

Consumer Financial Protection Bureau

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# The CFPB Can Strengthen Guidance on Cost-Increase Modifications



**Office of Inspector General**

Board of Governors of the Federal Reserve System  
Consumer Financial Protection Bureau



Executive Summary, 2024-FMIC-C-022, December 9, 2024

## The CFPB Can Strengthen Guidance on Cost-Increase Modifications

### Finding

Consumer Financial Protection Bureau contracting officers (COs) followed all six acquisition steps when awarding all contracts in our scope, in accordance with the *Federal Acquisition Regulation* (FAR) and CFPB policies. However, for the contract modifications with cost increases that we reviewed, COs did not consistently (1) conduct and document price reasonableness determinations and (2) obtain the expected reviews by the CFPB's Legal Division.

Procurement management has not issued guidance outlining the requirement to evaluate price reasonableness because they expect COs to be aware of the FAR requirement as part of their CO qualifications. Further, Procurement management had not documented expectations for Legal Division review, and CFPB policy includes vague language and multiple exclusions for modifications, which left COs unclear about when to request Legal Division review. Procurement management also allows for COs to exercise discretion when the FAR is not prescriptive, such as when to seek Legal Division reviews for total cost increases resulting from modifications.

Providing guidance to COs on the requirements related to cost-increase modifications will promote consistent reviews of modification pricing, thereby ensuring that the CFPB maximizes the value derived from its contracting activities.

### Recommendation

Our report contains one recommendation designed to ensure that COs assess prices on cost-increase modifications consistently. In its response to our draft report, the CFPB concurs with our recommendation and outlines actions to address it. We will follow up to ensure that the recommendation is fully addressed.

### Purpose

The objective of this audit was to assess whether the CFPB awarded contracts and managed modifications with cost increases in accordance with regulations, contract terms, and policies. We initiated this audit because of the financial risks associated with large cost increases over the life cycle of contracts and the legal risks associated with significant changes to the scope of initial contract awards.

Our scope covered 29 active CFPB contracts awarded from January 2020 through November 2023 that had at least one cost-increase modification that was not a contract option. These 29 contracts were valued at about \$244.5 million and had a total of 41 cost-increase modifications that increased the total value to about \$262.1 million.

### Background

The Procurement section within the Office of Finance and Procurement oversees the CFPB's purchasing activities and has internal policies related to those activities. Procurement staff includes COs who are authorized to obligate the government by awarding and modifying contracts.

Procurement voluntarily follows the FAR and has developed related policies to supplement FAR requirements. We identified six steps related to defining the contract scope and selecting a vendor and three related to ensuring cost-increase modifications are within the scope of the original contract and reasonably priced.



Recommendation, 2024-FMIC-C-022, December 9, 2024

## The CFPB Can Strengthen Guidance on Cost-Increase Modifications

### Finding: COs Did Not Consistently Assess Prices on Cost-Increase Modifications

Number	Recommendation	Responsible office
1	Document, clarify, and communicate requirements for assessing the price on cost-increase modifications, including <ol style="list-style-type: none"><li data-bbox="407 604 984 625">a. requirements for price reasonableness determinations.</li><li data-bbox="407 648 743 669">b. expectations for legal reviews.</li></ol>	Procurement section



**Office of Inspector General**

Board of Governors of the Federal Reserve System  
Consumer Financial Protection Bureau

**MEMORANDUM**

**DATE:** December 9, 2024

**TO:** Joshua Galicki  
Deputy Assistant Director for Procurement  
Consumer Financial Protection Bureau

**FROM:** Cynthia Gray *Cynthia Gray*  
Deputy Associate Inspector General for Audits and Evaluations

**SUBJECT:** OIG Report 2024-FMIC-C-022: *The CFPB Can Strengthen Guidance on Cost-Increase Modifications*

We have completed our report on the subject audit. We conducted this audit to assess whether the Consumer Financial Protection Bureau awarded contracts and managed modifications with cost increases in accordance with regulations, contract terms, and policies.

We provided you with a draft of our report for review and comment. In your response, you concur with our recommendation and outline actions that have been or will be taken to address it. We have included your response as appendix C to our report.

