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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**PROCESS FOR AWARDING  
SOLE SOURCE ACQUISITIONS**

**February 2008**

**A-15-07-17061**

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**AUDIT REPORT**

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## **Mission**

**By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.**

## **Authority**

**The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:**

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

**To ensure objectivity, the IG Act empowers the IG with:**

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

## **Vision**

**We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.**



# SOCIAL SECURITY

## MEMORANDUM

Date: February 14, 2008

Refer To:

To: The Commissioner

From: Inspector General

Subject: Process for Awarding Sole Source Acquisitions (A-15-07-17061)

## OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) non-competitive award process. Specifically, we assessed the Agency's process used to justify Sole Source Acquisitions by determining whether sole source awards were supported by adequate documentation in accordance with the Federal Acquisition Regulation (FAR).

## BACKGROUND

The Office of Acquisition and Grants (OAG) under the Office of the Deputy Commissioner for Budget, Finance and Management is the procurement office of SSA Headquarters in Baltimore, Maryland. OAG is responsible for the SSA-wide acquisition and grants programs in support of the Agency's mission and strategic goals. This includes: planning, soliciting, awarding, and administering contracts, purchase orders, task orders, and delivery orders. Also, OAG directs the business management aspects of these activities, and develops and implements applicable policies, procedures and directives.

In accomplishing its mission, OAG is required to comply with Title VII of the Deficit Reduction Act of 1984, Public Law 98-369, also known as the Competition in Contracting Act of 1984,<sup>1</sup> as implemented in the Code of Federal Regulation (C.F.R.) Part 6, which sets a standard of competition for Federal contracts. This law was enacted for the purpose of increasing the number of Government procurements

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<sup>1</sup> 41 U.S.C. § 253.

conducted under the principle of full and open competition,<sup>2</sup> as opposed to contracts that were issued under noncompetitive arrangements such as “sole source”<sup>3</sup> awards.

Per OAG, SSA made 18,660 acquisitions totaling approximately \$2.1 billion<sup>4</sup> from Fiscal Year (FY) 2003 through 2005. During the same period, 1,290 sole source acquisitions,<sup>5</sup> totaling approximately \$75 million, were awarded. A breakdown by year follows:

Year	Total Acquisitions	Total Dollar Value	Sole Source Acquisitions	Sole Source Dollar Value
FY 2003	4,521	\$541,389,261	504	\$27,685,604
FY 2004	6,743	708,747,820	463	31,242,240
FY 2005	<u>7,396</u>	<u>848,370,653</u>	<u>323</u>	<u>16,469,381</u>
Total	<u>18,660</u>	<u>\$2,098,507,734</u>	<u>1,290</u>	<u>\$75,397,225</u>

In FY 2003, the dollar value of sole source acquisitions represented five percent of the total dollar value of all acquisitions. By FY 2005, the dollar value of sole source acquisitions decreased to two percent of the total dollar value of all acquisitions.

Additionally, we noted the number of sole source acquisitions provided by SSA overstate the actual number of sole source acquisitions awarded. Our sample review of

<sup>2</sup> 48 C.F.R. § 2.101 defines “Full and open competition.” When this term is used with respect to a contract action, it means that all responsible sources are permitted to compete.

<sup>3</sup> 48 C.F.R. § 2.101 defines “Sole source acquisition” as “...a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.”

Additionally, certain types of contract actions were not included in the review or in the figures for “sole source acquisitions” or “sole source dollar value;” including but not limited to orders against General Services Administration (GSA) schedule contracts; orders to “required” sources of supply (such as Javits-Wagner-O’Day [JWOD]); orders against Government Wide Acquisition Contracts (GWACs); open market orders and orders against SSA awarded indefinite delivery indefinite quantity (IDIQ) contracts, if the original awards were not competed, etc. GSA schedule orders and GWAC orders were not reviewed because the initial award of the GSA schedules and the GWACs were themselves competed. According to 48 C.F.R. § 8.002, Priorities for use of Government supply sources, the Federal Government must satisfy requirements for supplies or services in accordance with the priority lists provided at 48 C.F.R. § 8.002, lists which include eight sources for supplies and four sources for services. The last source on either list includes “commercial sources;” sources that are higher on the lists include the procurement list maintained by the Committee for Purchase from People Who are Blind or Severely Disabled (this source is commonly known as “JWOD”); Federal Prison Industries or UNICOR (higher priority for supplies only); and optional use Federal Supply Schedules (GSA Schedules).

