



OFFICE OF
**INSPECTOR
GENERAL**
UNITED STATES POSTAL SERVICE

The Sufficiency of Recent Policy Changes Regarding Contracting Conflicts of Interest

Audit Report

August 31, 2011

Report Number CA-AR-11-006



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Conflicts of Interest**

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HIGHLIGHTS

IMPACT ON:

This audit will impact the U.S. Postal Service's purchasing policies.

WHY THE OIG DID THE AUDIT:

This audit is a follow-up to our audit of *U.S. Postal Service Purchasing Policies* (Report Number CA-AR-10-005, dated September 20, 2010). The previous audit identified that the control environment within the Postal Service allowed the awarding of contracts even though there were apparent conflicts of interest. Additionally, the prior audit identified contracts with former Postal Career Executive Service executives that did not contain adequate noncompetitive justifications. Senator Susan M. Collins requested that we review the Postal Service's recent policy changes regarding conflicts of interest and contracting with former executives. Our objective was to determine whether the changes were sufficient to promote accountability and impartial and cost-effective contracting decisions. We also compared the Federal Acquisition Regulation (FAR) conflict of interest rules with applicable Postal Service rules.

WHAT THE OIG FOUND:

The Postal Service agreed to take action to address weaknesses related to conflicts of interest and contracting with former executives identified in the *U.S.*

Postal Service Purchasing Policies

audit. Actions taken to date include implementing policies similar to or more stringent than the FAR requirements. The new policies are sufficient to avert direct or imputed conflicts of interest among contracting officials and internal business clients and should help to promote accountability and impartial and cost-effective contracting decisions.

WHAT THE OIG RECOMMENDED:

Because of the Postal Service's actions to date, we are not making any recommendations at this time.

WHAT MANAGEMENT SAID:

Management agreed with the findings of this report; however, for noncompetitive contracting actions, they plan to issue an annual summary report in lieu of publishing the full noncompetitive justification for each contract action.

AUDITORS' COMMENTS:

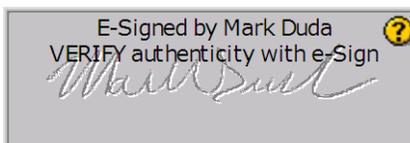
Management's plan to incorporate a summary of noncompetitive actions into an annual report will not be sufficient to close our prior recommendation. Timely public reporting of the entire justification for noncompetitive contracts will help promote accountability and impartial and cost-effective contracting decisions.

[Link to review the entire report](#)



August 31, 2011

MEMORANDUM FOR: SUSAN M. BROWNELL
VICE PRESIDENT, SUPPLY MANAGEMENT



FROM: Mark W. Duda
Deputy Assistant Inspector General
for Support Operations

SUBJECT: Audit Report – The Sufficiency of Recent Policy
Changes Regarding Contracting Conflicts of Interest
(Report Number CA-AR-11-006)

This report presents the results of our audit of the sufficiency of recent policy changes regarding contracting conflicts of interest (Project Number 11YG020CA000).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Judith Leonhardt, director, Supply Management, or me at 703-248-2100.

Attachments

cc: Joseph Corbett
Susan Witt
Corporate Audit and Response Management

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Introduction

This report presents the results of our audit of the sufficiency of recent policy changes regarding contracting conflicts of interest (Project Number 11YG020CA000). The report responds to a request from Senator Susan M. Collins to review the U.S. Postal Service's recent policy changes regarding conflicts of interest and contracting with former executives. Our objective was to determine whether the Postal Service's recent purchasing policy changes regarding conflicts of interest related to noncompetitive contracts and contracts with former executives were sufficient to promote accountability and impartial and cost-effective contracting decisions. In addition, Senator Collins asked that we include a comparative analysis of the Federal Acquisition Regulation (FAR) conflict of interest rules with applicable Postal Service rules. This audit addresses operational risk. See [Appendix A](#) for additional information about this audit.

This audit is a follow-up to a previous audit titled *U.S. Postal Service Purchasing Policies* (Report Number CA-AR-10-005, dated September 20, 2010). That audit identified the control environment within the Postal Service that allowed the requesting business function to negotiate prices and award contracts to friends and former associates even though there were apparent conflicts of interest. Although contracting officers (COs) were, at times, aware of potential conflicts of interest, they did not always object. Additionally, the audit identified contracts with former Postal Career Executive Service (PCES) executives that did not contain adequate noncompetitive justifications.

Conclusion

The new policies issued in response to our prior audit are sufficient to avert direct or imputed conflicts of interest among contracting officials and internal business clients and should help to promote accountability and impartial and cost-effective contracting decisions. The actions taken to date include implementing policies similar to or more stringent than the requirements of the FAR.

