



Procurement Process

Report No. OIG-AMR-99-23-02

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Memorandum from the Chief Financial Officer, Response to the Fiscal
Year 2021 – 2022 Procurement Process Audit Report, dated April 11,
2023

EXECUTIVE SUMMARY

The Office of the Chief Financial Officer's Acquisitions Management Branch performs the acquisition function for the National Labor Relations Board. The Federal Acquisition Regulations System was established to codify and publish uniform policies and procedures for all executive agencies, including the Federal Acquisition Regulation as the primary document. To ensure compliance with the Federal Acquisition Regulation, an agency should issue policies and procedures known as "internal controls."

The objectives of the audit were to evaluate the internal controls over the acquisition process and to determine whether procurements are executed in accordance with the Federal Acquisition Regulation. The scope was procurement awards and modifications executed during Fiscal Year 2021 and Fiscal Year 2022 first quarter that were above the micro-purchase level, excluding any Office of Inspector General procurements.

In general, we determined that the Acquisitions Management Branch lacked sufficient internal controls over the acquisition process and to ensure that its procurement actions were processed in compliance with the Federal Acquisition Regulation. We made three recommendations for corrective action.

In the Management Comments, the Chief Financial Officer concurred with the recommendations. The Management Comments are attached as Appendix B to the report.

BACKGROUND

The Office of the Chief Financial Officer's (OCFO) Acquisitions Management Branch (AMB) performs the acquisition function for the National Labor Relations Board (NLRB or Agency). During the scope period of this audit, AMB was staffed by a contracting officer who was the head of the branch, three contracting officers, and two contract specialists. During the scope period, AMB processed 29 new procurements and 202 modification actions.

The Federal Acquisition Regulations System was established to codify and publish uniform policies and procedures for all executive agencies, including the Federal Acquisition Regulation (FAR) as the primary document. The FAR is codified at title 48 Code of Federal Regulations. A contract may not be entered into unless the contracting officer ensures that all requirements of laws, executive orders, regulations, and other applicable procedures, including clearances and approvals, were met.

To ensure compliance with the FAR, an agency should issue policies and procedures known as "internal controls." For the NLRB, AMB documented its internal controls in three documents: Acquisition Management Branch Policy (AMB policy), Procurement Cycle Memorandum, and Procurement Notices.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to evaluate the internal controls over the acquisition process and to determine whether procurements are executed in accordance with the FAR. The scope was procurement awards and modifications executed during Fiscal Year 2021 and Fiscal Year 2022 first quarter that were above the micro-purchase level, excluding any Office of Inspector General procurements.

We reviewed laws, regulations, and Governmentwide policies related to the procurement process. We reviewed and selected FAR provisions to test the Agency's compliance. We also reviewed AMB contract file documents and relevant General Services Administration's (GSA) Federal Supply Schedule (FSS) contracts.

We interviewed staff in the OCFO and reviewed OCFO policies and procedures to learn about the Agency's internal controls over the procurement process. We obtained information from the Office of the Chief Information Officer and interviewed its staff to learn about information security measures as they related to AMB's contract files. We obtained information from the Agency's ethics officials regarding standards of conduct training for AMB's personnel.

From the OCFO officials, we obtained a list of contracts and contracting officers. We also obtained the contracting officer's warrants and training documents to determine whether the contracting officers had a valid warrant.

From the Federal Procurement Data System – Next Generation (FPDS-NG), we obtained a list of the NLRB's new contracts and modifications that were executed during the scope period. For new contracts, we divided the universe into two groups using the procurement value listed in the data field "Base and All Options Value." We then judgmentally selected one of the three contracts with a Base and All Options Value amount that was greater than \$1,000,000. For contracts with a Base and All Options Value amount that was less than \$1,000,000 but above the micro-purchase level, we selected a statistical random sample. For random sampling, we used a methodology in the Financial Audit Manual issued by Government Accountability Office (GAO). The methodology is generally used to select sample size from small universes associated with less frequently operating controls.

To test the FAR requirements for modifications, we judgmentally selected 25 modifications identified as "Supplemental Agreement for Work Within Scope"; and judgmentally selected 23 modifications that only increased funding to test the FAR's funding authorization requirement. For modifications that exercised an option period of performance, we selected a statistical random sample. For random sampling, we used a methodology in the Financial Audit Manual issued by GAO. The methodology is generally used to select sample size from small universes associated with less frequently operating controls.

We reviewed GAO's *Standards for Internal Control in the Federal Government*, dated September 2014, to identify the relevant internal control standards related to the procurement process. We evaluated the internal control policies and procedures to determine whether they met GAO's internal control standards.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period from January 2022 through March 2023. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS SUMMARY

In general, we determined that AMB lacked sufficient internal controls over the acquisition process and to ensure that its procurement actions were processed in compliance with the FAR.

NEW CONTRACTS' FAR COMPLIANCE

FAR section 1.102 states that the vision for the Federal Acquisition System is to deliver on a timely basis the best value for products or services, maintain the public's trust, and fulfill public policy objectives. Absent an approved and documented deviation, when entering a contract, FAR section 1.602 requires that a contracting officer ensure that all requirements of laws, executive orders, regulations, and other applicable procedures, including clearances and approvals, were met.

Acquisition Planning

FAR section 7.102 states that agencies shall perform acquisition planning for all acquisitions. The planning shall integrate the efforts of all personnel responsible for the significant aspects of the acquisition. FAR section 7.104 states that acquisition planning should begin as soon as the agency's need is identified, preferably well in advance of the

fiscal year in which contract award or order placement is necessary.

The content of a written acquisition plan is discussed at FAR section 7.105. The AMB policy requires that the contents found at FAR section 7.105 be used for procurements exceeding \$2.5 million, including all options. Also, AMB developed a template plan that is to be used as guidance for all acquisitions above the simplified acquisition threshold – currently set at \$250,000.

There was one procurement in our sample that was above \$2.5 million. For that procurement, there was a written acquisition plan in the contract file. The plan generally met the FAR's planning requirements.

Our review of the eight procurements in our sample below the simplified acquisition threshold found six of the eight procurements did not have documentation of acquisition planning. For the two procurements that had planning documentation, the acquisition plans were signed after the need was identified and the procurement process had started.

The procedures developed by AMB for acquisition planning do not address acquisitions below the simplified acquisition threshold and are not effective at ensuring compliance with the FAR's acquisition planning requirements. Without adequate acquisition planning, there is a possibility that the Agency will not procure what is needed or will procure what is needed, but not in a manner that provides the best value to the Agency.

System for Award Management Registration

FAR section 4.1103 states that the contracting office shall verify that the offeror or quoter is registered in the System for Award Management (SAM) at the time an offer or quotation is submitted. For eight of the nine contracts in our sample, the contracting officer verified and documented that the vendor was registered in SAM when the vendor's quote was submitted. For the remaining procurement action, we did not find documentation in the contract file regarding the status of the SAM registration.

We determined that AMB's documented policies and procedures do not address the requirement to ensure that SAM registrations for vendors are documented in the contract file. Without ensuring that the SAM registration is checked, there is a risk that the Agency could engage in a procurement with an ineligible vendor.

