent with the FBI's aircraft log.

¹² After the conclusion of the lease, the FBI corresponded with RJM about the significant unexpected downtime of the leased G5 aircraft. However, the FBI did not take this course of action until after RJM submitted requests for repairs it deemed to be in excess of normal wear and tear, which is discussed in detail in the following section of the report.

In that claim, the FBI sought reimbursement for the downtime of the leased G5 aircraft.¹³

Despite the potential for some differences in the exact number of days the aircraft was unavailable, the core issue remains that the FBI did not define any specific performance metrics and, therefore, did not have any meaningful recourse it could take during period of performance for the significant unexpected downtime of the leased G5 aircraft. Instead, the FBI continued to pay the monthly lease amount despite the leased G5 aircraft's unavailability for significant periods. We asked the FBI why the contract did not contain specific performance metrics, and the FBI Contracting Officer acknowledged that specific performance metrics should have been incorporated into the contract. We believe that the FBI should ensure that performance metrics are included within appropriate contracts to protect the government's interests in the event of contractor non-performance.

Inadequate Contract Administration

In addition to the weaknesses we identified with the FBI's actions in awarding the lease extension for the G5 aircraft, we also identified weaknesses with the FBI's execution of its contract administration responsibilities. In particular, the FBI did not document a pre-inspection of the leased G5 aircraft; did not conduct an adequate review of invoices, including ensuring timely payment; did not maintain complete contract files; and did not accurately input information into the FPDS.

Lack of Aircraft Pre-Inspection Documentation

The January 2016 lease extension included a provision that the aircraft would be returned to the owner in the same condition it was received with the exception of ordinary wear and tear.¹⁴ Upon conclusion of the lease period, RJM identified that the aircraft was in need of repairs it deemed in excess of normal wear and tear. On July 27, 2016, and August 3, 2016, RJM sent requests for equitable adjustment to the FBI totaling approximately \$2.4 million. As of January 2017, the FBI and RJM had not reached a settlement regarding the requests.

To review these requests as part of our audit, we asked the FBI for evidence of the aircraft's condition at the start of the original lease in October 2010. Although the FBI officials told us that a pre-inspection was performed, the FBI was unable to provide a comprehensive bilaterally agreed upon pre-inspection document. Instead, the FBI provided eight photographs of pre-existing damages that the FBI stated existed at the time the FBI accepted the aircraft in October 2010. RJM, in contrast, stated that a pre-inspection was not performed or documented. Based on the lack of a documented pre-inspection, it appears that neither the FBI nor RJM established a comprehensive baseline that could be used at

¹³ The FBI's claim covered October 2015 through July 2016 with a total loss of use valued at \$968,500, which included fuel costs for travel to and from the maintenance facilities.

¹⁴ No post-inspection was performed following the end of the prior award period.

the end of the lease to judge changes in the aircraft's condition. Therefore, we could not determine the accuracy of RJM's requests for equitable adjustment. We believe that the FBI should perform and document physical inspections of large leased assets at the beginning of a contract and have the condition of the asset agreed upon by both parties to protect its interests in the event a contractor submits unexpected repair claims.

Inadequate Review and Payment of Invoices

We reviewed invoice documentation for the most recent 6-month aircraft lease extension between the FBI and RJM. Because the lease was a firm-fixed-price contract, RJM billed the FBI \$400,000 per month, or a total of \$2.4 million during the period of performance. While we confirmed that the FBI paid RJM \$2.4 million, we identified weaknesses in the FBI's review and payment of the invoices as discussed in the following paragraphs.

According to the FAR, a proper invoice must contain, among other items, the contract number for the goods or services provided.¹⁵ The FAR also states that if an invoice does not comply with the definition of a proper invoice, the invoice must be returned to the vendor outlining the reasons it was deemed to be improper.¹⁶ The FBI's invoice approval policy reiterates these FAR requirements. We found that RJM did not submit proper invoices to the FBI in accordance with the FAR. Specifically, RJM submitted invoices numbered 1040 FBI and 1042 FBI with the previous contract number and invoice numbered 1041 FBI without a contract number. Moreover, the FBI did not return these improper invoices with an explanation to RJM, as required by the FAR and FBI policy. Instead, the FBI approved all three invoices for payment on the most recent 6-month lease extension. While the payment of these three invoices were applied to the correct contract, approving invoices with incorrect contract information increases the risk that payments will not be applied to the correct contracts and, in turn, could result in the overpayment or underpayment of contractors.