Status of the Postal Service's Actions to Address Weaknesses Noted in a Prior Audit Report

The *U.S. Postal Service Purchasing Policies* audit found the Postal Service's procurement policies and procedures for awarding noncompetitive contracts were much less extensive than those mandated in the FAR. Postal Service management has begun taking actions in response to that audit's recommendations. They have completed corrective actions for four of the nine recommendations. You can find the details of actions the Postal Service has taken to address the weaknesses noted in the *U.S. Postal Service Policies* audit in [Appendix B](#).

Comparison of FAR Conflict of Interest Requirements to Postal Service Policies

In 1970, congress passed the Postal Reorganization Act¹ which established the Postal Service. The Postal Service was given flexibility with its purchasing practices and is exempt from most federal procurement regulations including the FAR, the Competition in Contracting Act of 1984², and the Procurement Integrity Act.³ The FAR was established to codify and publish mandatory uniform policies and procedures for all executive agency acquisitions. As such, violating the FAR is a clear violation of a known federal regulation.⁴ The Postal Service's Supplying Principles and Practices (SP&Ps) are not binding regulations and are generally intended to provide flexibility and discretion in their application to specific business situations.⁵ We compared FAR requirements to Postal Service policies in regard to the potential for conflicts of interest related to noncompetitive contracts and contracts with former executives (see [Appendix C](#) for greater details).

As detailed in the comparison, in some cases, Postal Service policies are more stringent than the FAR requirements. For example:

- The FAR requires the head of the contracting activity (HCA) and the agency head to be involved in the process at certain points in resolving ethics violations or possible violations of the Procurement Integrity Act. The Postal Service's policies involve ethics officials earlier in the purchasing process. The ethics counsel is independent of the purchasing decision and reports to the postmaster general (PMG). In addition, only a designated ethics official and the PMG in consultation with the Office of Government Ethics may grant a statutory waiver for a financial conflict of interest.⁶
- The FAR does not contain conflict of interest and non-disclosure of sensitive information certification requirements for noncompetitive justifications. The Postal Service's policies require the requesting organization to submit a noncompetitive purchase request. The responsible parties of the requesting organization must certify that they do not have any conflicts of interest or loss of impartiality and will not disclose any sensitive information during the purchasing process.

¹ The Postal Service was established as an independent establishment within the Executive branch of the government of the U.S. under the Postal Reorganization Act of August 12, 1970 (Public Law 91-375, 84 Stat. 719).

² The Competition in Contracting Act of 1984 revised the FAR to encourage competition for awarding all types of government contracts. The purpose was to increase the number of competitors and savings through lower, more competitive pricing.

³ FAR 3.104-2, General, implements Section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act). The Postal Service is not required to comply with the act. The act includes prohibitions on disclosing and obtaining certain procurement information, actions required when an agency official contacts or is contacted by an offeror regarding non-federal employment, and prohibition's on former officials acceptance of compensation from a contractor.

⁴ The FAR does provide for flexibility in strategies, practices, policies, and procedures as long as the actions pursued are not specifically disallowed by the FAR, law, or regulation.

⁵ Postal Service purchasing regulations are contained in 39 CFR Section 601.

⁶ 5 CFR 2635.402(d)(4) states that, when practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the director, Office of Government Ethics.

- The FAR states that the Competition Advocate (CA) or an individual in a grade above general schedule (GS) 15 or comparable must approve justifications valued at between \$650,000 and \$12.5 million. The head of the procuring activity must approve justifications over \$12.5 million. The Postal Service's CA is responsible for independently reviewing and advising the CO on all noncompetitive purchase requests valued at \$1 million or more. Portfolio managers within Supply Management may approve purchase method recommendations for noncompetitive purchases valued at up to \$10 million, except for noncompetitive purchases of professional, technical, and consultant services valued at \$1 million or more. The vice president, Supply Management, must approve requests for noncompetitive professional, technical, and consultant services purchases valued at \$1 million or more, and all other noncompetitive purchases valued at \$10 million or more. Portfolio managers may delegate up to \$250,000 of this purchase method approval authority to subordinate team leaders or managers in the applicable purchasing organizations.

Because of the Postal Service's actions to date, we are not making any recommendations at this time.

Management's Comments

Management agreed with the findings. However, management clarified that in response to our prior recommendation⁷ concerning full and accurate tracking and public reporting of noncompetitive contracting actions, they plan to annually issue a fiscal year report that includes total dollars committed competitively, noncompetitively, and to required sources. For noncompetitive actions, they plan to incorporate a summary with the supplier's name, dollars committed, and the type of business scenario justifying the noncompetitive purchase. See [Appendix D](#) for management's comments in their entirety.

