



November 12, 2010

**TO:** Thomas R. Frieden, M.D., M.P.H.  
Director  
Centers for Disease Control and Prevention

**FROM:** /Daniel R. