



Office of Inspector General | United States Postal Service

Audit Report

Domestic Preference in Vehicle Contracts

Report Number SM-AR-18-004 | June 7, 2018

A photograph of various tools and miniature vehicles on a document. A large adjustable wrench and a pair of pliers are on the left. Two miniature white USPS delivery vans are on the right. A silver pen lies horizontally across the bottom. The word "Service" is printed in large black letters in the center. Below it, a line of text from a contract is visible.

Service

This Contract is made and entered into by and between the
hereinafter referred to as the "CUSTOMER" and the below named
as "SUPPLIER."

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Highlights

Objective

The objective was to assess whether the U.S. Postal Service applied domestic preference requirements during the award of vehicle and vehicle parts contracts.

Since the 1930s, the Buy American Act has required federal agencies to provide preferential treatment in its purchases of domestic end products. The Postal Service is not subject to the Buy American Act, but prescribes a provision and clause for domestic preference when awarding supply contracts and has issued guidance for evaluating proposals offering domestic and foreign end products in.

A domestic end product is an unmanufactured end product mined or produced in the U.S., or an end product manufactured in the U.S. provided that its components mined, produced, or manufactured in the U.S. exceeds 50 percent of the total cost.

As of October 2017, there were 57 active contracts and orders awarded under Supply Management's Vehicle Acquisition, Research and Development, and Parts Team during fiscal years 2011–2017. We reviewed all 57 contracts, including 13 vehicle contracts, five Next Generation Delivery Vehicle prototype contracts, 34 vehicle parts contracts, two research and development contracts, and three General Services Administration contracts totaling \$1.2 billion. The Postal Service domestic preference provision and clause were not applicable to six of the 57 contracts because they were either General Service Administration contracts, research or development contracts, or there was an approved deviation letter.

What the OIG Found

The Postal Service properly applied domestic preference requirements during the award of vehicle and vehicle parts contracts. However, we identified the following:

- Supplying Principles and Practices (SP&P) do not contain guidance for including the domestic preference provision and clause in supply solicitations and contracts, as it does for construction contracts.
- A prescribed clause was not incorporated in a vehicle parts contracts.
- Opportunities exist to enhance the supplier domestic preference certification process for vehicle parts contracts.

Further, we identified one Indefinite Delivery, Definite Quantity vehicle contract that did not have orders for purchases, as required.

These issues occurred because the domestic preference provision and clause for supplies were not included in the guidance due to management oversight during the development and updating of the SP&P; the contracting officer (CO) did not appropriately negotiate the terms and conditions by adding the prescribed clause in the new agreement; and, the domestic preference certification process is not explicit in requiring supplier affirmation of end product origins due to management's assessment that the current process was adequate.

When the aforementioned prescribed clause is not included in the contract, the Postal Service may not be able to obtain and examine the supplier's records, enforce privacy, wage laws, and incorporate the domestic preference clause. Additionally, when the domestic preference Provision 1-2 and Clause 1-9 are not included in the SP&P, COs may not include the provision and clause in the solicitation and contract. Further, if the Postal Service domestic preference certification process does not require suppliers to affirm the origin of their end products, the Postal Service could miss the opportunity to evaluate domestic end products in accordance with policy. There was an annual average total of \$21 million in unsupported contract costs for the two-year period of November 2015 to November 2017.

What the OIG Recommended

We recommended management revise SP&P Section 2-36 to include Provision 1-2: Domestic Source Certificate – Supplies (March 2006), and Clause 1-9: Preference for Domestic Supplies (March 2006) and reiterate requirements for incorporating prescribed clauses in renewed contracts.

We also recommended management revise the domestic preference certification process for proposals to make the supplier certification more explicit in affirming end products are domestic, and ensure deviation letters are developed for identified exceptions.

Transmittal Letter



OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

June 7, 2018

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

E-Signed by Charles Turley
Verify authenticity with eSign Desktop

FROM: Charles L. Turley
Deputy Assistant Inspector General
for Supply Management & Human Resources

SUBJECT: Audit Report – Domestic Preference in Vehicle Contracts
(Report Number SM-AR-18-004)

This report presents the results of our audit of the Domestic Preference in Vehicle Contracts (Project Number 18SMG005SM000).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Francine Hines, Acting Director, Supply Management and Facilities, or me at 703-248-2100.