Market Research

We generally found that AMB performs market research according to FAR sections 10.001 and 10.002. Those sections require that market research shall be conducted that is appropriate to the circumstances before certain actions are taken and that it should include certain information related to the commercial marketplace; customary practices; legal and regulatory requirements; recovered materials and energy efficiency; distribution and support services; and small businesses.

Our review found that seven of the nine contracts in our sample had a market research memorandum. For the remaining two contracts that did not, the file contained a limited source justification that addressed market research.

Although AMB complied with the FAR's market research requirements, during the scope period AMB did not have documented policies that addressed market research.

Independent Government Cost Estimate

FAR section 4.803 states that, if applicable, a Government estimate of contract price is normally contained in the contract file. The AMB policy states that when an Independent Government Cost Estimate (IGCE) is used to make a "fair and reasonable" determination, the contracting officer shall include the name of the preparer(s) and the date prepared and shall address the following five questions:

- How was the estimate made;
- What assumptions were made;
- What information and tools were used;
- Where was the information obtained; and

- How did previous estimates compare with prices paid?

We found that all nine procurements had documentation of an IGCE, but that only two included all the information required by the AMB policy. Four of the estimates with missing information did not address one or more of the following: assumptions that were made, tools used, or information obtained. None of the seven estimates with missing information included how previous estimates compared with the price paid.

AMB did not implement its policies and procedures to ensure that all IGCEs contained the necessary information; as a result, estimates for procurements may not be accurate.

Competition

Absent limited exceptions, part 6 of the FAR requires that contracts be awarded only after there has been full and open competition among potential contractors. Exceptions to the requirement include sole source procurements under FAR section 6.302-1; when supplies or services are available from only one source and no other supplies or services will satisfy agency requirements; and sole source contracts under FAR section 6.302-5 that are awarded through what is known as the section 8(a) program for small business set-asides. Orders through the GSA FSS and the National Aeronautics and Space Administration's Solutions for Enterprise-Wide Procurement Government-Wide Acquisition Contract (NASA SEWP) are not required to meet the part 6 requirements, but the contracting officer must justify restricting consideration for the FSS procurements or not providing a "fair opportunity" for NASA SEWP procurements.

Five of the nine contracts in the sample used an Agency solicitation and would need to meet the FAR part 6 competition or exception requirements:

- One was fully competed;
- One was a sole sourced 8(a) procurement and met the applicable regulatory requirements: and

- Three were sole-source procurements and all three contract files contained a written sole source justification. FAR section 6.303-2(b) requires that sole source justifications contain, at a minimum, 12 items. Two justifications addressed all the required items. The third procurement was missing documentation to support the findings and did not address 8 of the 12 required items, including not having the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief. We also observed that different contracting officers used different formats for their justifications. The lack of a standard format could result in not appropriately justifying a sole source procurement.

Two procurements used a GSA FSS contractor. FAR section 8.405-1 requires that when ordering using the GSA FSS for procurements exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, the contracting officer shall either review the catalogs or price lists or request quotations from at least three schedule contractors or document the circumstances for restricting consideration to fewer than three schedule contractors based on one of three reasons identified (an urgent and compelling need, single source, or logical follow-on). For those two procurements:

- One procurement did not have competition restricted and the contracting officer requested quotes from three vendors; and
- One procurement had competition restricted. Although we found a limited source justification in the contract file, there was no additional market research documentation to support the contracting officer's conclusion and the first page of the limited source justification was for another procurement.

Two procurements were orders under NASA SEWP. For these procurements, FAR section 16.505(b) requires that the contracting officer provide a "fair opportunity" to contractors when awarding orders above the micro-purchase threshold. Based on our review of the contract files, we determined that a fair opportunity was provided in both procurements.

The AMB policies in effect during the audit's scope period did not address the FAR's provisions related to competition requirements.

Price and Technical Evaluation

FAR section 15.304 states that an award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition and must represent the key areas of importance and emphasis to be considered in the source selection decision and support meaningful comparison and discrimination between and among competing proposals. All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The section also provides that acquisition officials have broad discretion, but the price or cost shall be evaluated, quality shall be addressed, and past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold, unless the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition. FAR section 4.803 states that records in the contract file normally include source selection information. FAR section 2.101 includes price and technical evaluations as source selection information.

For the one procurement action that was above the simplified acquisition threshold, the evaluation factors for the procurement were not documented in the solicitation. The request for proposals, under "Evaluation Methodology", stated that "[t]he Government reserves the right to accept the proposal and issue award without discussions or, if necessary, negotiate the terms and conditions of the award." This is not evaluation criteria as described in FAR section 15.304. Also, although the procurement was a follow-on to a prior procurement, there was no documentation in the contract file that past performance was considered.

For procurements below the simplified acquisition threshold, FAR section 13.106-2 states that the contracting officer shall evaluate quotations and offers in an impartial manner on the basis established in the solicitation. Of the eight contracts under the simplified acquisition threshold, one procurement

action did not have an evaluation based on the solicitation documented in the contract file.

Also, for procurements under the simplified acquisition threshold, FAR section 13.106-3 states that the contracting officer must determine that the proposed price is fair and reasonable. If only one response is received, the contracting officer must include a statement of price reasonableness in the contract file. Of the four sole source procurements tested, one did not have a statement of price reasonableness.

We determined that AMB did not have documented policies or procedures regarding evaluation factors to ensure compliance with FAR section 15.304. As a result, the evaluations of proposals were not performed and/or documented in a consistent manner.

Small Business Set-Aside

FAR section 19.502-2 requires that each acquisition of supplies or services that has an anticipated dollar value above the micro-purchase threshold, but not over the simplified acquisition threshold, be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery. FAR section 6.203 states that a separate justification or determination and findings is not required; however, under FAR section 4.803 set-aside decisions are normally contained in the contract file.

Eight of the nine contracts tested were between the micro-purchase threshold and the simplified acquisitions threshold:

- Two were set aside for small businesses;
- Five were not required to be set aside for small business based on the lack of a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery:

- Four were sole source procurements, with two of the procurements being awarded to small businesses;
- One procurement action was competed and not set aside for small businesses. The contract file documented that the contracting officer surveyed small businesses as part of the market research and determined none had the capability to service all of the required locations; and
- One action was competed and not set aside for small businesses. The contract file did not have documentation of the contracting officer's decision.

Our review of AMB's policies found that the policies do not address the FAR requirements for small business set-asides or what documentation should be included in the contract file regarding the contracting officer's small business decision. As a result, contracting officers are not consistently documenting the conclusion that the procurement should not be set aside for small business and the decision is, therefore, not subject to review.

Mandatory Sources

FAR section 8.002 states that agencies shall satisfy requirements for supplies and services from or through mandatory Government sources and publications. FAR section 8.004 provides that if an agency is unable to satisfy requirements for services and supplies from the mandatory services, agencies are encouraged to consider satisfying requirements from or through non-mandatory sources before considering commercial sources.

For the nine procurements in the sample:

- Six had documentation that mandatory sources were considered;
- Two did not require consideration of mandatory sources because in one instance the procurement was a small business set-aside and was exempt, and in the other the vendor had a proprietary right to perform the services; and

- One procurement did not have documentation that mandatory services were considered.