In addition, we determined that the FBI's review of two other invoices was not performed in a timely manner. The FBI's invoice approval policy outlines that an invoice is to be accepted within 7 calendar days of receipt if acceptable for payment or returned to the vendor no later than 7 days after receipt of the invoice. The FBI formally documents acceptance of an invoice within its financial management system. During our review of invoices, we found that the FBI did not review two of the six invoices within 7 calendar days of receipt.

In addition to not reviewing the invoices within 7 days of receipt, we found that the FBI did not pay two invoices within the 30-day timeframe required by the

¹⁵ FAR 32.905(b)(1) outlines the components of a proper invoice.

¹⁶ FAR 32.905(b)(3).

FAR.¹⁷ The FBI paid invoice numbered 1044 FBI approximately 1 week late and incurred a \$167 interest penalty charge, which it paid. Moreover, the FBI paid invoice numbered 1043 FBI (dated April 1, 2016) 94 days after its due date. According to the FBI, at the time RJM submitted this invoice, the FBI was undergoing a change in its payment processes, and the invoice appeared to be misplaced and was not processed for payment within the required 30-day timeframe. On July 26, 2016, the FBI requested from RJM a copy of the invoice and processed it for payment on August 2, 2016. Although RJM did not request the FBI to pay a late payment penalty for the April invoice, we computed that the FBI should have incurred an obligation to pay \$2,832 for the late payment in accordance with the Prompt Payment Act.¹⁸ We believe that the FBI needs to improve its contract administration practices to ensure invoices are properly reviewed and paid in a timely manner to avoid late payment penalties.

Inadequate Assignment of Oversight Responsibilities

According to the FAR, contracting officers can appoint a Contracting Officer Representative (COR) to assist with oversight of contract performance and billing.¹⁹ A COR's responsibilities could include reviewing invoices, verifying the existence of adequate funding, and ensuring the goods or services have been received. Although the FBI's SFOU was responsible for the day-to-day operations of the leased G5 aircraft, no one in that unit was formally appointed as a COR and such appointment was not documented in the contract file for the most recent 6-month lease extension.

Because the FBI did not formally appoint a COR, the Contracting Officer retained the COR responsibilities. However, the Contracting Officer was not located at the aircraft hangar in Manassas, Virginia, and did not possess the technical expertise that an FBI pilot or maintenance personnel would have to adequately oversee the operations of the aircraft and that we would expect in someone serving as a COR on this contract. The Contracting Officer stated that an official within SFOU was assigned as the technical point of contact (POC) for the lease. However, this official was not given any specific, written guidance on the responsibilities associated with this position. Despite the lack of specific, written guidance, the technical POC reviewed the invoices prior to the Contracting Officer's review, but the technical POC's review was only to ensure that the invoiced amounts were correct. Given the maintenance and billing issues previously discussed, we believe the FBI should have formally designated a COR (with issuance of a COR appointment letter) or provided specific, written guidance of the expected responsibilities to the technical POC. Therefore, we believe that the FBI needs to

¹⁷ FAR 32.904(b)(1).

¹⁸ FAR 32.904(b)(1)(i) requires payment to be made on the 30th day after the designated billing office received a proper invoice from the contractor.

¹⁹ FAR 1.602-2(d).

improve its contract administration practices to ensure that contract oversight tasks are formally and clearly articulated to those responsible for accomplishing them.

Incomplete Contract Files

According to the FAR, contracting officers should keep contract files that contain sufficient documentation to constitute a complete history of the contract action.²⁰ We determined that the FBI's contract file for the most recent 6-month lease of the G5 aircraft did not comply with the FAR requirement. For example, the contract file included the approved sole source justification, which indicated the FBI conducted market research during the process of leasing another aircraft and used that research for determining the fairness and reasonableness of the proposed price for the most recent 6-month lease extension. However, the file did not include documentation of that market research to support the FBI's determination that the contract price was fair and reasonable. Additionally, although the FAR requires equipment acquisitions and renewals or extensions of existing equipment leases to include an analysis of lease or purchase options, we could locate no such analysis in the contract file.²¹ Further, the contract file did not contain a copy of the invoices or invoice tracking spreadsheet as required by the FBI's contract file checklist. In addition, the contract file did not contain contractor performance assessments.²² Because the contract file was incomplete, we were unable to examine a complete history of the contract action. We believe that the FBI needs to improve its contract administration practices to ensure that relevant historical information on the contract action is sufficiently documented in the contract files in accordance with the FAR and FBI policy.