<sup>4</sup> These figures provided by OAG represent all SSA acquisitions over \$2,500, both those made by OAG and those made by regional contracting staff. We did not audit these figures.

<sup>5</sup> There were 13 awards in the population of 1,290 awards that had total dollars obligated of zero. We removed all items which had zero dollars obligated. Therefore, our population consisted of 1,277 awards (1290 less 13 awards). See Appendix B.

75 items included items that were not actual sole source acquisitions. (See details on pages 3 and 4, and in Appendix B regarding the sample.) Therefore, with fewer sole source acquisitions, opportunities for fraud in this area are reduced.

SSA indicated it uses full and open competition, whenever practicable. However, in certain situations OAG cannot provide for full and open competition. There are seven statutory exceptions which allow the use of other than full and open competition.<sup>6</sup> The exceptions, in summary, are: (1) only one responsible source and no other type of property or services will satisfy Agency requirements; (2) unusual and compelling urgency; (3) national emergency or industrial mobilization, essential engineering, research or development capability, or expert services for litigation or dispute; (4) international agreement; (5) authorized or required by statute; (6) national security; and (7) public interest.

We requested from OAG a data extract of all noncompetitive awards made during FY 2003 through FY 2005. OAG provided a data extract that combined data from Federal Procurement Data System - Next Generation (FPDS-NG) and from SSA's Streamlined Acquisition System (SSASy).<sup>7</sup> FPDS-NG is the Governmentwide computer-based data system for collecting, developing, and disseminating procurement data. SSASy is the internal SSA database used for acquisition planning, requisitions, awards, and acquisition management information reporting. SSA uses SSASy to prepare, submit and process paperless purchase requests (PR) electronically. OAG and regional contracting staff input basic information into SSASy regarding acquisitions over the Micro-Purchase Threshold (MPT), which was \$2,500 during the periods covered by our audit.

We reviewed sole source awards made in FYs 2003, 2004, and 2005. Our population consisted of 1,277 awards,<sup>8</sup> totaling over \$75 million. Our sample consisted of 75 awards. (See Appendix B for our sampling methodology.) For each award we selected, we reviewed the documents supporting the sole source acquisition. The documents supporting the sole source acquisitions were included in SSASy for awards that originated at Headquarters. However, regional contracting staff was not required to keep supporting documentation in SSASy. Our sample consisted of the following:

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<sup>6</sup> 41 U.S.C. §§ 253(c)(1)-(7).

<sup>7</sup> SSASy is a paperless, electronic tool used to create, route and process purchase requests (PR). OAG conducted a pilot version of SSASy in 2001. Based on the success of the pilot, SSASy was rolled out to various SSA headquarters components in 2002.

<sup>8</sup> See footnote 5 on p. 2.

Basis for Award	Awards Over MPT	Awards Under MPT	Total Awards	Amount
<b>Statutory Exceptions Permitting Sole Source Acquisition</b>				
- Exception 1 - only one responsible source and no other supplies or services will satisfy Agency requirements	45	12	57	\$20,499,596
- Exception 2 - unusual and compelling urgency	<u>2</u>	<u>0</u>	<u>2</u>	<u>991,031</u>
Subtotal Statutory Exceptions	47	12*	59	\$21,490,627
<b>Other Explanation (Not Sole Source Award)</b>				
- Awards Not Requiring JOFOC	1	6	7	\$10,107
- Ratification <sup>9</sup>	2	4	6	33,877
- Competitively Awarded	2	0	2	9,100
- Processed Incorrectly	<u>1</u>	<u>0</u>	<u>1</u>	<u>3,162</u>
Subtotal Non-Statutory Exceptions	6	10	16	\$56,246
<b>Total</b>	<u>53</u>	<u>22</u>	<u>75</u>	<u>\$21,546,873</u>
*Although awards under the MPT do not require a justification for other than full and open competition (JOFOC), SSA prepared a JOFOC for the base award associated with 12 awards (with Herman Miller, Inc.) meeting Exception 1 that were under the MPT. Therefore, we reviewed the JOFOC.				