We appreciate the cooperation that we received from CFPB personnel during our audit. Please contact me if you would like to discuss this report or any related issues.

cc: Jan Singelmann  
Adam Martinez  
Jean Chang  
Jafnar Gueye  
Dana James  
Marianne Roth  
Richard Austin  
Ashley Adair



# Contents

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<b>Introduction</b>	<b>6</b>
Objective	6
Background	6
Federal and CFPB Requirements for Awarding and Modifying Contracts	6
Characteristics of Contracts in Our Scope	7
<b>Finding: COs Did Not Consistently Assess Prices on Cost-Increase Modifications</b>	<b>9</b>
Recommendation	10
Management Response	11
OIG Comment	11
<b>Appendix A: Scope and Methodology</b>	<b>12</b>
<b>Appendix B: Modification Testing Results</b>	<b>13</b>
<b>Appendix C: Management Response</b>	<b>15</b>
<b>Abbreviations</b>	<b>17</b>



# Introduction

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## Objective

The objective of this audit was to assess whether the Consumer Financial Protection Bureau’s Office of Finance and Procurement awarded contracts and managed modifications with cost increases in accordance with regulations, contract terms, and policies. We initiated this audit because of the potential financial risks associated with large cost increases over the life cycle of contracts and the legal risks associated with significant changes to the scope of initial contract awards.

Our scope covered 29 active contracts the CFPB awarded from January 2020 through November 2023 that had at least one cost-increase modification. A *cost-increase modification* occurs when the original contract terms change and those changes increase the price. Our 29 contracts include all 28 of the contracts that met our population criteria and 1 that we judgmentally selected.<sup>1</sup> These 29 contracts were valued at approximately \$244.5 million and had a total of 41 cost-increase modifications that increased the total value to about \$262.1 million. Appendix A describes our scope and methodology in greater detail.

## Background

The Procurement section within the Office of Finance and Procurement oversees the CFPB’s purchasing activities. Procurement staff includes contracting officers (COs) authorized to obligate the government by awarding and modifying contracts. COs also coordinate with program offices when they need additional supplies or services that were not included in the original contract award.

## ***Federal and CFPB Requirements for Awarding and Modifying Contracts***

The *Federal Acquisition Regulation* (FAR) is the primary regulation guiding federal executive agencies in acquiring supplies and services with appropriated funds, including through contract award and modification. Although the CFPB has determined that it is not required to follow the FAR in its entirety, it has voluntarily chosen to follow the FAR for all acquisitions as a matter of policy.<sup>2</sup> The CFPB has supplemented FAR requirements with two policies: *Policy for Acquisition Planning* and *Directive for Management and Legal Reviews*.

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<sup>1</sup> We excluded from the population (1) contract options, because we audited the CFPB’s processes for exercising options in 2023; (2) contracts with executive-order cost-increase modifications, because they were mandated; (3) purchase orders, because they consisted of low-dollar-value transactions; and (4) all precompeted governmentwide acquisition contracts but one, because they pose a low risk of unfair pricing. We judgmentally included one governmentwide acquisition contract that had four cost-increase modifications totaling about \$5.3 million because of the risk associated with the contract.

<sup>2</sup> Almost all CFPB procurements use nonappropriated funds. The CFPB determined that it must follow the FAR for procurements when (1) using appropriated funds, such as those from the Civil Penalty Fund or from congressional appropriations received, and (2) the regulation is restating portions of a statutory requirement applicable to the CFPB, such as the Competition in Contracting Act.

For contract awards, we identified six FAR and CFPB policy acquisition steps for COs related to defining the contract scope and selecting a vendor:

- **Market research.** Determine whether supplies and services meet the CFPB's needs on factors such as urgency, estimated dollar value, complexity, and experience.
- **Statement of work.** Describe the required deliverables or results in clear, specific, and objective terms with measurable outcomes.
- **Independent government cost estimate.** Calculate the anticipated cost of meeting the CFPB's requirements for the supplies or services.
- **Source selection plan.** Establish evaluation factors, such as price and technical quality, for a proposed product or service.
- **Technical evaluation.** Assess the proposal and the vendors' ability to perform the prospective contract successfully consistent with the expectations in the solicitation.
- **Best-value determination.** Identify which vendor provides the greatest overall benefit to the CFPB based on either the lowest price or a combination of price and other noncost factors, such as technical expertise.

For cost-increase modifications, we identified three FAR and CFPB policy steps for COs to ensure the modification is within scope of the original contract and reasonably priced:

- **Scope alignment.** Ensure the modification is within the general scope of the contract as described in the statement of work.
- **Price reasonableness.** Determine whether the modification's pricing is competitive and the terms, conditions, and pricing are commensurate with the CFPB's needs.
- **Legal review.** Send a modification that significantly changes the contract terms and conditions (technical or cost), such that they may be considered scope changes, to the CFPB's Legal Division to ensure statutory, regulatory, and policy compliance. The legal review policy does not define the term *significant*. Separate from the legal review policy, Procurement management also has an undocumented expectation that COs request Legal Division review when cumulative cost-increase modifications raise the total contract value by at least 20 percent.