Inaccurate FPDS Entries

According to the FAR, contracting officers are responsible for the completion and accuracy of individual contract action reports in FPDS.²³ We found that the FPDS entries for the FBI contract action with RJM were inaccurate. For example, the FPDS entry listed the place of performance as Cincinnati, Ohio. While RJM is headquartered in Cincinnati, Ohio, the actual place of performance for the FBI was Manassas, Virginia. Additionally, the effective start date for the contract action was listed in FPDS as March 7, 2016, but it should have been January 31, 2016, which is when the period of performance began. Finally, the Contracting Officer did not

²⁰ 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.

²¹ FAR Subpart 7.4 – *Equipment Lease or Purchase*.

²² As discussed later in the report, the Contracting Officer provided a contractor assessment to another government agency during that agency's contract award process with RJM.

²³ FAR 4.604(b)(1), *Contract Reporting Responsibilities* states that the responsibility for the completion and accuracy of the individual contract action report resides with the Contracting Officer who awarded the contract action.

include the correct contractor address in FPDS. We believe that the FBI needs to improve its contract administration practices to ensure information entered into FPDS is accurate.

Previously Reported Deficiencies

In September 2016, the OIG issued an audit report examining two fiscal year 2015 FBI contracts for bulk fuel procurements.²⁴ During that previous OIG audit, we reported on several instances where the FBI did not comply with the FAR in its administration of the contracts, and many of the previously reported weaknesses are similar to those we identified on this audit. Specifically, as discussed in both our prior report and the preceding sections of this report, we found that the FBI inadequately reviewed invoices, paid invoices untimely, inadequately assigned oversight responsibilities, kept incomplete complete contract files, and inaccurately entered information into FPDS. We believe that it is notable that these two audits of FBI contracts had similar findings of recent contract administration weaknesses.

Our September 2016 report made several recommendations to the FBI to improve these weaknesses in its contract administration processes. Following the issuance of our previous report, the FBI provided evidence of corrective actions taken or planned to address the findings from our September 2016 audit. Because the G5 aircraft lease we audited ended in July 2016, these corrective actions also impact our current findings. Therefore, we believe the FBI needs to assess the findings from this audit, our prior audit, and its corrective actions to determine what actions need to be taken to improve the FBI's compliance with the FAR and internal FBI policies.

Inaccurate Contractor Technical Proposal and Deliverables Not Completed

We reviewed RJM's technical proposal, which RJM submitted to the FBI in February 2016, and determined the proposal contained inaccurate statements. An RJM executive stated that the FBI requested a quick turnaround for RJM to submit the technical proposal and, thus, RJM rushed to complete the proposal within the requested timeframe. As a result, RJM stated it rolled forward the proposal from the original contract action in 2010. Specifically, RJM stated that the leased G5 aircraft had a dispatch reliability rate of 99 percent prior to February 2016. RJM officials involved in the award and operation of the leased G5 aircraft acknowledged to the OIG that the reliability rate cited in the proposal was incorrect and was actually less than 99 percent.

Additionally, the technical proposal listed a specific secondary (or back-up) aircraft that could be used if the primary leased G5 aircraft was unavailable for use for an extended amount of time. The audit team discussed this back-up aircraft with officials from both the FBI and RJM, and RJM officials stated that the specific

²⁴ U.S. Department of Justice Office of the Inspector General, *Audit of the Federal Bureau of Investigation's Fuel Procurement Contracts Awarded to the Petroleum Traders Corporation*, Audit Report 16-25 (September 2016).

back-up aircraft listed in the technical proposal, a Gulfstream G-550, would never have been available for FBI use. RJM officials told us that the FBI never requested the use of a back-up aircraft, and that if the FBI had asked, RJM would have provided a Gulfstream G4 aircraft, an older, less advanced aircraft.

Finally, the technical proposal stated that RJM would maintain a Quality Assurance Plan (QAP). According to RJM, a QAP would provide assurances to the FBI related to the aircraft's consistent performance in terms of quality, security, availability, dependability, and timeliness. An RJM official stated that a QAP was never completed. Upon further inquiry, the RJM official stated that the technical proposal for the January 2016 lease contained verbatim language from the technical proposal provided for the original lease of the aircraft in 2010. RJM officials explained that the original technical proposal was prepared by a consultant and that a QAP was not prepared for the original 5-year lease either.