## RESULTS OF REVIEW

Based on our audit, we found (1) inaccurate and incomplete data in SSASy, (2) missing JOFOC documentation, (3) missing JOFOC requirement in SSA's AIMS policy, (4) lack of efforts to obtain unlimited rights to software, and (5) different policies regarding filing Confidential Financial Disclosure Reports, (Office of Government Ethics [OGE] Form 450).

### INACCURATE AND INCOMPLETE DATA IN SSA'S STREAMLINED ACQUISITION SYSTEM

SSASy<sup>10</sup> is used to create, route and process PRs electronically. It also validates accounting and project information and interfaces with the Social Security Online

<sup>9</sup> SSA's Administrative Instructions Manual System (AIMS) Materiel Resources Manual (MRM) § 06.04.06 defines ratification as the act of approving an unauthorized commitment by an official who has the authority to do so. See Other Matters for details.

<sup>10</sup> See footnote 7 on p. 3.

Accounting and Reporting System (SSOARS).<sup>11</sup> Therefore, it is important that data contained in SSASy is accurate and complete.

Information entered into SSASy is also entered into the FPDS-NG database. FPDS-NG provides guidance indicating that agencies should not report “Imprest fund transactions, SF 44 purchases, training authorizations, and micro-purchases (purchases valued at \$2,500 or less) obtained through the use of the Government purchase card.”<sup>12</sup> We noted that SSA personnel were inputting MPT information into FPDS-NG that was not necessary according to FPDS-NG guidance.

We determined that the sole source data extract from SSASy provided by SSA for this audit contained inaccuracies. Based on our audit, the sole source information in SSASy is not always complete, accurate, or consistent due to SSA’s lack of consistent data input requirements for SSASy users. Specifically, we have the following concerns:

### Incomplete

- SSA policy for regional contracting staff did not require keeping supporting documentation, for example, Statements of Work and JOFOCs, for awards in SSASy. However, Headquarters OAG staff was required to keep supporting documentation for awards in SSASy. OAG indicated it revised the policy for regional contracting staff by requiring them to maintain the supporting documentation in SSASy.<sup>13</sup> We support this change. Keeping files electronically in SSASy ensures documents are retained, whereas in the event of a natural disaster, such as fire or flood, hard-copy documents can be damaged or destroyed. For example, documents were damaged and destroyed by a flood in the Gwynn Oak Building, during July 2004, where OAG was located at the time.

### Inaccurate

- OAG provided a data extract that combined data from SSASy and FPDS-NG which included some awards that were not sole source acquisitions. For example, for two competitive awards, the contracting officer (CO) mistakenly marked the award as sole source when putting information into FPDS-NG.

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<sup>11</sup> In October 2003, SSOARS was implemented as the SSA system-of-record for the Agency’s financial accounting function.

<sup>12</sup> FPDS-NG User’s Manual, Section 2.1.2 on p. 3.

<sup>13</sup> OAG informed us that starting October 1, 2007, regional contracting staff are required to keep supporting documentation in SSASy. Per the Social Security Acquisition Handbook Subpart H2304.802 (f)(1), “[t]he electronic file in SSASy is the official contract file, effective for all contracts awarded by OAG after February 27, 2004 and for all contracts awarded by Regional COs on or after October 1, 2007.”

## Inconsistent

- OAG implemented the use of paperless PRs through SSASy for all PRs over \$2,500.<sup>14</sup> Purchases under \$2,500 were to be treated as micro-purchases.<sup>15</sup> However, if the award originated at OAG, the award had to be put into SSASy, regardless of dollar amount.
- Regional contracting staff input only basic information into SSASy and FPDS-NG for acquisitions over the MPT. However, OAG and regional staff were not prohibited from inputting information regarding acquisitions under the MPT.