Our review of AMB's policies found that AMB does not have internal controls in place to ensure that the use of mandatory sources is considered, as required by the FAR, and documented. Without proper controls, the Agency is at risk of not meeting the FAR's mandatory source requirements.

Availability of Funds

FAR section 32.702 states that before executing any contract, the contracting officer shall either obtain written assurance from the responsible fiscal authority that adequate funds are available or expressly condition the contract on the availability of funds. FAR section 4.803 states that the contract file will normally contain evidence of the availability of funds.

The OCFO's Procurement Cycle Memorandum states that commitments and obligations are routed through the Budget Branch and that without funding approval from the Budget Branch, AMB cannot process actions. Except for unauthorized commitments, the AMB policy does not address funding requirements or the requirement that documentation of funds availability be maintained in the contract file. For an unauthorized commitment, the contracting officer is required to ensure the adequacy of all facts, records, and documents, which would include whether there were funds available at the time of the unauthorized commitment as well as at the time of the ratification. The "Ratification Package" is to include appropriate funding documentation.

For the nine procurements in our sample:

- One was an indefinite quantity contract that did not create an obligation and the contract file documents noted that funding approval would be obtained for the individual task orders;
- Six had documentation in the contract file that funds were available. Only one of the six, however, had

documentation with the approval date. For the remaining five, we obtained documentation of the approval date from the Budget Branch. For all six, we determined that the approval of funding was received prior to executing the procurement action;

- One action was an unauthorized commitment because it was executed by a contract specialist without a warrant. The contract file did not contain any evidence of the availability of funds. The Budget Branch, however, provided documentation that they approved funding prior to the contract specialist executing the procurement action; and
- One action was an unauthorized commitment that was executed by a contracting officer. The contracting officer was not authorized to approve the ratification and did not process the action through AMB's ratification process. The contracting officer did not obtain documentation that funding was available at the time of the unauthorized commitment by the program office – the first funding requirement for a ratification. There was documentation of funds availability at the time of the improper ratification by the contracting officer – the second funding requirement for a ratification.

Generally, AMB had internal controls in place to ensure that it complies with FAR section 32.702 requirements that funding availability be obtained prior to executing a contract. The controls, however, do not address documenting the approval of availability of funds in the contract file. The failure to document funding approval or authorization limits effective supervisory review. Additionally, AMB personnel circumvented the internal controls in one instance involving an unauthorized commitment.

Procurement Documents Execution

FAR section 2.101 defines a contract as “a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them” and includes all types of commitments that obligate the Government to an expenditure of appropriated funds. FAR section 4.101 states that “[o]nly contracting officers

shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract.” Also, FAR section 4.102 states that the contract “shall be signed” by the appropriate contractor’s representative.

We found that eight of the nine contracts in our sample were signed by the contracting officer. As discussed elsewhere, one procurement action was an unauthorized commitment in that the official that signed the action did not have a contracting officer’s warrant.

Four of the contracts were not signed by a contractor’s representative. For this testing, we looked for the contractor’s representative’s signature on either the Agency’s award document or on other documentation in the contract files such as the contractor’s proposal.

Our review of the AMB’s policies found that there were no documented procedures regarding obtaining the contractor’s signature. The failure to properly execute procurement documents puts the Agency at risk of contract disputes.

Designation of the Contracting Officer’s Representative

FAR section 1.602-2 states that a contracting officer shall designate and authorize, in writing and in accordance with agency procedures, a COR:

- On all contracts and orders other than those that are firm-fixed-price; and
- For firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties.

The section also requires that the designation “be in writing, with copies furnished to the contractor and the contract administration office specifying the extent of the COR's authority to act on behalf of the contracting officer, identifying the limitations on the COR's authority, specifying the period covered by the designation, stating the authority may not be redelegated, and stating that the COR may be personally liable for unauthorized acts.”

The AMB policy, as updated in April 2021, allows for the contracting officer to designate a point of contact (POC) rather than a COR for the acceptance, inspection, and recommendation of payment for supplies and services.

Two contracts in our sample were for contract types other than firm-fixed-price. In both actions, the COR was designated in a writing that addressed each of the requirements of FAR section 1.602-2 and the designation was provided to the contractor.

The remaining seven contracts were for firm-fixed-price contracts. For those seven:

- Two contracts had a COR designated, but the designation letters were not documented in the contract file. In one instance, the COR designation was in the statement of work and in the other it was in an email to the contractor; and
- Five contracts had a POC or invoice approver designated. That designation should be sufficient to notify individuals that the named person is not a COR and is consistent with AMB's policy. We did not, however, find any information in the contract file regarding why a POC was appropriate rather than a COR.

The failure to meet the FAR's requirements regarding the COR designation letter may result in the COR, contracting officer, and contractor not fully understanding the extent and/or limitation of the COR's responsibility. Additionally, the AMB policy regarding a POC does not address when it is appropriate to appoint a COR for firm-fixed-price procurements below the simplified acquisition threshold.

Invoice Administration

FAR section 32.905 states that payments for goods and services will be based on receipt of a proper invoice and satisfactory contract performance. Payments must be supported by documentation such as a receiving report or other documentation authorizing payments. The documentation authorizing payment must include at a minimum:

- Contract number or other authorization for supplies delivered and services performed;
- Description of the supplies delivered, or services performed;
- Quantities of supplies received and accepted, or services performed, if applicable;
- Date supplies delivered or services performed;
- Date that the designated Government official accepted the supplies; and
- Signature, printed name, title, mailing address, and telephone number of designated official responsible for acceptance and approval functions.

If an invoice does not comply with those requirements, it must be returned within 7 days after receipt with the reasons why it was rejected.

For the nine contracts in our sample, there were 47 payments through March 11, 2022. For those payments:

- All 47 invoices were approved by the responsible official prior to the payment;
- 21 invoices did not have all the information for the designated official responsible for acceptance and approval functions; and
- 28 payments were supported by invoices with documentation that they were submitted to the payment office by the fifth working day. The other 19 invoices did not have documentation of the date of transmittal.

In April 2021, the AMB policy was updated to include addressing the FAR's invoice requirements. We found, however, that of the 21 invoices that did not have all the information for the designated official responsible for acceptance and approval functions, 20 were processed after the policy update.

We also found that the Agency was not billed appropriately for two contracts. For one procurement, billing was weekly when the contract stated that the Agency was to be billed on a monthly basis. The procurement was also incorrectly identified as “firm-fixed-price” when it was based on labor hours. For another procurement involving two firm-fixed-price task orders, the procurement action stated that payments were based on the completion of milestones and deliverables, but monthly payments were made based on the annual obligated amount divided by 12.

Four invoices were rejected by the invoice approver. All four invoices were rejected timely and the reasons for the rejection were stated.

Although AMB has policies regarding invoice approval, we determined that the policies were not implemented in a manner to ensure compliance with the FAR or to ensure that the Agency was billed appropriately.