Evaluation of Management's Comments

As the report did not contain any recommendations, the U.S. Postal Service Office of Inspector General (OIG) considers management's comments responsive. However, management's plan to incorporate a summary of the supplier's name, dollars committed, and the type of business scenario justifying the noncompetitive purchase into an annual report will not be sufficient to close our prior recommendation. Specifically, we recommended the Postal Service take steps to ensure full and accurate tracking and public reporting of noncompetitive contracting actions and justifications for noncompetitive contracts. The timely public reporting⁸ of the entire justification for noncompetitive contracts will help to promote accountability and impartial and cost-effective contracting decisions.

⁷ Recommendation number 5 in the *U.S. Postal Service Purchasing Policies* audit report (Report Number CA-AR-10-005, dated September 20, 2010).

⁸ FAR 6.305, *Availability of the Justification*, requires noncompetitive justifications be made publicly available at the Government Wide Point of Entry and on the agency website within 14 days after contract award.

Appendix A: Additional Information

Background

The Postal Service may contract with former employees (other than former officers or PCES executives) or with suppliers proposing the use of former employees during contract performance when the former employee's expertise will further the success of the purchase and the business and competitive interests of the Postal Service.⁹ Contracts with former employees or with suppliers offering the services of former employees should not be confused with employing annuitants. A reemployed annuitant is an annuitant¹⁰ who the Postal Service has rehired under conditions that do not terminate the annuity. Generally the law requires that the salary of the reemployed annuitant be reduced (or offset) by the amount of the annuity.¹¹

In addition, it is Postal Service policy not to contract with former officers or PCES executives or entities with whom such individuals have a substantial interest for 1 year after the date of their separation from the Postal Service (whether by retirement or otherwise) if the contract calls for substantially the same duties they performed during their career with the Postal Service. The vice president of Human Resources may grant exceptions to this policy when they determine that doing so is in the best interests of the Postal Service.¹²

As detailed above, the Postal Service has specific policies prohibiting contracting with former employees except under certain conditions; however, policies and internal controls did not prevent this from occurring. The *U.S. Postal Service Purchasing Policies* audit (Report Number CA-AR-10-005, dated September 20, 2010) disclosed, among other things, that the Postal Service did not follow applicable policy when awarding noncompetitive contracts to former PCES executives. Specifically, we analyzed three contracts and found that management did not sufficiently document their noncompetitive business cases. Also, the former executives were generally brought back to perform duties or "transfer knowledge" related very closely to the Postal Service position they vacated at rates of pay higher than their former salaries. In addition, management awarded these contracts noncompetitively and the Postal Service may not have received best value for them. Because awarding noncompetitive contracts can, by nature, give the appearance of favoritism and lack of impartiality, it is essential that contracting personnel approving these contracts consider any potential appearance of impropriety before approving the noncompetitive purchase. In response to recommendations the OIG made in the report, the Postal Service implemented revisions to purchasing policies and procedures.

⁹ SP&Ps General Practice 7-12.3, Contracts With Other Former Employees.

¹⁰ An individual who has retired from the Postal Service or another agency of the federal government and is receiving an annuity from the Office of Personnel Management based on their federal government service under the Civil Service Retirement System or the Federal Employees Retirement System.

¹¹ 5 CFR 837.303, Annuity Offset.

¹² SP&Ps General Practice 7-12.2, Contracts With Former Officers and Executives.

Objective, Scope, and Methodology

Our objective was to determine whether the Postal Service's recent purchasing policy changes regarding conflicts of interest related to noncompetitive contracts and contracts with former executives were sufficient to promote accountability and impartial and cost-effective contracting decisions. In addition, we performed a comparative analysis of the FAR conflict of interest rules with applicable Postal Service rules.

To accomplish our objectives we:

- Documented recently revised Postal Service purchasing policies and procedures and the prior policies and procedures regarding conflicts of interest related to noncompetitive contracts, contracts with former executives, and service contracts.
- Compared revised Postal Service policies and procedures regarding ethics and conflict of interest related to noncompetitive contracts; contracts with former Postal Service officers, and PCES executives; and professional, technical, consultant, and personal services type contracts with the previous policies and weaknesses noted in prior audit reports.
- Documented FAR purchasing policies and procedures regarding ethics and conflicts of interest related to noncompetitive contracts; contracts with former federal employees, officers, and executives; and service, personal, advisory and assistant, non-personal, and architect/engineer contracts.
- Compared Postal Service policies and procedures regarding conflicts of interest related to noncompetitive contracts; contracts with former Postal Service officers and PCES executives; and professional, technical, consultant, and personal services contracts to the FAR.
- Discussed Postal Service policies and procedures with Supply Management, Corporate Personal Management, and General Council personnel.

We conducted this performance audit from February through August 2011 in accordance with generally accepted government auditing standards and included such tests of internal controls as we considered necessary under the circumstances. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. We discussed our observations and conclusions with management on June 15, 2011, and included their comments where appropriate.