## Impact on the Federal Procurement Data System – Next Generation

FPDS-NG contains data that the Federal Government uses to create recurring and special reports to the President, Congress, Government Accountability Office (GAO), Federal executive agencies, and the general public. Therefore, it is important that data contained in FPDS-NG is accurate and complete.<sup>16</sup>

## MISSING JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION DOCUMENTATION

The FAR<sup>17</sup> and SSA's policies and procedures<sup>18</sup> provide guidance regarding required documentation for sole source acquisitions. During the period of our audit, the Simplified Acquisition Threshold (SAT)<sup>19</sup> was \$100,000. Awards over the SAT of \$100,000 required a formal JOFOC. Awards under the SAT did not require a formal JOFOC but may include other documentation (such as the sole source justification).

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<sup>14</sup> See footnote 12 on p. 5.

<sup>15</sup> 48 C.F.R. § 2.101 that was in effect at the time of our audit, states "Micro-purchase means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold." The micro-purchase threshold during our audit period was \$2,500, except for specified limited exceptions stated in the FAR.

<sup>16</sup> SSA formed the FPDS-NG Workgroup in March 2007. The objective of the workgroup is to improve and maintain the quality of data entered into FPDS-NG.

<sup>17</sup> 48 C.F.R. § 6.300, et seq., provides policies and procedures for contracting without providing for full and open competition, including justifications and content.

<sup>18</sup> AIMS MRM § 06.06.07 A.2., that was in effect at the time of our audit, indicates that if a project officer determines that there are no other qualified sources, s/he must "...write a justification explaining why full and open competition is not feasible." The AIMS section numbers have subsequently been amended and now provide for direct references to the justification requirements set forth in the FAR.

<sup>19</sup> 48 C.F.R. § 2.101 defines "Simplified acquisition threshold" as \$100,000, except under specified limited circumstances.



Of the 75 items we reviewed, 59 items did not require a formal JOFOC. Twenty-two items were under the MPT and did not require any documentation. Thirty-seven items required documentation to support the sole source award. For all 37 awards, we were able to obtain documentation justifying the sole source.

A formal JOFOC was required only for the 16 awards that were over the SAT of \$100,000. Based on our audit, 14 of the 16 awards had formal JOFOCs completed in accordance with FAR. A formal JOFOC was not completed for 2 of the 16 awards. For one award OAG could not determine why a JOFOC was not completed. Both the contract specialist and the CO are no longer with SSA. For the second award, the CO stated that a formal JOFOC was not completed due to the emergency nature of the acquisition. Although we do not question that the emergency occurred, this award was made 1 month after the emergency for over \$325,000. Therefore, a formal JOFOC should have been completed for this award.

### **MISSING JOFOC REQUIREMENT IN SSA's AIMS POLICY**

AIMS<sup>20</sup> did not include the requirement that JOFOCs include a listing of sources (if any) that expressed in writing an interest in the procurement/acquisition, as mandated by Federal law<sup>21</sup> and the underlying regulation.<sup>22</sup>

We reported this issue to OAG management, who informed us that AIMS MRM 06.06 was in the process of being updated. That update was effective on October 29, 2007. We concur with their action and have no recommendation.

### **LACK OF EFFORTS TO OBTAIN UNLIMITED RIGHTS TO SOFTWARE**

In our sample, we identified four awards in which the sole source justification was that only one responsible source would satisfy the Agency's requirement due to SSA's dependence on the contractor's proprietary data<sup>23</sup> (i.e., software). For three of the awards, SSA did not attempt to obtain rights to the software. For one award, SSA did attempt to obtain rights to software data. However, SSA did not identify the efforts, in JOFOCs, that it took to obtain unlimited rights<sup>24</sup> to the software in accordance with AIMS, MRM 06.06, Attachment B which states:

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<sup>20</sup> AIMS MRM § 06.06.09 Attachment B, September 22, 2003.

<sup>21</sup> 41 U.S.C. § 253(f)(3)(E).

<sup>22</sup> 48 C.F.R. § 6.303-2(a)(10).

<sup>23</sup> 48 C.F.R. § 52.227-14(a) defines "data" as "...recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software" (i.e., computer programs, computer data bases, and documentation thereof).

<sup>24</sup> 48 C.F.R. § 27.401 defines "Unlimited rights" as "...the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so."

If you cite 41 U.S.C. 253(c)(1), Only One Responsible Source...based on the use of proprietary data, describe the data, together with an indication as to how you determined it proprietary. If proprietary, indicate efforts that you will undertake to obtain unlimited rights.