While it is important to note that RJM failed to provide an accurate technical proposal to the FBI, it is similarly important to note that the FBI failed to recognize that the technical proposal was inaccurate. Further, the FBI never requested use of a back-up aircraft despite the significant downtime experienced with the leased aircraft, which relates to our finding on inadequate contract oversight. For instance, the Contracting Officer should have ensured the technical POC at SFOU was aware of the provision for a back-up aircraft and instructed the technical POC to provide information about significant maintenance issues so that the FBI would know when to request use of the back-up aircraft.²⁵ We recommend that FBI contracting officials ensure the FBI receives the proposed benefits identified within the technical proposals.

²⁵ The technical POC confirmed to us that he was not aware of the back-up aircraft cited in the technical proposal.

Inappropriate Preparation of a Past Performance Questionnaire

A past performance questionnaire is an additional evaluation tool contracting officers can use when making contract award decisions.²⁶ During an interview with an RJM official, we were told that the FBI completed a past performance questionnaire and submitted it to another government agency for consideration of an aircraft lease contract between RJM and that other agency. This questionnaire was completed by an FBI employee who was neither the technical POC nor had any contract administration or oversight responsibilities on the lease of the G5 aircraft. While this employee was involved with maintenance of the leased G5 aircraft, the employee was not involved in the awarding of the contract and was not assigned any contract oversight responsibilities. Therefore, this employee was not in a position to appropriately rate RJM on these issues. In an interview with the OIG, this employee indicated that he was not rating RJM but rather the owner of the aircraft – further supporting our belief that the questionnaire was not an accurate reflection of the FBI’s involvement with RJM. Although we do not know if the other government agency relied upon the FBI’s past performance questionnaire to award the contract to RJM, we believe that the FBI should ensure appropriate contract administration or oversight personnel, such as a Contracting Officer or COR, complete past performance questionnaires.

Recommendations

We recommend that the FBI:

1. Ensure contracts are awarded prior to the start of the period of performance when feasible. If not feasible, a detailed letter contract should be considered to reduce the potential for contract disputes.
2. Ensure that appropriate FBI contracting officials complete and execute justifications for other than full and open competition prior to awarding a sole source contract.
3. As appropriate for the contract type, ensure that specific performance metrics are incorporated into a contract so the FBI has meaningful recourse from the contractor in the event of non-performance.
4. Ensure that pre-inspections of large leased assets, such as this leased G5 aircraft, are performed, documented, and bilaterally signed.
5. Assess the similar findings from this audit and the prior DOJ OIG fuel procurement audit and develop a plan for improving compliance with the FAR and FBI policies. Specifically, this plan should address:
 - a. Adequate review and timely payment of invoices,
 - b. Adequate assignment of oversight responsibilities,

²⁶ FAR 13.106-2(b)(3)(ii)(B).

- c. Maintaining complete contract files, and
 - d. Accurate input of information into FPDS.
- 6. Reiterate to contracting officials the importance of ensuring technical proposals include accurate information and that deliverables are completed.
- 7. Reiterate to contracting officials the importance of ensuring past performance questionnaires are completed appropriately.

STATEMENT ON INTERNAL CONTROLS

As required by *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 audit of the contract awarded to RJM for the lease of a G5 aircraft was *not* made for the purpose of providing assurance on the entities' internal control structures as a whole. FBI management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of the report, the FBI needs to improve its internal controls to ensure compliance with all rules, regulations, and guidelines related to the award, administration, and oversight of the contract. Specifically, the FBI needs to: (1) ensure that its contracting officials properly award contract actions timely and justify those awards in accordance with the FAR, (2) adequately define requirements and performance measures within its contract actions to ensure the FBI is receiving the appropriate good or service required, (3) conduct pre-inspections of large leased assets to protect itself against future claims, (4) perform proper invoice reviews in a timely manner, and (5) maintain complete contract files and input accurate contract information into FPDS. The internal control deficiencies noted in the report prevented the FBI from seeking any recourse for the leased G5 aircraft being unexpectedly down for maintenance for 44 of the total 182 days within the lease period. The 44 days that the leased G5 aircraft was unavailable equated to \$580,000 of the total contract value.