Prior Audit Coverage

Report Title	Report Number	Final Report Date	Monetary Impact	Report Results
<i>Controls Over Noncompetitive Contracts Awarded to Former Postal Service Employees</i>	CA-AR-06-002	5/26/2006	\$137,636	Controls over noncompetitive personal services contracts awarded to former Postal Service employees needed improvement. Management agreed with the recommendations but disagreed with the monetary impact.
<i>Management Controls at Contractor-Operated Processing Facilities</i>	MS-MA-09-001	10/22/2008	\$0	Management controls related to contractor operated mail processing facilities did not address potential organizational conflicts of interest. Management generally agreed with the recommendations related to preventing organizational conflicts of interest.
<i>U.S. Postal Service Purchasing Policies</i>	CA-AR-10-005	9/20/2010	\$218,940,344	Steps needed to be taken to strengthen oversight and transparency of the Postal Service's noncompetitive purchasing policies, maximize competition, ensure best value, and avoid any actual or apparent conflicts of interest in the contracting process. Management generally agreed with the findings, recommendations, and monetary impact.

<p><i>Conflicts of Interest: Facility Leases and Contract Delivery Services</i></p>	<p>DA-AR-11-008</p>	<p>6/8/2011</p>	<p>\$737,359</p>	<p>The Postal Service entered into leases that resulted in financial conflicts. Similarly, the Postal Service entered into contract delivery service contracts with current or former employees that, in some cases, resulted in apparent violations of federal regulations and Postal Service policies. Management agreed with the recommendations but disagreed about the application of certain ethics laws. Management also disagreed with the monetary impact.</p>
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Appendix B: Postal Service's Actions to Address Weaknesses

The following table details the actions taken by the Postal Service to address the weaknesses noted in the *U.S. Postal Service Purchasing Policies* audit (Report Number CA-AR-10-005, dated September 20, 2010).

Recommendations	Postal Service Actions
<p>1. Establish a CA within the Postal Service to independently review and approve justifications for noncompetitive purchases and support the use of competition in the Postal Service. The CA should also prepare and submit an annual report to the chief financial officer and vice president, Supply Management, describing barriers to competition and goals and plans for increasing competition.</p>	<p>The Postal Service appointed a CA January 28, 2011. The vice president, Supply Management, appointed the CA to challenge barriers to competition, assist purchasing teams in developing Supply Chain Management solutions, obtain best value, and independently review and advise the CO on all noncompetitive purchase requests valued at \$1 million or more. In addition, the CA produces an annual report on noncompetitive purchase activity that is submitted to the vice president, Supply Management, and is posted online for both internal Postal Service and public audiences. Reporting will begin in conjunction with recommendation 5 in November 2011.</p>
<p>2. Immediately discontinue contracting with former Postal Service executives until adequate controls are implemented. Such controls should address the appropriate duties and functions of former executives in contracted positions, ensure that no former executives are paid more than the equivalent of their previous Postal Service rate of pay if contracted noncompetitively, and require a thorough cost and price analysis of proposed rates.</p>	<p>The new policy requires Corporate Personnel Management (CPM) to review all requests to contract directly with any individual or an individual who is a principal or owner of a sole proprietorship, partnership, or corporation. This includes former and/or retired Postal Service and federal civilian employees. CPM personnel are required to evaluate the information in the request and determine whether the individual may be engaged under a services contract or classified as an employee.</p> <p>Also, the new policy institutes the requirement that service contracts with former employees performing services significantly similar to their Postal Service duties establish a rate of compensation consistent with the current salary range for the last position held by the employee. The CO must still make a determination that the contract price is fair and reasonable and include that determination in the contract file.</p>

<p>3. Review the need and propriety of all existing contracts with former executives.</p>	<p>CPM conducted a review of 27 contracts using the new policy. The data included contract information provided by the OIG and records of contracts maintained within Supply Management. Three contracts with former executives remain. There was a determination that these individuals are not providing services significantly similar to those performed by the former executive when he or she was employed by the Postal Service, there is a relevant need for the services, and the rate of pay was determined as fair and reasonable.</p> <p>The Postal Service is currently working to identify all contracts with former executives granted under delegations of authority and plans to fully implement this recommendation by September 30, 2011.</p>
<p>4. Amend the <i>Administrative Support Manual</i> to emphasize the importance of compliance with all policies, circulars, and instructions pertinent to encouraging competition and managing noncompetitive purchases.</p>	<p>A revision to the <i>Administrative Support Manual</i>, Chapter 7, requires all individuals engaged in the purchasing process to follow the policies and procedures contained in the SP&Ps and other directives, such as management instructions, related to the purchase method and other business processes.</p>
<p>5. Take steps to ensure full and accurate tracking and public reporting of noncompetitive contracting actions. Data reported should include, but not be limited to, total dollars committed both competitively and noncompetitively; and the contractor, dollar value, and justification for noncompetitive contracts. The tracking mechanism should be able to identify a noncompetitive contract that has crossed the review and approval threshold based on modification after initial award.</p>	<p>Supply Management reviewed coding classifications within the Contract Authoring Management System and updated the system. These changes provide enhanced capability for tracking and reporting of competitive and noncompetitive contract actions. Training was provided to employees in March and April and an internal initiative to perform testing on contract documentation requirements for new contracts has begun. Similar efforts are being launched for two other contracting systems. The Postal Service plans to implement reporting enhancements by November 2011.</p>