Attachment

cc: Postmaster General
Corporate Audit Response Management






Results

Introduction/Objective

This report presents the results of our self-initiated audit of domestic preference requirements for U.S. Postal Service vehicle contracts (Project Number 18SMG005SM000). Our objective was to assess whether the Postal Service applied domestic preference requirements when awarding vehicle and vehicle parts contracts.

As of October 2017, there were 57 active contracts and orders awarded under the Vehicle Acquisition, Research and Development, and Parts Team during fiscal years (FY) 2011 – 2017. We reviewed all 57 contracts and orders, which totaled \$1.2 billion (see Table 1).

Table 1. Vehicle Contracts

CATEGORY	CONTRACTS AND ORDERS	COMMITTED AMOUNT
 VEHICLES	13	\$1,120,229,339
 NEXT GENERATION DELIVERY VEHICLE (NGDV)¹	5	33,752,096
 VEHICLE PARTS	34	4,166,065
 GENERAL SERVICES ADMINISTRATION (GSA)²	3	4,733,555
 RESEARCH & DEVELOPMENT (R&D)³	2	435,000
TOTAL	57	\$1,163,316,055

Source: Contract Authoring and Management System (CAMS)⁴.

¹ Prototype delivery vehicle in development to replace the Postal Service fleet of delivery vehicles.

² GSA contracts adhere to the BAA under Federal Acquisition Regulations (FAR), Subpart 25.1.

³ R&D contracts are not subject to domestic preference requirements because no supplies are provided.

⁴ The Postal Service's contract writing tool that facilitates the solicitation, award, and storage of various contracts.

Background

Since the 1930s, the Buy American Act (BAA)⁵ has required federal agencies to provide preferential treatment in their purchases to domestic end products unless a specific exemption applies.

The Postal Service is not subject to the BAA; however, its Supplying Principles and Practices (SP&P) contains domestic preference guidance for use when evaluating proposals offering domestic and foreign end products.

The Postal Service defines a domestic end product as (1) any unmanufactured end product that is mined, produced, or manufactured in the U.S., or (2) any end product that is made in the U.S. and has components that are mined, produced, or manufactured in the U.S. exceed 50 percent of the total cost. End products that are mined, produced, or manufactured in trade agreement countries such as Aruba, Belgium, Canada, and France are considered domestic.

The Postal Service Supply Management's Mail and Operational Equipment (MOE) Portfolio⁶ oversees expenditures of about \$1.5 billion annually. The MOE Vehicles, Delivery and Industrial Equipment Category Management Center (CMC) in the MOE Portfolio has three teams that support the development and acquisition of the entire fleet of 213,000 mail and non-mail delivery vehicles, including purchasing, leasing, and maintenance services. Contracts managed by these teams include the NGDV prototypes, Right-Hand Drive Long-Life Vehicles (LLV), Flexible Fuel Vehicles (FFV), and vehicle parts.

Finding #1: Supplying Principles and Practices Provision and Clauses

The SP&P do not contain guidance for inclusion of domestic preference Provision 1-2 and Clause 1-9 for supply solicitations and contracts, see Table 2. There was also a vehicle parts contract that did not include prescribed Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders.

Table 2. Domestic Preference for Supplies Provision and Clause

Requirement	Definition
Provision 1-2	Requires suppliers to certify that each end product, except those listed in their proposal, is a domestic-source end product and that components of unknown origin are considered to have been mined, produced, or manufactured outside the U.S.
Clause 1-9	Incorporates domestic preference requirements by Clause 4-2 and gives preference to proposals offering domestic end products or end products manufactured in trade agreement countries, when an award is based on price or on evaluation factors other than price.

Source: SP&P.

The SP&P are intended to provide internal advice and guidance to Postal Service professionals on approaches to performing supply chain management functions. The User Aids section of the SP&P contains a clause matrix which states, "...citations and references to the relevant SPs and Ps text and a description or

"The SP&P do not contain guidance for inclusion of domestic preference Provision 1-2 and Clause 1-9 for supply solicitations and contracts."

prescription for the use of the clauses." The SP&P clause matrix further states, "Clause 1-9 must be included in all contracts for supplies (check off in Clause 4-2)." As the clause matrix is included on the Postal Services internal SP&P website, it is used as a tool for Postal Service professionals and is not mandatory guidance.

Additionally, the SP&P prescribes Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders be included in all contracts due to the Postal Service's obligation to comply with Federal Laws prescribed in the clause.