## ***Characteristics of Contracts in Our Scope***

Procurement can purchase supplies or services through direct awards or governmentwide contracts. Procurement primarily uses governmentwide contracts because they have preestablished pricing, terms, and conditions, thereby minimizing the risk of unfair pricing. Procurement uses direct contracts for supplies and services that cannot be fulfilled through governmentwide contracts. Those contracts can be awarded competitively or on a sole-source basis.<sup>3</sup>

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<sup>3</sup> *Sole source acquisitions* occur when the supplies or services required by the agency are available from only one source and no other type of supplies or services will satisfy agency requirements; in such cases, full and open competition is not possible.

Of the 29 contracts in our scope, 15 were sole-source acquisitions for expert witness services.<sup>4</sup> The CFPB uses expert witness services in enforcement litigation, and such services undergo a streamlined acquisition process because of their time sensitivity. Sole-source acquisitions must have a justification, and market research on potential experts occurs continually. One CO explained that because the total need for expert witness services for a particular case may not be known at the time of the contract award, COs typically cannot accurately anticipate and provide contract options for additional expert witness services and must issue cost-increase modifications.<sup>5</sup>

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<sup>4</sup> We reviewed expert witness contracts for compliance with the same nine FAR and CFPB requirements for contract awards and cost-increase modifications as the other contracts in our scope, and Procurement's oversight of those nine requirements. We did not assess the effectiveness of the streamlined expert witness acquisition process.

<sup>5</sup> COs use contract options to include additional supplies or services at a prenegotiated price in base contracts. The agency then has the unilateral right to purchase the prenegotiated supplies or services as needed.





# Finding: COs Did Not Consistently Assess Prices on Cost-Increase Modifications

COs followed all six of the acquisition steps we tested when awarding all 29 contracts in our scope, in accordance with the FAR and CFPB policies. For cost-increase modifications, COs also ensured that the modifications aligned with the respective statement of work; however, COs did not consistently follow the remaining two steps to assess the prices for cost-increase modifications. Specifically, COs did not consistently (1) conduct and document price reasonableness determinations on modifications and (2) send modifications that increased the cumulative cost of the overall contract by at least 20 percent for Legal Division review (appendix B).

**Price reasonableness.** The FAR requires COs to establish a fair and reasonable price for all contract modifications. However, Procurement management explained that because the FAR requires COs to establish price reasonableness at the time of the contract award, they expect COs to document price reasonableness only for modifications to acquire a new item or service. Even if the CO determined that the price for an item or service was fair and reasonable at contract award, we believe that COs should confirm and document that modification prices are consistent with the original contract and that the modification meets the agency’s needs and expectations.

For the modifications within our scope, COs were not consistent in making price reasonableness determinations or documenting that prices were consistent with the original contract regardless of whether the modifications were for a new or existing item or service (table 1). Procurement does not have a policy or guidance that outlines requirements or expectations for how COs should assess and document the price reasonableness of contract modifications.

**Table 1. Results of CFPB Contract Cost-Increase Price Reasonableness Testing**

Modifications	Number	Price reasonableness documented	Price reasonableness not documented	Percent not documented
Total	41	25	16	39%
New items or services	10	3	7	70%
No new items or services	31	22	9	29%

Source: OIG analysis.

**Legal review.** The CFPB’s *Directive for Management and Legal Reviews* policy requires COs to send modifications for Legal Division review when proposed modifications significantly change the contract terms and conditions (technical or cost), such that they may be considered scope changes, but the policy

does not define *significant changes* and contains multiple exclusions.<sup>6</sup> Separate from the legal review policy, Procurement management explained that they also have an undocumented expectation that COs request Legal Division review when cumulative cost-increase modifications raise the total contract value by at least 20 percent. Procurement management explained that because the FAR does not define *significant*, for them to do so would impose a more stringent requirement; in addition, the policy allows the COs discretion. In our scope, 16 of the 18 contracts with modifications that increased the cost on the overall contract by at least 20 percent were within the exclusions in the legal review policy because of their contract type. For the remaining 2 contracts that were not excluded from the legal review policy, neither CO sent the modifications for Legal Division review. The seven COs we interviewed—including the two who did not send modifications exceeding 20 percent for Legal Division review—had differing understandings of the legal review policy. Two COs stated that they send modifications for Legal Division review when the modifications increase the total contract cost by at least 20 percent and one stated that they do so at 10 percent, two COs focused solely on potential changes to the scope of the contract’s work and not on cost increases, and two COs were unclear about the requirements for Legal Division review. Procurement’s undocumented Legal Division review expectation, combined with vague policy language and multiple exclusions, leaves COs unclear about when to request Legal Division review.