<p>6. Revoke delegations of authority for contracts that acquire goods and services for the Postal Service and bring these contracts into compliance with all Postal Service purchasing policies.</p>	<p>The Postal Service agreed to review delegations of authority that were issued for the purchase of goods and services and determine whether there is a continued need for such delegations. As necessary, the Postal Service agreed to revise the delegations to bring them into compliance with Postal Service purchasing policies. During the review, if it is determined that the delegation of authority is not in its best interests, the Postal Service agreed to revoke it and perform any necessary contract actions within Supply Management. The Postal Service plans to implement this recommendation by December 31, 2011.</p>
<p>7. Require that all noncompetitive contract files include a determination by the CO that prices are fair and reasonable and a CO's certification that the justification is accurate and complete to the best of their knowledge and belief. A detailed analysis supporting these certifications should be part of the noncompetitive purchase documentation.</p>	<p>The new policy requires the CO to perform a thorough review of the noncompetitive purchase request, evaluate the supplier, consider any other matter that may lead to a more informed business decision, and then make a recommendation to the approval authority. These actions, in effect, make the CO accountable for his or her actions.</p> <p>Also, the new policy requires the CO to negotiate reasonable pricing and terms and conditions prior to contract award and ensure that all necessary reviews and approvals, price determinations, and supplier evaluations are documented and included in the contract file.</p>

<p>8. Require Supply Management officials approving noncompetitive contracts to review purchases for potential or apparent conflicts of interest and evaluate any potential conflicts through the agency's ethics official before approval. The opinion and recommendations of the agency ethics official should be documented in the contract file. In addition, any person found to have an actual or apparent conflict of interest should not be allowed to participate in negotiations with the contractor.</p>	<p>The new policy discusses the need for purchase teams, COs, and management to fully consider and address any ethical concerns on the part of any employee involved in the contracting process as well as any organizational conflicts of interest on the part of the suppliers. It also addresses financial conflicts of interest, impartiality in performing official duties, and misuse of position. In addition, a new section discusses avoiding real or apparent conflicts of interest and includes circumstances in which an individual involved in the contracting process must seek ethics counseling. Ethics counsel are required to advise the CO and the employee if the Postal Service's best interests will be served by the employee's participation in the matter or if the employee must be disqualified from these activities. Finally, the requesting organization must submit a noncompetitive purchase request that certifies they do not have a financial interest in any entity or party interested in the purchase. They must also certify that they will not disclose any sensitive information during the purchase process. The noncompetitive purchase request must be signed by all responsible parties in the requesting organization.</p>
<p>9. Institute an oversight mechanism to ensure and track compliance with updated noncompetitive contracting policies.</p>	<p>The Postal Service plans to implement this recommendation by March 2012.</p>

Appendix C: Comparison of the FAR to Postal Service's Policies

In regard to the potential for conflicts of interest related to noncompetitive contracts and contracts with former executives, the following table details the comparison of the FAR requirements to Postal Service policies.

FAR Reference	FAR Requirement	Postal Service Policies
FAR 3.101-1 <i>Standards of Conduct</i>	Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships.	Postal Service supplying professionals will act with the highest standards of conduct, ethics, and integrity. The Postal Service has an interest in early identification and remediation of organizational conflicts of interest on the part of its suppliers. The Postal Service will attempt to avoid situations in which a supplier has an unfair competitive advantage or other interests that may impair the supplier's objectivity in dealing with the Postal Service or in its ability to perform satisfactorily on Postal Service contracts.
FAR 3.104 <i>Procurement Integrity</i>	<p>FAR 3.104-2(a) implements the Procurement Integrity Act that prohibits certain conduct and includes other statutes and regulations including:</p> <ul style="list-style-type: none"> ▪ 5 CFR 2635. ▪ 5 CFR 2636. ▪ 18 USC 201, 203, 205, 207, 208, and 209. <p>FAR 3.104-5(b) states that an agency official who has a conflict of interest must promptly submit written notice of disqualification from further participation in the procurement to the CO, the source selection authority if other than the CO, and the agency official's immediate supervisor. Also, FAR 3.104-5(c)(2) states that the HCA, after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement after the conditions of the</p>	<p>All Postal Service employees must adhere to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635 and the Supplemental Standards of Ethical Conduct for Postal Employees, 5 CFR 7001. 5 CFR 2635, Subpart A, Section 101(c) states that 18 USC 201, 203, 205, 208, and 209 are applicable to all employees. In addition, 5 CFR 7001 states that Postal Service employees are also subject to 5 CFR 2634 and 39 CFR 447. Further, 39 CFR 10 and 3000 apply to the Postal Service as well.</p> <p>Purchase teams, CO, and management must fully consider and address any ethical concerns on the part of any employee involved in the contracting process as well as any organizational conflicts of interest on the part of its suppliers. Additionally, when submitting a noncompetitive</p>