Advocate for Competition

FAR section 6.501 states that, as required by 41 U.S.C § 1705, the head of each executive agency shall designate an Advocate for Competition for the agency and for each procuring activity of the agency. The Advocate for Competition shall be in a position other than that of the agency’s senior procurement executive and not be assigned any duties or responsibilities that are inconsistent with FAR section 6.502. That section requires the Advocate for Competition to identify and report to the senior procurement executive and the chief acquisition officer on matters related to competition in an agency’s procurement process. The Advocate for Competition also makes recommendations for increasing competition as well as system of personal and organization accountability for competition.

When we asked for documentation to show that the Agency appointed an Advocate for Competition, we were told that the individual appointed was the former Director, AMB, but that there was no documentation of the appointment. We were told the former Director, AMB,

was appointed to the Advocate for Competition position prior to the promotion to Director, AMB. No individual was appointed to the Advocate for Competition after the former Director, AMB, left the Agency. When we asked for the reports that were submitted by the Advocate for Competition, we were told the reports could not be located.

We determined that there are no documented Agency policies or guidance on the appointment of an Advocate for Competition or the related duties and responsibilities. Based on the information provided by AMB, there is no documentation that the Agency complied with the FAR sections 6.501 or 6.502 regarding the appointment and duties of the Advocate for Competition.

MODIFICATION ACTIONS' FAR COMPLIANCE

Bilateral Modification

FAR section 43.103 section states that a bilateral modification is a contract modification that is signed by the contractor and the contracting officer and is used to:

- Make negotiated equitable adjustments resulting from the issuance of a change order;
- Definitize letter contracts; and
- Reflect other agreements of the parties modifying the terms of contracts.

In the sample of modifications, there were 25 modifications identified as a bilateral modification. For those 25 modifications, we determined that 23 modifications were bilateral modifications, and the remaining two modifications were related to name changes and therefore did not meet the FAR's definition of a bilateral modification. We found that 22 of the 23 bilateral modifications were signed by both the contractor and contracting officer. The one modification that was not signed by the contractor had documentation of the contractor's quote.

We found that during the audit scope period, AMB did not have policies and procedures addressing the requirements for bilateral agreements.

Increases in Funding

FAR section 43.105 states that the contracting officer shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that are conditioned on availability of funds or contain a limitation of cost or funds clause. FAR section 4.803(a) states that evidence of availability of funds is among the records normally contained in the contract file.

There were 23 modifications in our sample that only involved increases in funding. For 19 of the 23 modifications, AMB provided documentation of a dated certification of funds availability that was approved prior to the execution of the modification. For four modifications, the certification of funds availability that was provided by AMB was not dated. We obtained the date of approval from the Budget Branch and determined that funding was approved prior to the execution of the modification.

From our review of the bilateral modifications, we found that 13 of the 25 modifications caused an increase in funding. For those modifications, AMB also provided documentation regarding certification of funds availability that was approved prior to the execution of the modification; however, none of the documents had an approval date. We obtained the date of approval from the Budget Branch and determined that funding was approved prior to the execution of the modification. Also, one modification was an unauthorized commitment, and AMB did not provide documentation that the contracting officer obtained documentation that funding was available at the time of unauthorized commitment by the program office – the first funding requirement for a ratification, as required by AMB’s ratification policy.

Although the Procurement Cycle Memorandum states that without funding approval from the Budget Branch, approval actions cannot be processed by AMB, neither the memorandum nor the AMB policy addresses obtaining certification of funds availability for modifications or maintaining appropriate documentation in the contract file.

The failure to document funding approval or authorization limits effective supervisory review.

Extension of Service Contracts

FAR section 37.111 states that the contracting officer may include option clause 52.217-8 in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

FAR clause 52.217-8 states:

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The contracting officer may exercise the option by written notice to the contractor within ___ [insert the period of time within which the contracting officer may exercise the option].

We identified 13 modifications that extended the period of performance. Of those 13, only 5 of the modifications stated that they were based on FAR clause 52.217-8.

Three of the five modifications included FAR clause 52.217-8 by full text in the award document or incorporated it by reference. For the three modifications, each of the extensions was executed after the notice time period; however, AMB did not provide any documentation for any of the three modifications that notice was provided to the contractors by the stated time period.

We found that two modifications purported to use FAR clause 52.217-8 as an authority to execute the modification, but the award documents did not include the FAR clause 52.217-8 in full text or by reference. For each modification, the contracting officer included a *Memorandum for Record* (MFR) stating that FAR clause 52.217-8 was included either in the GSA contract or in the solicitation. From our review of

the GSA contracts and the AMB contract files, we are unable to determine the validity of the statement made by the contracting officer because there was no documentation to support the statement made in the MFRs. One of the procurements was for software licenses. GSA categorizes information technology software that is not being developed for Government-unique specifications as “supply buy” rather than a service. Additionally, there was a price increase, which is a bilateral agreement that is outside the scope of the extending services clause.

We also found a modification that the contracting officer misstated in the description that the modification was based on FAR clause 52.217-8. The modification extended the period of performance at no cost for the purpose of continuing to provide out-briefs. As such, the modification extended the period of performance to complete the task rather than provide continued services and should have been considered a bilateral agreement.

We determined that AMB does not have policies or procedures regarding the FAR requirements for extending service contracts.

Changes Within Scope

FAR section 6.001(c) states that the full and open competition requirement set forth in Part 6 of the FAR does not apply to contract modifications that are within the scope of the contract. FAR section 8.405-6 states that orders placed under an FSS are exempt from FAR part 6, and that section allows for circumstances that justify limiting sources to include logical follow-on work to an FSS order.

The OCFO’s Procurement Cycle Memorandum, dated September 2021, states that AMB is to verify that the request for a change is within the scope of the contract in accordance with the FAR and document the scope determination in the contract file. The AMB policy states that the contracting officers shall obtain legal review and advice from the Office of General Counsel for modifications involving complex contractual issues that raise legal issues; or where there is a concern as to whether the modification is in-scope, regardless of the dollar amount.

Of the 17 within scope modifications that we reviewed, we did not identify any issues with 7 modifications. For the remaining 10 modifications:

- Two modifications were executed after the end of the period of performance. The scope determinations did not address that the modifications were to be executed after the end of the period of performance. One modification did not have a determination or analysis that the modification was within the scope of the original award. Also, one modification was an apparent unauthorized commitment, and the contract file did not contain the ratification documents showing that the ratification for the procurement action was processed.
- Three modifications had incomplete or inaccurate scope determinations:
 - One scope determination relied on FAR clause 52.217-8, even though the clause was not included in the original contract;
 - One scope determination did not include an analysis of the reasonableness of a change in cost; and
 - One scope determination did not include a scope analysis regarding an additional quote for services.
- Five modifications for the extension of the period of performance for the same procurement included contradicting statements in the scope determination. Also, the modifications involved repeated extensions of the period of performance due to the pandemic; however, a legal review was not performed. Given the complex legal issues involving the procurement and the pandemic, a legal review should have been performed in accordance with the AMB policy.

Additionally, two modifications for procurements that were GSA FSS task orders incorrectly included a FAR Part 6 Justification and Approval for Other than Full and Open Competition. Those modifications are not subject to the FAR Part 6 requirements. The Justification and Approval for

Other than Full and Open Competition also included statements that were not applicable to the procurements.