Procurement management explained they have not issued guidance outlining the requirement to evaluate price reasonableness because COs should be aware of the FAR requirement as part of their CO qualifications. Procurement management also explained that COs are allowed discretion when the FAR is not prescriptive, such as when to seek Legal Division reviews for total cost increases resulting from modifications.

Providing guidance to COs on the requirements related to cost-increase modifications will promote consistent reviews of modification pricing, thereby ensuring that the CFPB maximizes the value derived from its contracting activities.

## Recommendation

We recommend that the deputy assistant director for procurement

1. Document, clarify, and communicate requirements for assessing the price on cost-increase modifications, including
  - a. requirements for price reasonableness determinations.
  - b. expectations for legal reviews.

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<sup>6</sup> The policy excludes from Legal Division review (1) material in support of task order requirements against single award contracts; (2) task orders issued against multiple award indefinite-delivery indefinite-quantity contracts valued up to \$10 million; (3) unilateral contract modifications, including exercising options; (4) nonmaterial solicitation amendments on a solicitation otherwise requiring Legal Division review; and (5) all sole-source expert witness and consulting contracts.

## Management Response

In response to our draft report, the deputy assistant director for procurement concurs with our recommendation. Procurement plans to update its standard operating procedures with uniform guidance on documentation requirements for cost-increase modifications by the second quarter of fiscal year 2025.

## OIG Comment

The planned actions described by the deputy assistant director for procurement appear to be responsive to our recommendation. We will follow up to ensure that the recommendation is fully addressed.



# Appendix A: Scope and Methodology

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Our objective was to assess whether the CFPB awarded contracts and managed modifications with cost increases in accordance with regulations, contract terms, and policies. Our scope covered 29 active contracts the CFPB awarded from January 2020 through November 2023 that had at least one cost-increase modification. Our 29 contracts include all contracts that met our population criteria and one that we judgmentally selected.<sup>7</sup> Of the 28 contracts that met our population criteria, 13 were awarded competitively and 15 were awarded as sole-source acquisitions for expert witness services. These 29 contracts were valued at approximately \$244.5 million and had a total of 41 cost-increase modifications that increased the total contract value to about \$262.1 million.

To accomplish our objective, we reviewed contract documents and sections of the FAR relating to awards and cost-increase modifications. We also reviewed CFPB guidance, including the *Directive for Management and Legal Reviews* policy and the *Policy for Acquisition Planning*. Further, we interviewed CFPB Procurement management and COs to understand key processes for cost-increase modifications, as well as contracting officer representatives in the program offices.

For the 29 contracts in our scope, we tested whether the COs ensured the following steps were completed when defining the contract scope and selecting a vendor: (1) market research, (2) statement of work, (3) independent government cost estimate, (4) source selection plan, (5) technical evaluation, and (6) best-value determination. For cost-increase modifications, we tested whether (1) the modification was within the general scope of the contract described in the statement of work, (2) COs assessed the reasonableness of the modification's pricing, and (3) COs sent a modification that increased the cumulative cost of the overall contract by at least 20 percent for CFPB's Legal Division review.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted this work from October 2023 to October 2024.

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<sup>7</sup> We excluded from the population (1) contract options, because we audited the CFPB's processes for exercising options (see Office of Inspector General, *The CFPB Can Improve Its Controls for Exercising Contract Options*, [OIG Report 2023-FMIC-C-012](#), September 18, 2023); (2) contracts with executive-order cost-increase modifications, because they were mandated; (3) purchase orders, because they consisted of low-dollar-value transactions; and (4) all precompeted governmentwide acquisition contract vehicles but one, because they pose a low risk of unfair pricing. We judgmentally included one governmentwide acquisition contract that had four cost-increase modifications totaling about \$5.3 million because of the risk associated with the contract.