	<p>disqualification have been resolved. The HCA's reinstatement decision should be in writing.</p> <p>FAR 3.104-7(a)(1)(ii) states that if a CO receives or obtains information of a violation or possible violation and concludes that there is no impact on the procurement, the CO must forward the information to an individual designated in accordance with agency procedures. If that individual does not concur, they must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.</p> <p>FAR 3.104-7(a)(2) states that if the CO concludes that the violation or possible violation impacts the procurement, the CO must promptly forward the information to the HCA.</p> <p>FAR 3.104-7(b)(1) states the HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as advise the CO to continue with the procurement or begin an investigation.</p> <p>FAR 3.104-7(f) and (g) state that if the HCA determines that urgent and compelling circumstances justify an award, or the award is otherwise in the interests of the government, the HCA may authorize the CO to award the contract or execute the contract modification after notifying the agency head. The HCA may also delegate his or her authority under this subsection to an individual at least one organizational level above the CO and of General Officer, Flag, Senior Executive Service, or equivalent rank.</p>	<p>purchase request, the responsible parties of the requesting organization must certify they do not have conflicts of interest or loss of impartiality and will not disclose any sensitive information during the purchasing process.</p> <p>There are several restrictions imposed by law and federal regulation on Executive-branch employees that require Postal Service employees, under certain circumstances, to seek ethics counseling prior to participating in a contracting activity. In general, if an employee (1) has a direct or imputed financial interest in the matter, (2) if the employee's participation in the matter would lead a reasonable person with the relevant facts to question his/her ability to remain impartial in the matter, or (3) if the employee's participation in the matter would give rise to an appearance that the employee was using his public office for the private gain of another person, the Postal Service employee must disclose the real or apparent ethical issue to the CO and seek ethics counseling before participating in any phase of the contracting process.</p> <p>Postal Service employees who identify a financial conflict of interest in the course of their work must immediately contact ethics counsel to determine (1) whether he/she must recuse him/herself from the contracting activity, (2) whether the employee is eligible for a statutory waiver which would allow the employee to participate despite the conflict of interest; or (3) whether the Postal Service is entitled to order the employee to divest the conflicting financial interest. Under no circumstance may an employee</p>
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		<p>participate in the matter in which the employee has identified a conflict until written advice approving such participation is provided by ethics counsel.</p> <p>Postal Service employees must avoid taking any action that could lead to an appearance that the employee has lost his/her ability to remain impartial in performing his/her official duties. Additionally, Postal Service employees must ensure that performance of their official duties do not give rise to an appearance of the misuse of public office for private gain. Therefore, any employee involved in a contracting activity must disclose to the CO any personal or business relationship the employee has with any third party that may have a direct or indirect interest in the contract matter at hand. Unless a Postal Service employee has received prior authorization from ethics counsel to proceed, an employee cannot participate in a contract matter that may lead a reasonable person with the relevant facts to question the employee's ability to remain impartial in the matter.</p> <p>COs should refer to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, or seek ethics counseling whenever there is a question regarding an ethical obligation in any contracting activity. Ethics counsel will advise the CO and the employee if the Postal Service's best interests will be served by the employee's participation in the matter or if the employee must be disqualified from these activities.</p>
<p>FAR 6.302 <i>Circumstances</i></p>	<p>Statutory authorities for other than full and open competition include:</p>	<p>The Postal Service has four business scenarios under which the</p>