Because we are not expressing an opinion on the FBI's internal control structure as a whole, this statement is intended solely for the information and use of the FBI. 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 the FBI and RJM'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. FBI and RJM's management are 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 auditees and that were significant within the context of the audit objectives:

- Federal Acquisition Regulation (FAR) 4.604(b)(1) – *Contract Reporting*
- FAR 4.801(b) – *Government Contract Files*
- FAR 6.303-1(a)(3) – *Other Than Full and Open Competition*
- FAR 6.304(a)(2) – *Other Than Full and Open Competition*
- FAR 11.002(a)(2) – *Describing Agency Needs*
- FAR 13.106-2(b)(3)(ii) – *Procedures*
- FAR 16.603-2(a) – *Letter Contracts*
- FAR 31.201-3 – *Contracts with Commercial Organizations*
- FAR 32.904(b) – *Prompt Payment*
- FAR 32.905(b) – *Prompt Payment*

Our audit included examining, on a test basis, FBI and RJM's compliance with the aforementioned laws and regulations that could have a material effect on the FBI's and RJM's operations. We interviewed auditee personnel, assessed internal control procedures, and examined contract award and administration records.

As noted in the Findings and Recommendations section of this report, we found instances where the FBI did not have controls in place to ensure compliance with the FAR. Specifically, we noted that the FBI did not properly ensure performance metrics were incorporated into the contract and did not properly document its sole source justification prior to awarding the contract.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of this audit were to: (1) determine whether the FBI adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of FBI's contract oversight, and (3) RJM properly invoiced the government and complied with the terms and conditions of the contract award.

Scope and Methodology

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

To accomplish the audit objectives, we reviewed various federal regulations and policies including the Code of Federal Regulation; FAR; Justice Acquisition Regulation; and FBI policies that involved contracting award, administration, and oversight.²⁷ We also interviewed approximately 20 FBI employees, including the Chief Acquisition Officer, contracting officials in the Finance Division, and personnel at the Special Flight Operations Unit (SFOU) who participated in acceptance of the aircraft, invoice processing, and management decisions affecting the award of the contract actions. Additionally, we interviewed three RJM employees involved in the awarding, ordering, and billing on this contract action.

We determined if FBI contracting officials properly awarded and administered the contract action in accordance with federal regulations and internal policies. Specifically, we determined if the FBI:

- Properly executed the contract prior to the period of performance beginning and if not, prepared a proper letter contract in accordance with FAR 16.603-2(a). This FAR states that a letter contract shall be used when the government's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible is sufficient time to meet the requirement.

²⁷ The applicable criteria for purposes of this audit were the same in the Justice Acquisition Regulation as in the FAR. Therefore, we only refer to the specific FAR requirements throughout the report.

- Properly completed a sole source justification and the competition advocate approves it in writing in accordance with FAR 6.303-1(a)(3) and FAR 6.304(a)(2).
- Properly included measurable performance standards and the method of assessing the contractor performance against performance standards in accordance with FAR 37.601(b)(2).
- Properly documented the pre-inspection of the aircraft.
- Reviewed contractor invoices in accordance with FAR 32.905(b)(1), which outlines the components of a proper invoice.
- Paid contractor invoices within 30 days in accordance with FAR 32.904(b).
- Maintained complete contract files in accordance with FAR 4.801(b), which states that the documentation in the files shall be sufficient to constitute a complete history of the transaction.
- Accurately entered information into the Federal Procurement Data System in accordance with FAR 4.604(b)(1), which states that the responsibility for the completion and accuracy of the individual contract action report resides with the contracting officer who awarded the contract action.
- Adhered to internal FBI policies; including the FBI Invoice Approval Process for Contracts, Purchase Orders, Delivery Orders, and Task Orders to ensure that FBI personnel were adequately reviewing invoices.

**REYNOLDS JET MANAGEMENT'S
RESPONSE TO THE DRAFT AUDIT REPORT**



June 17, 2017

Carol S. Taraszka
Regional Audit Manager
Chicago Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
500 West Madison Street, Suite 1121
Chicago, Illinois 60661

Subj.: Draft Audit Report - FBI's Aircraft Lease
Contract OJF-16-1200-K-0004114

Ref.: Department of Justice Transmittal Letter
Dated June 1, 2017; Draft Audit Report

Dear Ms. Taraszka:

Provided in response to the Reference (a) letter, Midwest Jet Center, LLC, DBA Reynolds Jet Management (RJM) hereby provides its official response to the Subject draft audit report prepared by you and your office.

The Department of Justice (DOJ) Office of the Inspector General's (OIG) confirmed in the Subject draft audit that there are no recommendations for RJM regarding any findings contained in the audit report. This letter outlines certain clarifications regarding the draft report. It was expressed in Reference (a) that this letter from RJM will be appended to the final audit report.