AMB does not have adequate internal controls to ensure that modifications to procurements are within the scope of the original procurement action and meet the FAR requirements. The scope determinations were incomplete, inaccurate, and were not subject to a legal review when complex issues such as the pandemic arose or when the modification was executed after the end of the performance period.

Modifications Exercising Options

FAR section 17.208(g) states that the contracting officer is to insert a clause substantially the same as the clause 52.217-9, Option to Extend the Term of the Contracts, in solicitations and contracts when the inclusion of an option is appropriate. The standard clause provides for a written notice to the contractor within a specified number of days that the option to extend the contract is being executed and that within a specified number of days the contractor is provided a preliminary written notice that the Agency intends to exercise the option. FAR section 17.207(a) requires that when exercising the option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

We found that five of the seven modifications in our sample that exercised options did not comply with the time period requirements for the preliminary written notice of intent and/or written notice that the option is being executed. Also, we found that for one procurement action, the option clause did not include the specified number of days for the written notice. In another procurement action, we found that the timing for the preliminary notice of intent and the written notice in the clause were not specified in a sequential manner – in that the preliminary notice period was after the written notice period.

FAR section 17.207(c) states that the contracting officer may exercise an option only after making certain determinations. For one modification, the determination did not address all the FAR requirements, and for another modification, the determination was dated after the option was exercised.

AMB does not have effective policies and procedures to ensure that the contracting officer complies with the FAR provisions to provide preliminary notice of intent and written notice to the contractor within the time period specified in the procurement action or prepare a written determination before exercising the option for the contract file. The AMB policy does not address modifications to exercise options.

INTERNAL CONTROLS

From the GAO's *Standards for Internal Control in the Federal Government* we selected the internal control attributes and standards that are applicable to AMB's procurement process. We generally found AMB was not meeting those standards. The details of our internal control review are provided at Appendix A.

In some instances, as discussed above and in the internal control matrix, the cause of the internal control deficiencies appears to be a lack of documented policies and procedures. In other instances, AMB staff did not comply with the documented internal controls. In three of those instances, AMB staff circumvented internal controls without any detection by supervisory or management officials. In one instance, an AMB employee without a warrant executed a procurement and paid for it with a purchase card. In two other instances, the contracting officer executed the procurement action apparently knowing that it was an unauthorized commitment and failing to follow AMB's ratification process. We also found instances when AMB had controls in place, but AMB staff failed to properly document compliance with those controls. The failure to follow and document compliance with controls activity; and the failure to discover and remediate those instances through meaningful supervisory reviews renders the particular internal control ineffective.

The overall effect of the failure to have an adequate system of internal controls for the Agency's procurement process and to ensure compliance with the FAR, as described above and listed in Appendix A, is an inability of the OCFO to ensure that it is delivering, on a timely basis, the best value product or service to the Agency, while maintaining the public's trust and fulfilling public policy objectives.

RECOMENDATIONS

After we initiated the audit, AMB made changes to its internal controls as the result of updating policies and procedures in the Contracting Officer's Representative Handbook dated May 11, 2022. Those changes are outside the scope of the audit. The OCFO should review the changes in determining appropriate action to implement the following recommendations:

- (1) Develop internal controls to address deficiencies that resulted in non-compliance with the FAR and identified in the Internal Control Matrix;
- (2) Provide training to AMB staff regarding its internal controls as they relate to compliance with the FAR; and
- (3) Develop a system of supervisory review that will identify apparent instances of noncompliance with the FAR and AMB's internal control processes.

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
<p>1.06 Management establishes standards of conduct to communicate expectations concerning integrity and ethical values. The entity uses ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the general public.</p>	<p>MEETS</p>	<p>The Agency's Ethics Branch provides ethics training to new and existing Acquisitions Management Branch (AMB) staff. New staff receive a new hire ethics orientation within 90 days of the start of their NLRB employment and existing staff participate in the annual ethics training.</p> <p>The new hire ethics orientation and the annual ethics training are tracked via the Agency's learning management system. Ethics Branch staff reviews the reports to ensure that the training requirements are met and communicates with employees and their supervisors as needed when the requirements are not met.</p>
<p>3.02 Management establishes the organizational structure necessary to enable the entity to plan, execute, control, and assess the organization in achieving its objectives. Management develops the overall responsibilities from the entity's objectives that enable the entity to achieve its objectives and address related risks.</p>	<p>MEETS</p>	<p>The Office of the Chief Financial Officer (OCFO) is comprised of the Budget, Acquisitions, Finance, and Internal Controls, Enterprise Risk Management and Performance branches. The Chief Financial Officer (CFO) reports directly to the Chairman and General Counsel. The CFO is responsible for managing all financial activities within the organization. These activities include internal controls, enterprise risk management, planning, budget, financial reporting, acquisition, risk management, agency performance, and analysis.</p>
<p>3.03 Management develops an organizational structure with an understanding of the overall responsibilities and assigns these responsibilities to discrete units to enable the organization to operate in an efficient and effective manner, comply with applicable laws and regulations, and reliably report quality information.</p>		<p>AMB is headed by the Director of Acquisitions and reports to the CFO. The Director of Acquisitions, who is also the Head of the Contracting Authority (HCA), has</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>3.04 As part of establishing an organizational structure, management considers how units interact in order to fulfill their overall responsibilities. Management establishes reporting lines within an organizational structure so that units can communicate the quality information necessary for each unit to fulfill its overall responsibilities.</p>		<p>oversight of all NLRB acquisitions. The Acquisition Management Branch Policy (AMB Policy) states that the HCA assists the CFO in taking systematic and proactive measures to: (1) develop and implement appropriate, cost-effective internal controls for results-oriented management; (2) assess the adequacy of internal controls and identify needed improvements in Agency acquisition operations; and (3) assist in taking corresponding corrective action.</p>
<p>3.05 Management periodically evaluates the organizational structure so that it meets the entity's objectives and has adapted to any new objectives for the entity, such as a new law or regulation.</p>		<p>The Procurement Cycle Memorandum describes how units within the OCFO interact. The program offices obtain budget approval from the Budget Branch; contracting officers are responsible for ensuring performance of all necessary actions for effecting contracting; and payments are made by the Finance Branch.</p> <p>The OCFO's organizational chart was reviewed and updated in 2021 to include the Internal Controls, Risk Management and Performance Branch.</p>
<p>3.06 To achieve the entity's objectives, management assigns responsibility and delegates authority to key roles throughout the entity.</p>	MEETS	<p>The AMB Policy and the Procurement Cycle Memorandum describe the responsibilities of the HCA, contracting officers, and the Contracting Officer's Representative (COR).</p>
<p>3.07 Management considers the overall responsibilities assigned to each unit, determines what key roles are needed to fulfill the assigned responsibilities, and establishes the key roles.</p>		<p>The HCA is generally delegated authority to manage contracting office operations, oversees the award and administration of all contracts; appoint contracting officers in accordance with all</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>3.08 Management determines what level of authority each key role needs to fulfill a responsibility. Management delegates authority only to the extent required to achieve the entity's objectives.</p>		<p>applicable laws and regulations; prescribe policies, procedures, and processes governing the conduct of all procurement activities; and oversees the Agency's purchasing program. The contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and staying current on Continuous Learning Points (CLP). The contracting officers also designate and authorize a COR, Technical Point of Contact (TPOC), or Point of Contact (POC) on all contractual vehicles to assist in the technical monitoring or administration of a contract. The CORs/TPOCs/POCs also have the primary responsibility to approve the payment of invoices.</p>
<p>3.09 Management develops and maintains documentation of its internal control system.</p>	<p>MEETS</p>	<p>The AMB Policy, Procurement Cycle Memorandum, and Procurement Notices together document AMB's internal controls.</p>
<p>3.10 Effective documentation assists in management's design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel.</p>	<p>DOES NOT MEET</p>	<p>The internal control documentation was not effective in assisting in the design of AMB's internal control to ensure compliance with the Federal Acquisition Regulation (FAR). For example, AMB's policies and procedures do not require an acquisition plan for procurements below the simplified acquisition threshold; do not provide adequate guidance regarding when to appoint a COR and documenting the COR designation letter; and do not address the use of the contract file templates.</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>4.02 Management establishes expectations of competence for key roles, and other roles at management’s discretion, to help the entity achieve its objectives.</p>	<p>MEETS</p>	<p>The CFO and the HCA are responsible for managing AMB employees. Expectation of competencies were established for key roles in AMB through position descriptions.</p> <p>AMB policy established the expectations and key roles of the COR.</p>
<p>4.05 Management recruits, develops, and retains competent personnel to achieve the entity’s objectives.</p>	<p>MEETS</p>	<p>During the scope period, AMB maintained a staffing level with little attrition.</p> <p>AMB uses the IDP as a tool to help OCFO employees in career development and advancement. As part of their annual review, AMB reviews the IDPs to ensure that employees have the training needed to support future requirements and meet the Agency’s goals and objectives.</p>
<p>4.06 Management defines succession and contingency plans for key roles to help the entity continue achieving its objectives.</p>	<p>DOES NOT MEET</p>	<p>The OCFO did not have a succession plan during the audit scope period.</p>