<p><i>Permitting Other Than Full and Open Competition</i></p>	<ul style="list-style-type: none"> ▪ Only one responsible source and no other supply/service will satisfy agency requirements ▪ Unusual and compelling urgency ▪ Industrial mobilization ▪ International agreement ▪ Authorized or required by statute ▪ National security ▪ Public interest 	<p>noncompetitive method may be used:</p> <ul style="list-style-type: none"> ▪ Sole source ▪ Compelling business interests ▪ Industry structure or practice ▪ Superior performance.
<p>FAR 6.303-1(a)(2) <i>Certification of the Noncompetitive Justification</i></p>	<p>The CO must certify the accuracy and completeness of the justification.</p>	<p>The CO must thoroughly review the noncompetitive purchase request, evaluate the supplier, consider any other matter that may lead to a more informed business decision, and then make a recommendation to the approving authority. These actions, in effect, make the CO accountable for his or her actions.</p>
<p>FAR 6.303-2 (b)(7) <i>Fair and Reasonable Cost</i></p>	<p>A determination by the CO that the anticipated cost to the government will be fair and reasonable.</p>	<p>Require the CO to negotiate reasonable pricing and terms and conditions prior to contract award.</p>
<p>FAR 6.305 <i>Availability of the Justification</i></p>	<p>The noncompetitive justification shall be made publicly available at the Governmentwide Point of Entry and on the agency website within 14 days after contract award.</p>	<p>The Postal Service plans to implement noncompetitive contract reporting enhancements by November 2011.</p>
<p>FAR 6.501 <i>Competition Advocates</i></p>	<p>The head of each executive agency shall designate a CA for the agency.¹³ Agency CAs are responsible for promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses. The</p>	<p>The vice president, Supply Management, appoints a CA¹⁴ whose responsibilities include challenging barriers to competition, assisting purchasing teams in developing Supply Chain Management solutions, obtaining best value, and independently reviewing and advising the CO on all noncompetitive purchase requests valued at \$1 million or more. Portfolio managers within Supply Management may approve purchase method recommendations for noncompetitive purchases valued at up to \$10 million, except</p>

¹³ FAR 1.108(b) states that each authority is delegable unless specifically stated otherwise. We noted examples where the agency head delegated the authority to appoint a CA.

¹⁴ The Postal Reorganization Act provides purchasing authority to the PMG, who has delegated all purchasing and related policy development authority to the vice president, Supply Management.

	<p>CA is required to submit an annual report to the chief acquisition officer. FAR 6.304 <i>Approval of the Justification</i> states the CA or an individual in a grade above GS-15 or comparable must approve justifications valued between \$650,000 and \$12.5 million. Justifications over \$12.5 million must be approved by the head of the procuring activity.</p>	<p>for noncompetitive purchases of professional, technical, and consultant services valued at \$1 million or more. Requests for noncompetitive professional, technical, and consultant service purchases valued at \$1 million or more, and all other noncompetitive purchases valued at \$10 million or more, must be reviewed and approved by the vice president, Supply Management. Portfolio managers may delegate up to \$250,000 of this purchase method approval authority to subordinate team leaders or managers in the applicable purchasing organizations.</p> <p>The CA is required to produce an annual report on noncompetitive purchase activity that is submitted to the vice president, Supply Management, and posted online for both internal Postal Service and public audiences. Reporting is scheduled to begin in November 2011.</p>
<p>FAR 9.502 <i>Organizational Conflicts of Interest</i></p>	<p>Organizational conflicts of interest are more likely to occur in contracts involving:</p> <ul style="list-style-type: none"> ▪ Management support services. ▪ Consultant or other professional services. ▪ Contractor performance of or assistance in technical evaluations. Systems engineering. 	<p>An organizational conflict of interest exists when the nature of the work to be performed under a contract may give an offeror or supplier an unfair competitive advantage and when an offeror or supplier has other interests that may impair objectivity or the ability to render impartial assistance or advice or to provide objectivity in performing the contract work. Although such conflicts are not limited to any particular type of purchase, they are more likely to occur in contracts involving:</p> <ul style="list-style-type: none"> ▪ Professional, technical, and consultant services. ▪ Performance of or assistance in technical evaluations. ▪ Those for projects that are purchased in separate phases.