# Appendix B: Modification Testing Results

Table B-1. Results of CFPB Contract Cost-Increase Modification Testing

Base contract value	Increase in total contract value	Percentage increase	Test 1. Scope alignment	Test 2. Price reasonableness	Test 3. Legal review
\$45,135	\$100,000	222%	●	○	n.a.
\$2,281,319	\$573,200	25%	●	○	○ <sup>a</sup>
\$1,643,974	\$411,850	25%	●●	○○	n.a.
\$23,167,522	\$5,250,140	23%	●●●	●○○	n.a.
\$278,430	\$62,124	22%	●	●	n.a.
\$895,000	\$180,000	20%	●	●	○ <sup>a</sup>
\$38,894,211 <sup>b</sup>	\$5,339,765	14%	●●●●	○○○○	n.a.
\$1,230,085	\$164,931	13%	●	●	n.a.
\$209,000	\$20,047	10%	●	○	n.a.
\$207,454	\$19,088	9%	●	●	n.a.
\$6,098,885	\$357,375	6%	●●	●●	n.a.
\$7,261,263	\$351,000	5%	●●	●●	n.a.
\$23,400	\$748	3%	●	○	n.a.
\$55,558	\$1,200	2%	●	○	n.a.
Expert Witness Contracts					
\$27,000	\$95,000	352%	●	●	n.a.
\$352,000	\$1,028,420	292%	●	●	n.a.

Base contract value	Increase in total contract value	Percentage increase	Test 1. Scope alignment	Test 2. Price reasonableness	Test 3. Legal review
\$189,400	\$397,500	210%	●	●	n.a.
\$18,600	\$28,200	152%	●	●	n.a.
\$145,500	\$214,888	148%	●●	●●	n.a.
\$1,500,000	\$1,799,900	120%	●●	●●	n.a.
\$418,000	\$397,050	95%	●●●	●●●	n.a.
\$191,500	\$96,710	51%	●	●	n.a.
\$426,800	\$198,930	47%	●	○	n.a.
\$27,575	\$10,800	39%	●	●	n.a.
\$1,215,925	\$403,925	33%	●	●	n.a.
\$28,600	\$7,200	25%	●	●	n.a.
\$818,530	\$47,400	6%	●	●	n.a.
\$143,500	\$7,500	5%	●	○	n.a.
\$199,126	\$10,326	5%	●	○	n.a.

Source: OIG analysis.

Note: Some contracts contain multiple cost-increase modifications, and thus, multiple results.

● The cost-increase modification contains the required aspect that we tested for.

○ The cost-increase modification did not contain the required aspect that we tested for.

n.a. The cost-increase modification is excluded from the *Directive for Management and Legal Reviews*.

<sup>a</sup> The modifications associated with these contracts were not one of the exclusions in the *Directive for Management and Legal Reviews*.

<sup>b</sup> This is the single governmentwide contract that we reviewed.

# Appendix C: Management Response



1700 G Street NW, Washington, D.C. 20552

5 December 2024

Ms. Cynthia Gray  
Deputy Associate Inspector General for Audits and Evaluations  
Office of Audits and Evaluations  
20<sup>th</sup> and C Streets, NW  
Washington, DC 20551

Dear Ms. Gray:

Thank you for the opportunity to review and comment on the Office of Inspector General's draft report, titled *The CFPB Can Strengthen Guidance on Cost-Increase Modifications*. We appreciate the OIG's partnership with the CFPB Office of Finance and Procurement over the course of this audit.

We are pleased your audit found that our Contracting Officers followed all required acquisition steps when awarding contracts within the scope of this audit, in accordance with the Federal Acquisition Regulation (FAR). The Office of Finance and Procurement has worked hard to ensure effective controls are in place for contract awards and modifications and we remain committed to continuing that.

We acknowledge and concur with the recommendation you made around strengthening our documentation process for assessing the price on cost increase modifications. We will begin making this enhancement shortly to address this recommendation and plan to have it addressed no later than quarter two of FY 2025. The enhancement will include an update to our standard operating

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procedures with uniform guidance on documentation requirements for cost increase modifications.

We appreciate the amount of work that went into this audit and thank you for the opportunity to comment on the report.

Thank you for your review.

Sincerely,

JOSHUA  
GALICKI

 Digitally signed by  
JOSHUA GALICKI  
Date: 2024.12.05 16:39:27  
-05'00'

Joshua Galicki  
Deputy Assistant Director for Procurement





# Abbreviations

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CO	contracting officer
FAR	<i>Federal Acquisition Regulation</i>

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