5 FAR, Subpart 25.1.
6 MOE portfolio is one of five purchasing organizations within Supply Management.

The SP&P further states, *“The Contracting Officer is responsible for holding discussions and negotiations with the Supplier to determine the contract terms and conditions that will be established upon contract renewal.”*⁷ *“If the parties agree upon the renewal, the contract is modified to reflect the new agreement.”*⁸

Provision 1-2 and Clause 1-9 were not included in the SP&P domestic preference guidance due to management oversight during the development and/or updating of the guidance. Regarding Clause 4-2, it was not a prescribed clause when this specific vehicle parts contract was originally awarded; however, at the time of the renewal, Clause 4-2 was prescribed in the SP&P to be included in all contracts. When the contract was renewed, the CO did not appropriately negotiate the terms and conditions by adding this clause in the new agreement.

When the domestic preference Provision 1-2 and Clause 1-9 are not included in the SP&P guidance, COs will not include the provision and clause in the solicitation and contract. As such, suppliers will not be required to list foreign end products in proposals and may not be aware how foreign end products will be evaluated. When Clause 4-2 is not included in the contract, the Postal Service may not be able to obtain and examine the supplier’s records, enforce privacy, wage laws, and incorporate the domestic preference clause. Due to the renewed vehicle parts contract missing Clause 4-2, we identified \$41,921,741 in unsupported questioned costs.⁹

“When the domestic preference Provision 1-2 and Clause 1-9 are not included in the SP&P guidance, COs will not include the provision and clause in the solicitation and contract.”

Recommendation #1

The Vice President, Supply Management, revise Supplying Principles and Practices Section 2-36 to include Provision 1-2: Domestic Source Certificate – Supplies (March 2006), and Clause 1-9: Preference for Domestic Supplies (March 2006), and reiterate the prescription for including Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders in renewed contracts

Finding #2: Domestic Preference Certification

There are opportunities to enhance the supplier certification language for the domestic preference provision applied in the solicitation process. The certification process for Provision 1-2 requires the supplier to sign the proposal confirming the origin’s (domestic or foreign) of the end products as stated proposal. If the supplier leaves Provision 1-2 blank, or there is no other language in the proposal document indicating otherwise, the Postal Service considers the supplies will contain domestic end products.

SP&P Provision 1-2 states, *“The offeror certifies that each end product, except those listed below, is a domestic-source end product (as defined in the Preference for Domestic Supplies clause) and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.”*

As part of our analysis, we reviewed 34¹⁰ vehicle parts contracts that included Provision 1-2. In 20 of these vehicle parts proposals,¹¹ Provision 1-2 was left blank. Upon further analysis, we identified 40 percent of those suppliers (or eight

“We identified 40 percent of those suppliers (or eight of 20) had potential foreign manufacturing ties.”

⁷ SP&P Decide to Renew a Contract or Exercise Options, Discussions and Negotiations, revised March 2009.

⁸ SP&P Consider Use of Renewals, Renewals, revised March 2009.

⁹ Claimed because of failure to follow policy or requested procedures, but does not necessarily connote any real damage to Postal Service.

¹⁰ Excluded 13 vehicle contracts, five NGDV contracts, three GSA contracts, and two R&D contracts.

¹¹ Proposals that included spare parts for the repair of vehicles.

of 20) had potential foreign manufacturing ties. We deemed the eight suppliers a higher risk for not complying with their certification due to the following:

- Six vehicle parts suppliers did not manufacture their own end products and did not indicate their end product origins in the proposal.
 - Within those six vehicle parts suppliers, three suppliers are subsidiaries of a supplier with an approved deviation¹² for not being able to meet the domestic preference clause. The three subsidiaries did not have an approved deviation.
- Two of the eight vehicle parts suppliers had both domestic and foreign manufacturing locations and they did not indicate their end product origins in the proposal.

The certification process for Provision 1-2 is not explicit in requiring supplier affirmation of end product origins due to management's assessment that the current process was adequate.

When the certification process for Provision 1-2 does not contain explicit language, there is the risk of misinterpretation and application of the guidance by the supplier. In this instance, the risk would include suppliers potentially certifying they are providing domestic end products but are providing foreign end products.

Recommendation #2

The Vice President, Supply Management, revise the domestic preference certification process for proposals to make the supplier certification more explicit in affirming end products are domestic, and ensure deviation letters are developed for identified exceptions.

Other Matters – Vehicle Contract Ordering Procedures

As part of our audit, within our sample of contracts, we identified an Indefinite Delivery, Definite Quantity (IDIQ) contract for purchasing of vehicles, where the services were executed against the IDIQ and no subsequent task orders were issued.