GAO - STANDARDS	CONCLUSION	RESULTS
<p>5.02 Management enforces accountability of individuals performing their internal control responsibilities. Accountability is driven by the tone at the top and supported by the commitment to integrity and ethical values, organizational structure, and expectations of competence, which influence the control culture of the entity. Accountability for performance of internal control responsibility supports day-to-day decision making, attitudes, and behaviors. Management holds personnel accountable through mechanisms such as performance appraisals and disciplinary actions.</p>	<p>DOES NOT MEET</p>	<p>The Procurement Cycle Memorandum states that contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.</p> <p>We observed that there was no documentation of supervisory review in the contract files. Management did not detect inadvertent and willful deviation from the internal control requirements.</p> <p>Management cannot hold employees accountable if there is not a proper system of review of contract files to ensure compliance with its internal control environment.</p>
<p>5.07 Management adjusts excessive pressures on personnel in the entity. Pressure can appear in an entity because of goals established by management to meet objectives or cyclical demands of various processes performed by the entity, such as year-end financial statement preparation. Excessive pressure can result in personnel “cutting corners” to meet the established goals.</p>	<p>PARTIALLY MEETS</p>	<p>During the third quarter, the CFO provides annual guidance for year-end spending with the key deadlines for contracting actions for the third and fourth quarters. However, we identified instances where excessive pressure from program offices may have been placed on contracting officers that resulted in contracting officers knowingly entering into unauthorized agreements on behalf of the Agency. Because the management did not identify excess</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>5.08 Management is responsible for evaluating pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with the entity's standards of conduct. Management can adjust excessive pressures using many different tools, such as rebalancing workloads or increasing resource levels.</p>		<p>pressures, it was not able to evaluate and then make adjustments.</p>
<p>6.02 Management defines objectives in specific and measurable terms to enable the design of internal control for related risks.</p>	<p>DOES NOT MEET</p>	<p>OCFO provided their annual qualitative and quantitative risk assessment. The risk assessment considered risks for financial statement line items. The assessment did not define the objectives in specific and measurable terms or the risk tolerance for procurement actions as they relate to the acquisition of goods and services under the FAR. According to the assessment at the "Scoring by Bus Process" tab, the risks reviewed were related to the financial statement line item "Accounts Payable (Liabilities with the Public)" process, "CC: Commercial Contracts." Although the "Scoring by Bus Process" tab contains evaluation for "Commercial Contracts (Liability with the Public)," the "Assessment" tab contained information for "Liabilities with the Public," but not any specific information related to AMB's compliance with the FAR.</p>
<p>6.06 Management evaluates and, if necessary, revises defined objectives so that they are consistent with these requirements and expectations.</p>		
<p>6.07 Management determines whether performance measures for the defined objectives are appropriate for evaluating the entity's performance in achieving those objectives.</p>		
<p>6.08 Management defines risk tolerances for the defined objectives. Risk tolerance is the acceptable level of variation in performance relative to the achievement of objectives. Risk tolerances are initially set as part of the objective-setting process.</p>		

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>7.02 Management identifies risks throughout the entity to provide a basis for analyzing risks. Risk assessment is the identification and analysis of risks related to achieving the defined objectives to form a basis for designing risk responses.</p>	<p align="center">DOES NOT MEET</p>	<p>OCFO provided their annual qualitative and quantitative risk assessment. The risk assessment considered risks for financial statement line items. The assessment did not address the risks for procurement actions as they relate to the acquisition of goods and services under the FAR. According to the assessment at the "Scoring by Bus Process" tab, the risks reviewed were related to the financial statement line item "Accounts Payable (Liabilities with the Public)" process, "CC: Commercial Contracts." Although the "Scoring by Bus Process" tab contains evaluation for "Commercial Contracts (Liability with the Public)," the "Assessment" tab contained information for "Liabilities with the Public," but not any specific information related to AMB's compliance with the FAR.</p>
<p>7.06 Management estimates the significance of the identified risks to assess their effect on achieving the defined objectives at both the entity and transaction levels.</p>		
<p>7.08 Management designs responses to the analyzed risks so that risks are within the defined risk tolerance for the defined objective. Management designs overall risk responses for the analyzed risks based on the significance of the risk and defined risk tolerance. These risk responses may include Acceptance, Avoidance, Reduction, and Sharing.</p>		
<p>8.02 Management considers the types of fraud that can occur within the entity to provide a basis for identifying fraud risks. Types of fraud are: Fraudulent financial reporting; Misappropriation of assets; and Corruption.</p>	<p align="center">DOES NOT MEET</p>	<p>OCFO provided their annual qualitative and quantitative risk assessment in a spreadsheet format. The risk assessment considered fraud risks for financial statement line items. The assessment did not address fraud risk for procurement actions as they relate to the acquisition of goods and services under the FAR. According to the assessment spreadsheet at the "Scoring by Bus Process" tab, the risks reviewed</p>
<p>8.03 In addition to fraud, management considers other forms of misconduct that can occur, such as waste and abuse.</p>		