Also, the GAO recently issued a legal decision (See Appendix C for details) to the Department of State in which it tries to address a common issue of how captive the Government is to one software vendor because of proprietary rights. GAO recommended that the Department of State conduct a documented cost/benefit analysis reflecting the costs associated with obtaining competition, either through purchasing additional rights to the proprietary software or some other means, and the anticipated benefits. At a minimum, SSA should conduct a documented cost benefit analysis for seeking competition, including efforts made to obtain unlimited rights to proprietary software, in accordance with the recent GAO decision.

## **DIFFERENT POLICIES FOR FILING CONFIDENTIAL FINANCIAL DISCLOSURE REPORT**

Public and confidential financial disclosure serves to prevent conflicts-of-interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees.<sup>25</sup> These reports assist agencies in administering their ethics programs and providing counseling to employees.<sup>26</sup>

The Agency chooses which employees are required to file the confidential financial disclosure report (OGE Form 450). Employees are required to file an OGE Form 450 if the Agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially in making a Government action, such as contracting or procurement.<sup>27</sup>

The Office of the General Counsel maintains a list, updated as needed, of the Deputy Ethics Counselors (DEC). The DECs identify incumbent employees required to file an OGE Form 450. We obtained lists of employees required to file an OGE Form 450 from contracting staff in the regional offices for the FYs under review.

We reviewed the OGE Form 450 for the contracting staff associated with the 75 awards in our sample. We had a total of 30 contracting staff associated with our sample, of which 24 were required to complete the OGE Form 450. Our review of OGE Form 450 completed by OAG and regional contracting employees did not disclose any

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<sup>25</sup> 5 C.F.R. § 2634.104(b).

<sup>26</sup> *Id.*

<sup>27</sup> The Ethics in Government Act of 1978, as amended, Pub. L. No. 95-521, 5 U.S.C. App. 4, provided authority to the Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government, to require that appropriate executive branch employees file financial disclosure reports.

deficiencies for these employees. All 19 OAG Headquarters staff and 5 of the 11 regional contracting staff in our sample were required to complete the OGE Form 450. The remaining six regional contracting staff was not required to file an OGE Form 450. In the regions, COs were required to complete an OGE Form 450. Other contracting staff, such as contracting specialists, were not required to complete OGE Form 450.

Since the contracting staff in OAG at Headquarters and contracting staff in regional offices perform the same functions, contracting staff in regional offices should be held to the same requirements as Headquarters staff. This would assist SSA in preventing conflicts-of-interest and identifying potential conflicts, in accordance with 5 C.F.R. 2634.104(b).

## **CONCLUSION AND RECOMMENDATIONS**

Based on the results of our review, we concluded that SSA needs to take steps to fully comply with documentation requirements contained in Federal law, regulations and its own policies. Specifically, we recommend SSA:

1. Ensure the data entered into the SSASy and FPDS-NG databases is complete, accurate and consistent.
2. Remind staff a formal JOFOC must be completed for all awards that are over the simplified acquisition threshold in accordance with Federal law, regulations and SSA policy.
3. For non-commercial sole source awards where the basis for the justification is the fact that the software needed by the Agency is proprietary to a vendor, remind staff to conduct a documented cost/benefit analysis reflecting the costs associated with obtaining competition, either through purchasing additional rights to the proprietary software or some other means, and the anticipated benefits, as recommended in the GAO decision.
4. Require regional staff to comply with the same requirements as Headquarters contracting staff for completing the OGE Form 450 or document why the requirements should be different.

## **AGENCY COMMENTS AND OIG RESPONSE**

SSA agreed with our recommendations. The Agency's comments are included in Appendix D.

## OTHER MATTERS

SSA should implement the following best practice to strengthen its sole source acquisition process.