<p>FAR 9.504 <i>CO Responsibilities</i></p>	<p>COs shall analyze planned acquisitions to:</p> <ul style="list-style-type: none">▪ Identify and evaluate potential organizational conflicts of interest.▪ Avoid, neutralize, or mitigate significant potential conflicts before contract award.▪ Obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation; and provisions and contract clauses.▪ Recommend to the HCA a course of action for resolving the conflict.	<p>As part of purchase planning, COs, with the assistance of the purchase team, must attempt to identify organizational conflicts of interest so that they may be avoided, neutralized or mitigated (when purchases will be made noncompetitively, certain disclosures must be made). When a potential organizational conflict is foreseeable, the contracting officer should consult with assigned counsel and obtain the assistance of appropriate technical specialists to consider the potential to avoid, neutralize, or mitigate the organizational conflict of interest. Mitigation actions may include, but are not limited to:</p> <ul style="list-style-type: none">▪ Developing a solicitation provision restricting competition to offerors without conflicts of interest.▪ Including a contract clause limiting the supplier's eligibility for future contracts and subcontracts.▪ The adoption of other measures to ensure as fair a competition as possible. <p>Any limit on future contracts must be for a reasonable period sufficient to avoid unfair competitive advantage or potential bias.</p>
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<p>FAR 9.5 <i>Organizational and Consultant Conflicts of Interest</i></p>	<p>FAR 9.503 states the agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of HCA.</p> <p>FAR 9.504(e) states that if the CO finds that it is in the best interest of the U.S. to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted. The waiver request and decision shall be included in the contract file.</p> <p>FAR 9.506 (b) states if the CO decides that an acquisition involves a significant potential organizational conflict of interest, the CO shall, before issuing the solicitation, submit for approval to the chief of the contracting office a draft solicitation provision and, if appropriate, a proposed contract clause.</p>	<p>Postal Service policy does not discuss any waivers specific to organizational conflicts of interest. The vice president, Supply Management, and associate general counsel and chief ethics officer stated a waiver is not allowed and, if an organizational conflict of interest cannot be avoided, neutralized, or mitigated then they must find another supplier.</p> <p>Also, the Postal Service's contract Clause 1-7, Organizational Conflicts of Interest, among other things, warrants against existing organizational conflicts of interest and requires the supplier to disclose any possible future organizational conflicts of interest.</p>
<p>FAR 9.505 <i>General Rules</i></p>	<p>The exercise of common sense, good judgment, and sound discretion is required in deciding whether a significant potential conflict exists and, if it does, the means for resolving it.</p> <p>The two underlying principles are:</p> <ul style="list-style-type: none"> ▪ Preventing the existence of conflicting roles that might bias a contractor's judgment. ▪ Preventing unfair competitive advantage. <p>An unfair competitive advantage</p>	<p>All members of the Proposal Evaluation team are required to complete the conflict of interest certification and non-disclosure agreement. Additionally, as discussed above, when non-Postal Service employees are members of the Proposal Evaluation team, the CO should take steps to safeguard against or mitigate any conflicts of interest. The signers of the noncompetitive purchase request also sign a conflict of interest certification and non-disclosure agreement.</p>

	<p>exists when a contractor competing for award of any federal contract possesses:</p> <ul style="list-style-type: none"> ▪ Proprietary information obtained from a government official without proper authorization. ▪ Source selection information that is relevant to the contract but is not available to all competitors when such information would assist that contractor in obtaining the contract. 	
<p>FAR 37.102 <i>Purchasing of Services</i></p>	<p>Services must be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.</p>	<p>Requires the CO to pay particular attention to the potential for organizational conflicts of interest when purchasing services.</p>
<p>FAR 37.203 <i>Purchasing of Advisory/Assistant Services</i></p>	<p>Advisory and assistant services¹⁵ shall not be contracted for on a preferential type basis to former government employees.</p>	<p>Requires the CO to enforce the policy of not contracting with former Postal Service officers and PCES executives if the contract calls for substantially the same duties they performed during their career when purchasing consultant services.¹⁶</p>

¹⁵ Services that support or improve organizational policy development, decision-making, management and administration, program management and administration, or research and development activities.

¹⁶ Consultant services are used to enhance the understanding of complex issues and to provide new insights into alternate solutions to, or make recommendations on, business or decision-making functions of a postal organization.

Appendix D: Management's Comments

SUSAN M. BROWNELL
Vice President, Supply Management



August 19, 2011

SHIRIAN HOLLAND

SUBJECT: Draft Audit Report – The Sufficiency of Recent Policy Changes Regarding
Contracting Conflicts of Interest (Report Number CA-AR-11-DRAFT)

We appreciate this review of our conflicts of interest policies and procedures implemented under the Postal Service's Policies and Procedures audit report and the opportunity to review and comment on the subject draft report. Significant changes have been implemented based upon the recommendations from the prior policies audit. Those changes are acknowledged both in the text of this current audit report, and in the fact that this audit report contains no associated monetary impact or further audit recommendations. We agree with the Office of Inspector General's (OIG) finding that the new policies issued in response to your prior audit are sufficient to avert direct or imputed conflicts of interest among contracting officials and internal business clients and will help to promote accountability and impartial and cost-effective contracting decisions.

There is one issue within this report under Appendix C, *Comparison of the FAR to Postal Service's Policies*, which does not fully match the OIG's recommendation from the previous policies audit. This is the Federal Acquisition Regulation requirement to post noncompetitive justifications. The OIG's previous report recommended that the Postal Service take steps to ensure full and accurate tracking and public reporting of noncompetitive contracting actions.

In accordance with our prior audit response and to enhance transparency, we agreed that tracking and public reporting of contracting actions would be performed on a fiscal year basis. The data reported would include, but not be limited to: total dollars committed competitively, noncompetitively, or to a required source. For noncompetitive actions, a summary report with the supplier's name, dollars committed, and the type of business scenario justifying the noncompetitive purchase would be incorporated.

We do not believe that this report contains any proprietary or business information and may be disclosed pursuant to the Freedom of Information Act. If you have any questions about this response, please contact Susan Witt at (202) 268-4833.

A handwritten signature in cursive script that reads "Susan M. Brownell".

cc: Joseph Corbett
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