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>8.04 Management considers fraud risk factors. Fraud risk factors do not necessarily indicate that fraud exists but are often present when fraud occurs. Fraud risk factors includes Incentives/Pressure; Opportunity; and Attitude/Rationalization.</p>		<p>were related to the financial statement line item "Accounts Payable (Liabilities with the Public)" process, "CC: Commercial Contracts." Although the "Scoring by Bus Process" tab contains evaluation for "Commercial Contracts (Liability with the Public)," the "Assessment" tab contained information for "Liabilities with the Public," but not any specific information related to AMB's compliance with the FAR.</p>
<p>8.06 Management analyzes and responds to identified fraud risks so that they are effectively mitigated.</p>		
<p>9.02 As part of risk assessment or a similar process, management identifies changes that could significantly impact the entity's internal control system.</p>	<p>DOES NOT MEET</p>	<p>OCFO provided their annual qualitative and quantitative risk assessment. The risk assessment considered changes for financial statement line items. The assessment did not address the changes for procurement actions as they relate to the acquisition of goods and services under the FAR. According to the assessment at the "Scoring by Bus Process" tab, the risks reviewed were related to the financial statement line item "Accounts Payable (Liabilities with the Public)" process, "CC: Commercial Contracts." Although the "Scoring by Bus Process" tab contains evaluation for "Commercial Contracts (Liability with the Public)," the "Assessment" tab contained information for "Liabilities with the Public," but not any specific information related to AMB's compliance with the FAR.</p>
<p>9.03 Management identifies, on a timely basis, significant changes to internal and external conditions that have already occurred or are expected to occur. Changes in internal conditions include changes to the entity's programs or activities, oversight structure, organizational structure, personnel, and technology.</p>		
<p>9.04 As part of risk assessment or a similar process, management analyzes and responds to identified changes and related risks in order to maintain an effective internal control system. Changes in conditions affecting the entity and its environment often require changes to the entity's internal control system, as existing controls may not be effective for meeting objectives</p>		

GAO - STANDARDS	CONCLUSION	RESULTS
or addressing risks under changed conditions.		
<p>10.02 Management designs control activities in response to the entity’s objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.</p>	<p>DOES NOT MEET</p>	<p>Management did not design AMB's internal controls to meet its objectives related to compliance with the FAR. There was a lack of policies and procedures to ensure that verification of contractor's registration in the System of Award Management (SAM) is documented in the contract file; new procurement documents are signed by the contractor; a COR is appointed for firm fixed-price contract and the COR designation letter is documented in the contract file; technical evaluations include all factors listed in the solicitation; price reasonableness and technical evaluations are documented in the contract file; contracting officers’ small business set-aside decisions are documented in the contract file; mandatory sources consideration is documented in the contract file; the funding approval date is documented in the contract file; an Advocate for Competition is appointed and the related duties and responsibilities are documented; within scope modifications are within the scope of the original procurement; and contracting officers follow the FAR requirements for extending a service contract and exercising an option.</p>
<p>10.03 Management designs appropriate types of control activities for the entity’s internal control system. Control activities help management fulfill responsibilities and address identified risk responses in the internal control system.</p>		

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GAO - STANDARDS	CONCLUSION	RESULTS
<p><i>10.03 Management of Human Capital:</i> Effective management of an entity’s workforce, its human capital, is essential to achieving results and an important part of internal control. Only when the right personnel for the job are on board and are provided the right training, tools, structure, incentives, and responsibilities is operational success possible.</p>	<p>MEETS</p>	<p>Management had a 14.3% (1/7) attrition rate with no new hires during the scope period. The employee loss occurred at the end of scope period.</p> <p>Management uses the IDP as a tool to help OCFO employees in career development and advancement. AMB reviews the IDPs to ensure that employees have the training needed to support future requirements and meet the Agency’s goals and objectives.</p>
<p><i>10.03 Segregation of duties:</i> Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.</p>	<p>PARTIALLY MEETS</p>	<p>The Procurement Cycle Memorandum describes how the units within the OCFO interact in regard to segregation of duties. The program offices obtain budget approval from the Budget Branch; contracting officers are responsible for ensuring performance of all necessary actions for effective contracting; and the payments are made by the Finance Branch. AMB also has internal controls regarding the ratification of unauthorized commitments that limit the approval to the HCA or CFO.</p> <p>There are, however, no internal controls to ensure segregation of duties is maintained in the procurement process. We found instances in the procurement process where segregation of duties were not followed. For example, a contract specialist without a warrant signed a procurement action, creating a contract, and then paid for it with a purchase card. Also, a contracting officer executed contracts for unauthorized commitments created by the program offices without following AMB's ratification</p>