SP&P Section 4-1.3, Contract Vehicles for Ordering, states, *“An indefinite-delivery contract or ordering agreement can be used to expedite related future contracts. As client needs for the requirements arise, the CO may request delivery from a supplier by issuing orders against the original contract or agreements.”* SP&P Clause 2-39 was included in the contract and states, *“Supplies or services to be furnished under this contract will be ordered by authorized Postal Service credit card, or issuance of delivery orders, during the period and by the activities specified in the schedule.”*¹³

The CO indicated that, under the circumstances and based on the availability of the funding, it was more efficient to process one contract action rather than issue a subsequent task order. When services and supplies are purchased on an IDIQ contract without a task or delivery order, management is promoting a practice that conflicts with policy.

There is an open recommendation¹⁴ in which Postal Service management agreed to update contract policy to clarify ordering procedures for issuing orders against IDIQ contracts; therefore, we are not making a recommendation for this issue.

“We identified an IDIQ contract for purchasing of vehicles, where the services were executed against the IDIQ and no subsequent task orders were issued.”

¹² On August 22, 2003, the Postal Service approved a deviation for the parent company of these subsidiaries.

¹³ SP&P Clause 2-39: Ordering (March 2006).

¹⁴ Report Number SM-AR-16-007, *Controls over Multiple Award IDIQ Contracts*, dated March 28, 2016.

Management's Comments

Management agreed with both report findings, recommendation 2, and, in part, with recommendation 1; however, management disagreed with the monetary impact.

Regarding the monetary impact, management stated that the OIG based it on a single contract missing Clause 4-2. Further, management stated that the contract was a renumbered agreement needed by a change in contract writing, administration system, and a continuation of an older contract. Management also stated that the SP&P do not require incorporation of updated clauses at time of renewal.

Regarding recommendation 1, management stated that they agree in part with the recommendation. Management indicated that they will revise SP&P Section 2-36 to include guidance for implementing Provision 1-2 and Clause 1-9. Management stated that there is no requirement that clauses be replaced or updated for renewal contracts; however, management will issue a communication to SM purchasing staff reiterating that they must include all required clauses with new awards. The target implementation date is March 2019.

Regarding recommendation 2, management stated that they will revise Provision 1-2 to make supplier certification more explicit in affirming that proposed end products are domestic in origin as opposed to only requiring affirmative certification when proposed end products are foreign. Management indicated that they will issue a communication reiterating that any deviation from the SP&P be documented in accordance with SP&P Section 7-6 – Deviations. The target implementation date is March 2019.

Management also noted that the final recommendation closed in our *Controls Over Multiple Award IDIQ Contracts* audit report was closed by the OIG on October 18, 2017.

See [Appendix B](#) for management's comments in their entirety.

Evaluation of Management's Comments

The OIG considers management's comments responsive and corrective actions stated should resolve the issues identified in the report.

Regarding recommendation 1, we disagree with management's interpretation of the SP&P regarding contract renewals. The SP&P state, "*The Contracting Officer is responsible for holding discussions and negotiations with the Supplier to determine the contract terms and conditions that will be established upon contract renewal. If the parties agree upon the renewal, the contract is modified to reflect the new agreement.*" In this instance, we acknowledge there was a system change that resulted in the contract being renumbered; however, this contract was renewed, therefore, a new agreement was established and current terms and conditions should have been included. By not including the required Clause 4-2 in this contract, we identified \$41 million in unsupported questioned costs.

Management's comment regarding the final recommendation closed in the *Controls Over Multiple Award IDIQ Contracts* audit report was closed in the OIG system on October 18, 2017 is accurate. In October 2017, management provided documentation asserting contract policy to clarify that ordering procedures for COs issuing orders against IDIQ contracts were rolled out in a pilot to incorporate feedback from users; however, the policy revisions were not effective at that time. During this audit, the OIG determined that the policy was not effective and published to the Supply Management organization until February 28, 2018, not October 2017. This corrective action addressed the recommendation from the previous report and the issue identified in this report.

All recommendations require OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. All recommendations should not be closed in the Postal Service's follow-up tracking system until the OIG provides written confirmation that the recommendations can be closed.