Comment and Clarifications:

1. It is stated in the Executive Summary, Findings and Recommendations section and elsewhere that "RJM complied with the terms and conditions of the contract, but did not submit to the FBI an accurate technical proposal, including a provision for a specific back-up aircraft that was not, in fact, available." It is noted and clarified that RFP and the Contract does not contain a requirement for a back-up aircraft.

654 Wilmer Ave. - Cincinnati - OH - 45226



2. In the section titled "Previously Reported Deficiencies" mention is made of other contracts where the FBI did not comply with the FAR in its own contract administration activities. It is noted and clarified that these fuel contracts being referred to are examples and are not with RJM and do not involve RJM in any way.

3. In the Executive Summary, Inadequate Contract Administration section and elsewhere mention is made of an Equitable Adjustment submitted by RJM for repairs and parts replacement needed to return the aircraft to the same condition it was in at the beginning of the contract, less ordinary wear and tear. It is noted and clarified that the Request for Equitable Adjustment and settlement for such items is a requirement of the contract that must be satisfied prior to being closed out. RJM is in the process of updating it's Request for Equitable Adjustment and expects the parties to work in a mutual manner to reach an equitable and final settlement.

RJM appreciates the opportunity this contract has provided to supply its excellent services in support the FBI in its important mission to keep safe the United States and its citizens here and abroad.

Regards,

A handwritten signature in black ink, appearing to read 'J. Mercer Reynolds'.

J. Mercer Reynolds
President
Reynolds Jet Management

A handwritten signature in black ink, appearing to read 'Curtis Jablonka'.

Curtis Jablonka
Vice President
Reynolds Jet Management

654 Wilmer Ave. - Cincinnati - OH - 45226

**THE FEDERAL BUREAU OF INVESTIGATION'S
RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

June 22, 2017

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, *Audit of the Federal Bureau of Investigation's Aircraft Lease Contract Awarded to Midwest Jet Center, LLC, DBA Reynolds Jet Management*.

We agree that it is imperative to remedy the deficiencies which were identified in the FBI's awarding and oversight of the lease extension for the aforementioned jet. In that regard, we concur with your seven recommendations for the FBI.

Should you have any questions, feel free to contact me. We greatly appreciate the professionalism of your audit staff throughout this matter.

Sincerely,

A handwritten signature in cursive script that reads "James C. Langenberg".

James C. Langenberg
Section Chief
External Audit and Compliance Section
Inspection Division

Enclosure

**OIG Audit of the FBI's Aircraft Lease Contract Awarded to Midwest
Jet Center, LLC DBA Reynolds Jet Management**

FBI'S RESPONSE TO THE OIG RECOMMENDATIONS

JUNE 22, 2017

Report Recommendation #1: Ensure contracts are awarded prior to the start of the period of performance when feasible. If not feasible, a detailed letter contract should be considered.

FBI response: The FBI concurs that contracts should be awarded prior to the start of the period of performance where feasible. However, a letter contract would not have been the appropriate vehicle here. This review dealt specifically with a bridge contract, and bridge contracts have several unique aspects that differentiate them from the general contracting process. For example, bridge contracts are almost always sole sources, with incumbents, to extend services in the short term until a new contract can be put in place. In addition, bridge contracts often occur under the same or similar terms and conditions as the original contract, and the parties have an established course of dealing with one another. For this reason, letter contracts are inappropriate given that they anticipate a situation where terms are not defined and where there will be future definitization. See FAR 16-603.2. In a bridge contract situation, the parties are generally aware of the terms of performance and the arrangement is not intended to be long term. For this reason, it does not make sense to have a schedule to facilitate definitization of the contract, as is required under the FAR for letter contracts. See *id.* Moreover, the Justice Acquisition Regulation requires the FBI to get approval from the Head of Contracting Activity for the Department of Justice prior to entering into a letter contract. This can be time consuming, and given the short shelf life of bridge contracts, is impractical. Thus, the FBI would not consider using a letter contract in a situation like the one discussed in the subject review.

Report Recommendation #2: Ensure that appropriate FBI officials complete and execute justifications for other than full and open competition prior to awarding a sole source contract.

FBI response: The FBI concurs that, where time permits, appropriate contracting officials should complete and execute justifications for other than full and open competition prior to awarding a sole source contract. If time does not permit, they should document the file appropriately. In certain circumstances, the FAR permits a justification to be approved after award. See FAR 6.302-2.