GAO - STANDARDS	CONCLUSION	RESULTS
		process. These instances were not detected by the HCA or CFO.
<p><i>10.03 Proper execution of transaction:</i> Transactions are authorized and executed only by persons acting within the scope of their authority. This is the principal means of assuring that only valid transactions to exchange, transfer, use, or commit resources are initiated or entered into. Management clearly communicates authorizations to personnel.</p>	<p>PARTIALLY MEETS</p>	<p>The AMB Policy states that the contracting officers' warrants are issued at particular dollar thresholds and type based upon the needs of the organization and the demands of a particular position. However, management did not establish internal control activities to ensure that the procurement actions were executed only by authorized officials.</p>
<p><i>10.03 Accurate and timely recording of transactions:</i> Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.</p>	<p>PARTIALLY MEETS</p>	<p>The Agency does not have policies and procedures to ensure accurate and timely recording of transactions in the procurement life cycle. We found that the acquisition plans were signed after the procurement process started; an option determination was prepared after exercising the option; funding approval documentation did not include the budget approval dates; and supporting documentation for scope determinations was inaccurate and incomplete.</p> <p>Also, during our modification universe determination, we found that four modifications were not entered in the Federal Procurement Data System - Next Generation (FPDS-NG). After we notified AMB, we found that one modification was still not entered in FPDS-NG. Additionally, we observed that AMB's policy regarding FPDS-NG posting did not correctly state the FAR's 3-day posting requirement.</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p><i>10.03 Access restrictions to and accountability for resources and records:</i> Management limits access to resources and records to authorized individuals and assigns and maintains accountability for their custody and use. Management may periodically compare resources with the recorded accountability to help reduce the risk of errors, fraud, misuse, or unauthorized alteration.</p>	<p>DOES NOT MEET</p>	<p>Agency officials could not demonstrate that there were sufficient internal controls over the access of the contract files.</p>
<p><i>10.03 Appropriate documentation of transactions and internal control:</i> Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.</p>	<p>PARTIALLY MEETS</p>	<p>Management's internal controls are documented in the AMB Policy, Procurement Cycle Memorandum, and Procurement Notices. However, management does not have adequate policies and procedures to ensure that transactions and other significant events are appropriately documented. Although AMB uses a checklist to ensure completeness of the contract file, the process is not documented in the policy documents. We found that one or more of the contract files were missing the checklists. Transactions were not always documented, for example: contract files were also missing vendor verification in SAM; contracting officers' small business set-aside decisions; mandatory sources consideration; price reasonableness and technical evaluations; and funding approval dates.</p> <p>Additionally, AMB officials could not provide the warrant, training records, and/or current Federal Acquisition Certification for Contracting certificate for one or</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
		more employees; or a signed delegation of authority letter for the Advocate for Competition.
<p>10.05 Management evaluates the purpose of the control activity as well as the effect a deficiency would have on the entity in achieving its objectives.</p>	<p>PARTIALLY MEETS</p>	<p>Management evaluated the internal control system for the procurement process to determine whether control activities are effective. Control activities tested included Oracle funds check, requisition approval, and award approval. Under the award approval category, management reviewed whether the awards were signed by the contracting officer, submitted to the awardee and the COR/POC/TPOC, and recorded the award in FPDS-NG. The review process does not evaluate the effect of the deficiencies.</p>
<p>10.08 Management designs control activities for appropriate coverage of objectives and risks in the operations. Operational processes transform inputs into outputs to achieve the organization’s objectives. Management designs entity-level control activities, transaction control activities, or both depending on the level of precision needed so that the entity meets its objectives and addresses related risks.</p>	<p>PARTIALLY MEETS</p>	<p>The Procurement Cycle Memorandum describes policies and procedures at entity level. The program offices obtain budget approval from the Budget Branch; contracting officers are responsible for ensuring performance of all necessary actions for effective contracting; and the payments are made by the Finance Branch.</p> <p>AMB internal controls, however, were not adequate to ensure that procurement actions meet the FAR requirements.</p>
<p>12.03 Management documents in policies for each unit its responsibility for an operational process’s objectives and related risks, and control activity design, implementation, and operating effectiveness.</p>	<p>MEETS</p>	<p>The AMB Policy and Procurement Cycle Memorandum document the policies for each unit’s responsibility.</p> <p>The AMB Policy states that the HCA shall ensure that the AMB Policy and any other local acquisition</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>12.05 Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity’s objectives or addressing related risks. If there is a significant change in an entity’s process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately.</p>		<p>policies are periodically reviewed at intervals not to exceed 12 months and shall take action to cancel any policy not reviewed and revised after two years. It also states that the HCA issues revisions to the AMB Policy. The AMB Policy dated April 2021 was revised to include FAR Part 32. There were no policy changes between the Procurement Cycle Memorandum issued in FY 2021 and FY 2022.</p>
<p>13.02 Management designs a process that uses the entity’s objectives and related risks to identify the information requirements needed to achieve the objectives and address the risks.</p>	<p>PARTIALLY MEETS</p>	<p>Management has designed processes that use the AMB objectives and related risks to identify information requirements. However, that process was not effective. For example, AMB Policy requires an Independent Government Cost Estimate (IGCE) and the IGCEs documented in the contract file did not include all the information required by the AMB policy. Additionally, we found that the contracting officers created documents after the process started. For example, a determination document was created after the option modification was executed; and acquisition planning documents were created after the procurement process started. Because the documentation is necessary for internal control activities, management lacked quality information that supports the internal control system.</p>
<p>13.05 Management processes the obtained data into quality information that supports the internal control system.</p>		

GAO - STANDARDS	CONCLUSION	RESULTS
<p>14.02 Management communicates quality information throughout the entity using established reporting lines. Quality information is communicated down, across, up, and around reporting lines to all levels of the entity.</p>	<p>PARTIALLY MEETS</p>	<p>Management uses the AMB Policy, Procurement Cycle Memorandum and Procurement Notices to communicate their policies. We also found email correspondence in the contract files between AMB employees, program offices, and contractors that documented key information.</p>
<p>14.03 Management communicates quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system. In these communications, management assigns the internal control responsibilities for key roles.</p>		<p>We also found instances that important information was not properly communicated. For example, we found that the official appointment of the COR designation was not consistently communicated; the budget approval document in the contract file did not include the budget approval dates; and scope determinations contained contradictory statements.</p>
<p>14.07 Management selects appropriate methods to communicate internally. Management considers a variety of factors in selecting an appropriate method of communication.</p>		
<p>16.02 Management establishes a baseline to monitor the internal control system. The baseline is the current state of the internal control system compared against management’s design of the internal control system.</p>	<p>PARTIALLY MEETS</p>	<p>Management established a baseline to monitor the internal control system for the procurement process. Currently, the AMB baseline consist of Oracle funds check controls, requisition approval controls, and award approval controls. For award approval, the OCFO reviewed whether the awards were signed by the contracting officer, submitted to the awardee and the COR/POC/TPOC, and recorded the award in FPDS-NG. The baseline established was not sufficient to monitor compliance with the FAR.</p>

GAO - STANDARDS	CONCLUSION	RESULTS
<p>16.05 Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions.</p>	<p>DOES NOT MEET</p>	<p>Management did not effectively monitor the design and operating effectiveness of its internal control system and evaluate the results. In one or more instances we found the following: contracts were not signed by the contractor’s representatives; acquisition plans were signed after the need was identified and the procurement process had started; IGCEs were missing one or more of the necessary information; contracting officers used different formats for sole source justifications; approved invoices did not include all the information required by FAR section 32.905; a bilateral modification was not signed by the contractor; unauthorized commitments were created, and management failed to follow the Agency’s ratification process; statement made in supporting documentation for the extension of service modification was not supported; incomplete, inaccurate, and contradictory statements were made in the within scope determination; legal review was not obtained for modifications with complex issues; the option determination was prepared after exercising the option; and contract files were missing one or more documents.</p>
<p>16.09 Management evaluates and documents the results of ongoing monitoring to identify internal control issues.</p>		



UNITED STATES NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE CHIEF FINANCIAL OFFICER

April 11, 2023

TO: David P. Berry, Inspector General

FROM: Isabel Luengo McConnell, Chief Financial Officer

SUBJECT: Response to the Fiscal Year 2021 - 2022 Procurement Process Audit Report

- 1. Purpose:** The purpose of this document is to provide a response to the National Labor Relations Board (NLRB), Office of the Inspector (OIG), to the Fiscal Year 2021 - 2022 Procurement Process Audit Report. The Office of the Chief Financial Officer (OCFO) has reviewed the recommendations and provides responses to each recommendation.
- 2. Recommendation Number 1:** *Develop internal controls to address deficiencies that resulted in non-compliance with the FAR and identified in the Internal Control Matrix.*
- 3. Response to Recommendation Number 1:** The OCFO concurs with the recommendation. The OCFO will develop internal controls to address deficiencies identified as a result of the Procurement Process Audit. The OCFO will update current policies to reflect the findings of the audit. Additionally, the OCFO will be providing documentation and training to ensure that staff is aware of the new policies and procedures.
- 4. Recommendation Number 2:** *Provide training to AMB staff regarding its internal controls as they relate to compliance with the FAR.*
- 5. Response to Recommendation Number 2:** The OCFO concurs with the recommendation. The OCFO will provide training for AMB staff regarding internal controls related to compliance with the FAR in order to address deficiencies. .
- 6. Recommendation Number 3:** *Develop a system of supervisory review that will identify apparent instances of noncompliance with the FAR and AMB's internal control processes.*
- 7. Response to Recommendation Number 3:** The OCFO concurs with this recommendation. The OCFO will develop a supervisory review process to identify apparent instances of noncompliance with the FAR and AMB's internal control processes.

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Isabel Luengo McConnell, Chief Financial Officer