Appendices

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Appendix A: Additional Information

Scope and Methodology

To accomplish our objective, we:

- Obtained active contracts and ordering agreements in CAMS under the Vehicle Acquisition, R&D, & Parts Team Code (3DVPRT) between August 2011 and October 2017.
- Obtained the contract spend for the vehicle contracts housed in EDW between November 13, 2015, and November 14, 2017.
- Interviewed policy, portfolio and CMC managers and COs to gain an understanding of the processes, procedures, and controls in place to ensure domestic preference in vehicle supplies are enforced.
- Interviewed the MOE Analysis and Research Team regarding how they perform research to identify potential suppliers and whether they consider domestic preference in their market research analysis.
- Reviewed contracts and ordering agreement documents to analyze the domestic preference application.
 - For domestic suppliers, we reviewed contract and supporting documentation and identified contracts with foreign end products.
 - For foreign supplier contracts, we determined whether there are other domestically owned suppliers for solicitation.

- For foreign suppliers, we determined whether suppliers have domestic or foreign manufacturing facilities and whether Postal Service market research identified domestically owned suppliers for solicitation.
- For foreign-owned suppliers not subject to a trade agreement, we determined how domestic preference was applied.

We conducted this performance audit from November 2017 through June 2018, 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 April 13, 2018, and included their comments where appropriate.

We assessed the reliability of CAMS data by comparing the report to source documents in CAMS and interviewing the contracting officers that manage the contracts. We determined that the data was sufficiently reliable for the purposes of this report.

Prior Audit Coverage

The OIG did not identify any prior audits or reviews related to the objective of this audit within the last five years.

Appendix B: Management's Comments

SUSAN M. BROWNELL
VICE PRESIDENT, SUPPLY MANAGEMENT



May 24, 2018

LORI LAU DILLARD

SUBJECT: Domestic Preference in Vehicle Contracts (Report Number SM-AR-18-DRAFT)

Thank you for providing the United States Postal Service with an opportunity to review and comment on the subject Office of the Inspector General (OIG) audit report, "Domestic Preference in Vehicle Contracts." Management agrees with the findings. Management agrees, in part, with both recommendations. Management disagrees with the monetary impact.

The claimed monetary impact is based on a single contract missing the current version of Clause 4-2 – *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*. Management has discussed and previously noted that this contract was a renumbered agreement necessitated by a change in contract writing and administration systems and is a continuation of an older contract. At the time of the older contract's award, the version of Clause 4-2 on which the OIG bases its monetary impact did not exist. Further, all material elements of the current version of Clause 4-2 were included in the older contract at time of award. This importantly includes those elements which address domestic preference. The OIG notes that contracting officers must "*determine the contract terms and conditions that will be established upon contract renewal*." Management notes that, for renewals, the Supplying Principles and Practices (SPs and Ps) do not require updated clauses to be incorporated at time of renewal. Accordingly, the monetary impact claimed is not consistent with the subject matter of the audit, but is only predicated on a rare circumstance of renumbering an ongoing contract. For these reasons, management disagrees with the monetary impact.

Management notes that the OIG inaccurately identifies a recommendation as remaining open under its *Controls over Multiple Award IDIQ Contracts* audit report. The final recommendation under that report was closed by the OIG on October 18, 2017.

Management's response to the audit recommendations may be found below.

We recommend the Vice President, Supply Management:

Recommendation #1: Revise Supplying Principles and Practices Section 2-36 to include Provision 1-2: Domestic Source Certificate – Supplies (March 2006), and Clause 1-9: Preference for Domestic Supplies (March 2006), and reiterate the prescription for including Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders in renewed contracts.

Management Response to Recommendation #1: Management agrees in part with this recommendation. Management will revise the referenced SPs and Ps section to include guidance for implementing Provision 1-2 and Clause 1-9. While Clause 4-2 is considered a mandatory clause under the SPs and Ps, it is not required to replace or update clauses in renewed contracts. However, management will reiterate through issuance of an SM Communication to purchasing staff the requirement to include all required clauses within new awards.

Target Implementation Date: March 2019

Responsible Official: Manager, Supply Management Infrastructure

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Recommendation #2: Revise the domestic preference certification process for proposals to make the supplier certification more explicit in affirming end products are domestic, and ensure deviation letters are developed for identified exceptions.

Management Response to Recommendation #2: Management agrees with this recommendation and will revise Provision 1-2 to make the supplier certification more explicit in affirming that proposed end products are domestic in origin, as opposed to only requiring affirmative certification when proposed end products are foreign. Management will reiterate in a communication that any deviations from SPs and Ps policy in this area be documented in accordance with SPs and Ps Section 7-6 – *Deviations*.

Target Implementation Date: March 2019

Responsible Official: Manager, Supply Management Infrastructure

Susan M. Brownell



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