Report Recommendation #3: As appropriate for the contract type, ensure that specific performance metrics are incorporated into a contract so the FBI has a meaningful recourse from the contractor in the event of non-performance.

FBI response: Concur. The FBI will include metrics where such metrics will assist the FBI in effectively measuring contractor performance. However, some types of contracts,

and in particular certain types of services may not be conducive to empirical measurement.

Report Recommendation #4: Ensure that pre-inspection of large leased assets, such as aircraft, are performed, documented and bilaterally signed.

FBI Response: Concur. Evidence in the file indicated that a pre-inspection occurred, but a signed acknowledgement was not executed. Procurement management will reiterate the need for inspection and documentation.

Report Recommendation #5: Assess the similar findings from this audit and prior DOJ OIG fuel procurement audit, and develop a plan for improving compliance with the FAR and FBI policies. Specifically, this plan should address: a. Adequate review, and timely payment of invoices, b. Adequate assignment of oversight responsibilities, c. Maintaining complete contract files, d. Accurate input of information into FPDS.

FBI Response: Concur. The FBI Procurement Section will implement such a plan.

Report Recommendation #6: Reiterate to contracting officials the importance of ensuring technical proposals include accurate information and that deliverables are completed.

FBI Response: Concur. The FBI will stress to CORs, and end user evaluators, the need for precision and oversight in contract performance.

Report Recommendation #7: Reiterate to contracting officials the importance of ensuring past performance questionnaires are completed appropriately.

FBI Response: Concur. All CORs will be reminded of the importance of accurate evaluations.

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

The OIG provided a draft of this audit report to Midwest Jet Center, LLC, doing business as Reynolds Jet Management (RJM) and the Federal Bureau of Investigation (FBI). RJM's response is incorporated in Appendix 2 of this final report, and the FBI's response is incorporated in Appendix 3. In response to our draft audit report, the FBI concurred with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved.

Although none of our recommendations were directed to RJM, the contractor provided a response to our draft audit report that included clarifications related to three areas of the report. In reviewing these clarifications, we do not disagree with any of the statements; however, none of RJM's statements necessitated revisions to our report.

The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for the FBI:

- 1. Ensure contracts are awarded prior to the start of the period of performance when feasible. If not feasible, a detailed letter contract should be considered to reduce the potential for contract disputes.**

Resolved. The FBI concurred with our recommendation to award the contract prior to the start of the period of performance when feasible. However, in its response, the FBI stated that this 6-month lease was a bridge contract, which has several unique aspects that differentiate it from the general contracting process. Therefore, the FBI stated that a letter contract was not an appropriate option for this lease because the FBI and RJM had an established course of dealing with each other and the terms and conditions would be similar to the original contract.

While we acknowledge the FBI and RJM had established a working relationship through the original contract, our report indicates that not having a definitized contract in place prior to the period of performance created additional risk to the FBI if RJM later decided to dispute the contract terms. In addition, bridge contracts are not defined in the Federal Acquisition Regulation (FAR), which is the primary regulation used by all federal executive agencies in their acquisition of supplies and services with appropriated funds. Further, an October 2015 Government Accountability Office (GAO) report identified various risks with the use of bridge contracts

because these actions are almost always noncompetitive and are associated with higher contract prices and the inefficient use of staff and resources. Therefore, we believe the FBI should consider all of these factors during future contract awards.

This recommendation can be closed when we receive evidence that the FBI has taken appropriate action to ensure contracts are awarded prior to the start of the period of performance when feasible.

2. Ensure that appropriate FBI officials complete and execute justifications for other than full and open competition prior to awarding a sole source contract.

Resolved. The FBI concurred with our recommendation to complete and execute justifications for other than full and open competition prior to awarding a sole source contract. However, the FBI stated that in certain circumstances, the FAR permits a justification to be approved after the award, citing in its response FAR 6.302-2. In fact, the only instance in which a justification does not need to be documented prior to the award is identified in FAR 6.302-2, unusual and compelling urgency. FAR 6.302-2(c)(1) states that if the execution of a justification would unreasonably delay the acquisition, the justification for unusual and compelling urgency may be made and approved after a contract is awarded.