### EXERCISE OF OPTION YEARS

Each year SSA should re-evaluate contract requirements before issuing sole source contracts for follow-on awards. Federal regulation requires that each justification shall contain sufficient facts and rationale to justify the "...use of other than full and open competition..." for follow-on acquisitions.<sup>28</sup> "As a minimum, each justification shall include" for specified follow-on acquisitions "...an estimate of the cost to the Government that would be duplicated and how the estimate was derived."<sup>29</sup> The justification shall also include "...a statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required."<sup>30</sup>

House Resolution 1362, Accountability in Contracting Act, has specific language on certain sole source contracts. If/when it is passed, it shall require that for noncompetitive contracts greater than \$1,000,000 entered into by an executive agency, the contract period shall be restricted to the minimum necessary (1) to meet the urgent and compelling requirements of the work to be performed; and (2) to enter into another contract for the required goods or services through competitive procedures. It also requires, "...the contract period to not exceed 1 year, unless the head of the executive agency concerned determines that the Government would be seriously injured by the limitation on the contract period."<sup>31</sup>

In addition, legislation has recently been passed by the Senate (S. 680, Accountability in Government Contracting Act of 2007 § 116) that places limits on the length of certain contracts awarded using other than full and open competition.

For informational purposes, we are providing the following details regarding ratifications.

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<sup>28</sup> 48 C.F.R. § 6.303-2(a)(9)(ii).

<sup>29</sup> Id.

<sup>30</sup> 48 C.F.R. § 6.303-2(a)(11).

<sup>31</sup> Accountability in Contracting Act (ACA), H.R. 1362 § 101(a)-(c). The ACA was introduced in the House of Representatives on March 6, 2007, and passed by the House and referred to the Senate on March 15, 2007.

## **RATIFICATION OF UNAUTHORIZED COMMITMENTS**

SSA's AIMS MRM 06.04.03 indicates that an employee creates an unauthorized commitment if s/he lacks the authority to enter into the agreement on the Agency's behalf. AIMS MRM 06.04.07 allows the Agency to ratify an unauthorized commitment under limited instances, such as when the resulting contract would otherwise have been proper if made by an appropriate CO. AIMS MRM 06.04.06 defines ratification as the act of approving an unauthorized commitment by an official who has the authority to do so.

Our review disclosed 6 of the 75 sole source awards in our sample were unauthorized commitments that were subsequently ratified by SSA. Four of the six awards were part of the same ratification. For these four awards, an employee signed a task order for maintenance. However the CO's delegation did not include maintenance so the awards were ratified. In another award, the employee in good faith made a purchase he was not authorized to make. The purchase was ratified and additionally, the Associate Commissioner issued guidance to ensure all employees are aware that only authorized personnel are allowed to make purchases. In the sixth award, the employee received a quote that was under the MPT. The employee was not informed of a processing fee which was included in the actual invoice. As a result, the actual invoice was over the MPT, and this award was ratified.



Patrick P. O'Carroll, Jr.

# *Appendices*

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[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Scope and Methodology

[APPENDIX C](#) – GAO Decision

[APPENDIX D](#) – Agency Comments

[APPENDIX E](#) – OIG Contacts and Staff Acknowledgments

### Acronyms

ACA	Accountability in Contracting Act
AIMS	Administrative Instructions Manual System
C.F.R.	Code of Federal Regulations
CO	Contracting Officer
DEC	Deputy Ethics Counselor
FAR	Federal Acquisition Regulations
FPDS-NG	Federal Procurement Data System – Next Generation
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
GWACs	Government Wide Acquisition Contracts
IDIQ	Indefinite Delivery Indefinite Quantity
JOFOC	Justification for Other than Full and Open Competition
JWOD	Javits-Wagner-O'Day
MRM	Materiel Resources Manual
MPT	Micro-Purchase Threshold
PR	Purchase Requests
OAG	Office of Acquisition and Grants
OGE Form 450	Confidential Financial Disclosure Report
SAT	Simplified Acquisition Threshold
SSA	Social Security Administration
SSASy	Social Security Administration Streamlined Acquisition System
SSOARS	Social Security Online Accounting and Reporting System
U.S.C.	United States Code

# Scope and Methodology

We reviewed the sole source acquisition documentation for Fiscal Years (FY) 2003 through 2005 to determine whether the Social Security Administration (SSA) Office of Acquisition and Grants (OAG) properly justified its sole source acquisitions.