While we acknowledge that the FAR 6.302-2 does allow for a sole source justification to be approved after a contract is awarded, the FBI's justification for this contract action dated June 2016 did not include this FAR citation, and the contract file did not indicate the FBI had any concerns that executing the justification in advance of the period of performance would unreasonably delay the acquisition. Instead, the FBI indicated that FAR 6.301-1 was applicable, which states that only one responsible source and no other supplies or services will satisfy agency requirements. However, FAR 6.301-1 requires a justification for other than full and open competition to be executed prior to the contract award. Therefore, the FBI's sole source justification should have been completed and executed prior to the awarding of the contract and period of performance. As indicated in our report, the contract file did not contain any discussion of the timing of the sole source justification, much less a justification for unusual and compelling urgency that would be required for completion and execution of a justification for other than full and open competition prior to awarding a sole source contract.

This recommendation can be closed when we receive evidence that the FBI has taken appropriate action to ensure that the proper FBI officials complete and execute justifications for other than full and open competition prior to awarding a sole source contract except in those circumstances articulated in FAR 6.302-2.

3. As appropriate for the contract type, ensure that specific performance metrics are incorporated into a contract so the FBI has meaningful recourse from the contractor in the event of non-performance.

Resolved. The FBI concurred with our recommendation and stated that it will include metrics in contracts when establishing such metrics will assist the FBI in effectively measuring contractor performance. The FBI further stated, however, that some types of contracts, in particular certain types of service contracts, may not be conducive to empirical measurement.

As mentioned in our report, the FBI Contracting Officer acknowledged that specific performance metrics should have been included in this contract. Moreover, this official stated that the 6-month lease was a performance-based contract. According to FAR 37.601(b)(2), performance-based acquisitions shall include measurable performance standards (i.e., in terms of quality, timeliness, or quantity) and the method of assessing contractor performance against performance standards. Therefore, for the contract we audited and in all other performance-based acquisitions, the FBI is required to include measurable performance metrics in its contracts to be in compliance with the FAR.

This recommendation can be closed when we receive evidence that the FBI has taken appropriate action to ensure that specific performance metrics are incorporated into a contract so the FBI has a meaningful recourse from the contractor in the event of non-performance.

4. Ensure that pre-inspection of large leased assets, such as this leased G5 aircraft, are performed, documented, and bilaterally signed.

Resolved. The FBI concurred with our recommendation. In its response, the FBI stated that evidence in the file indicated that a pre-inspection of the G5 aircraft had been conducted, but that a signed acknowledgement was not executed, and that procurement management officials would reiterate the need for inspection and documentation.

While the FBI's evidence of pre-inspection consisted of some photographs, we do not believe the documentation was detailed enough to safeguard the FBI from future claims made by the owner of the aircraft. The documentation neither detailed the overall condition of the aircraft, nor did it include a comprehensive list of items to be inspected and the results of inspecting those items. For example, the documentation did not specify the condition of the external paint on the aircraft, which was later included as part of a request for equitable adjustment by RJM. We believe it is imperative that the FBI have comprehensive pre-inspection documentation completed and agreed upon by both parties.

This recommendation can be closed when we receive evidence that the FBI has informed its contracting personnel on the importance of conducting

comprehensive pre-inspections of large leased assets, and that this requirement is incorporated into FBI policy.

- 5. Assess the similar findings from this audit and the prior DOJ OIG fuel procurement audit and develop a plan for improving compliance with the FAR and FBI policies. Specifically, this plan should address:**
 - a. Adequate review and timely payment of invoices,**
 - b. Adequate assignment of oversight responsibilities,**
 - c. Maintaining complete contract files, and**
 - d. Accurate input of information into FPDS.**

Resolved. The FBI concurred with our recommendation and stated that it will develop such a plan. This recommendation can be closed when we receive evidence that the FBI developed and implemented a plan for improving its compliance with the FAR and FBI policies.

- 6. Reiterate to contracting officials the importance of ensuring technical proposals include accurate information and that deliverables are completed.**

Resolved. The FBI concurred with our recommendation and stated that it will stress to contracting officer representatives and end user evaluators the need for precision and oversight in contract performance. This recommendation can be closed when we receive evidence that contracting officials and end user evaluators were informed of their responsibilities to ensure that technical proposals are accurate and deliverables are completed.

- 7. Reiterate to contracting officials the importance of ensuring past performance questionnaires are completed appropriately.**

Resolved. The FBI concurred with our recommendation and stated that all contracting officer representatives will be reminded of the importance of accurate evaluations. This recommendation can be closed when we receive documentation that all contracting personnel and FBI employees tasked with contract oversight were reminded about the importance of ensuring past performance questionnaires are completed appropriately.

The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations. Information may be reported to the DOJ OIG's hotline at www.justice.gov/oig/hotline or (800) 869-4499.



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