To accomplish our objective, we:

- Reviewed pertinent sections of SSA's policies and procedures as well as relevant Federal laws and regulations to determine the requirements relating to sole source acquisitions. Specifically we reviewed the United States Code, Code of Federal Regulations, Federal Acquisition Regulation, and the Administrative Instructions Manual System criteria specific to sole source acquisitions.
- Interviewed SSA's OAG staff to gain an understanding of the sole source acquisition process.
- Obtained and reviewed the awards and/or modifications for the 75 sample items.
- Interviewed staff in the OAG and in various regional offices on individual awards.
- Requested and received from OAG the list of sole source acquisitions made during FYs 2003 through 2005. We removed all items which had zero dollars obligated. There were 13 awards in the population of 1,290 awards provided by OAG that had total dollars obligated of zero. Therefore, our population consisted of 1,277 awards (1290 less 13) totaling \$75,397,225.
- We selected for review:
  - the 3 highest dollar awards by different vendor,
  - the 30 lowest dollar awards,
  - 30 randomly selected awards from the remaining population, and
  - subsequently, we also selected 12 additional awards required to have additional documentation justifying the sole source. For each award we selected, we reviewed the documents supporting the sole source acquisition.
- Requested and reviewed OGE Form 450, Confidential Financial Disclosure Report for OAG and Regional staff.

We determined that the data extract, exclusive to sole source acquisitions, provided by SSA for this audit, contained inaccuracies. We base this determination on our interviews with staff in the OAG and in various regional offices and our review of the documents supporting the sole source acquisition for the 75 sample items. We did not determine the completeness of the data extract provided by SSA.



We conducted our fieldwork in Baltimore, Maryland between December 2006 and July 2007. The entities audited were OAG, and the New York, Philadelphia, Atlanta, Chicago, Kansas City and San Francisco Regional Offices contracting units. Our audit was conducted in accordance with generally accepted government auditing standards.

### GAO Decision

In our sample, we identified four awards in which the sole source justification was due to SSA's dependence on the contractor's proprietary data (i.e., software).

The Administrative Instructions Manual System, Materiel Resources Manual 06.06, Attachment B - Content Items for Justification, B states:

If you cite 41 U.S.C. 253(c)(1), Only One Responsible Source...based on the use of proprietary data, describe the data, together with an indication as to how you determined it proprietary. If proprietary, indicate efforts that you will undertake to obtain unlimited rights.

Also, the Government Accountability Office (GAO) recently issued a legal decision<sup>32</sup> in which it stated:

...the agency [Department of State] has produced no record of any steps that it has taken to end its reliance on the services of the incumbent to maintain the existing software systems; in fact, this latest proposed sole-source award has a potential term of 5 years. It is possible, for example, that the agency could purchase additional rights to the proprietary software in order to promote competition....

Therefore, GAO recommended:

...that the agency [Department of State] conduct a documented cost/benefit analysis reflecting the costs associated with obtaining competition, either through purchasing additional rights to the proprietary software or some other means, and the anticipated benefits. If the cost/benefit analysis reveals a practicable means to obtain competition, we recommend that the agency proceed with a competitive procurement.<sup>33</sup>

In its decision, GAO is trying to address a common issue of how captive the Government is to one software vendor because of proprietary rights. Therefore, it is apparent from SSA's policy and the GAO decision that SSA should document any efforts made to obtain unlimited rights including but not limited to a cost/benefit analysis.

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<sup>32</sup> GAO, [eFedBudget Corporation](#), B-298627, November 15, 2006, p. 8.

<sup>33</sup> GAO, *supra* at p. 8-9.

## Agency Comments



## SOCIAL SECURITY

### MEMORANDUM

**Date:** January 29, 2008 **Refer To:** S1J-3

**To:** Patrick P. O'Carroll, Jr.  
Inspector General

**From:** David Foster /s/  
Chief of Staff

**Subject:** Office of the Inspector General (OIG) Draft Report, "Process for Awarding Sole Source Acquisitions" (A-15-07-17061)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments regarding the draft report and response to the recommendations are attached.

Please let me know if we can be of further assistance. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL’S DRAFT REPORT,  
“PROCESS FOR AWARDING SOLE SOURCE ACQUISITIONS” (A-15-07-17061)**

Thank you for the opportunity to review and provide comments on this draft report. This is a contracting topic that has received a great deal of attention over the last several years from members of Congress, as well as the Office of Management and Budget. As responsible stewards of the taxpayer’s money, we are committed to ensuring that all sole source acquisitions are properly and adequately justified.

**Recommendation 1**

Ensure the data entered into the Social Security Administration Streamlined Acquisition System (SSASy) and Federal Procurement Data System – Next Generation (FPDS-NG) databases is complete, accurate and consistent.

**Comment**

We agree. Since December 2006, procurement analysts in the Division of Policy and Purchase Card Administration in the Office of Budget, Finance and Management have reviewed FPDS-NG records as part of their ongoing Acquisition Management Reviews. Additionally, in December 2007, we updated our Social Security Acquisition Handbook (SSAH) to: 1) remind contracting officers (COs) of the importance of accurate and complete FPDS-NG data and of the need to review FPDS-NG for accuracy and completeness before issuing any award; 2) clarify that doing so requires more than getting the award to pass edit checks; and 3) remind those reviewing contract awards (e.g.; team leaders, managers, etc.) that they too must review the FPDS-NG record for accuracy and completeness before approving an award. We also added language to the SSAH to require COs to make a statement in the file documentation for modifications, including option renewals. As for SSASy, we will issue a reminder to the COs to verify the information they input into SSASy in our upcoming Acquisition Update (a monthly newsletter that is sent to all COs).

It should also be noted that COs do not have the ability to change data that defaults into an FPDS-NG record from other systems. Examples of this are data regarding business size that defaults from the Central Contractor Registration and data that defaults into the FPDS-NG record from the General Services Administration (GSA) when an order is issued against a GSA schedule contract.

**Recommendation 2**

Remind staff a formal Justification for Other than Full and Open Competition must be completed for all awards that are over the simplified acquisition threshold in accordance with Federal law, regulations and Social Security Administration policy.

### **Comment**

We agree. We will issue a reminder in our upcoming Acquisition Update.

### **Recommendation 3**

For non-commercial sole source awards where the basis for the justification is the fact that the software needed by the Agency is proprietary to a vendor, remind staff to conduct a documented cost/benefit analysis reflecting the costs associated with obtaining competition, either through purchasing additional rights to the proprietary software or some other means, and the anticipated benefits, as recommended in the Government Accountability Office decision.

### **Comment**

We agree. Since the responsibility for conducting such an analysis will be the responsibility of the requiring component, we will prepare a reminder and send it to all project officers and COs. Additionally, we will post the reminder to our Intranet page for project officers and update Administrative Instructions Manual System MRM 06.06, Competition in Acquisitions, to reflect this requirement.

### **Recommendation 4**

Require Regional staff to comply with the same requirements as Headquarters contracting staff for completing the Confidential Financial Disclosure Report (OGE Form 450) or document why the requirements should be different.

### **Comment**

We agree. We will determine whether Regional staff needs to complete the OGE Form 450 by the end of June 2008. It should be noted that currently individuals who are assigned certain designated positions are required to file OGE Form 450, which has been a management decision. If, through our analysis, we determine that the requirement needs to continue to be different for Regional staff than for Headquarters staff, we will document our decision.

## OIG Contacts and Staff Acknowledgments

### ***OIG Contacts***

Vicki Vetter, Director, Financial Audit Division, (410) 966-9081

Mark Meehan, Acting Audit Manager, Financial Audit Division, (410) 966-6741

### ***Acknowledgments***

In addition to those named above:

Jackie Patel, Auditor-in-Charge, Financial Audit Division, (410) 966-9382

Donna Parris, Auditor, Financial Audit Division, (410) 965-3516

Brennan Kraje, Statistician

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# **Overview of the Office of the Inspector General**

The Office of the Inspector General (OIG) is comprised of our Office of Investigations (OI), Office of Audit (OA), Office of the Chief Counsel to the Inspector General (OCCIG), and Office of Resource Management (ORM). To ensure compliance with policies and procedures, internal controls, and professional standards, we also have a comprehensive Professional Responsibility and Quality Assurance program.

## **Office of Audit**

OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

## **Office of Investigations**

OI conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as OIG liaison to the Department of Justice on all matters relating to the investigations of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

## **Office of the Chief Counsel to the Inspector General**

OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

## **Office of Resource Management**

ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.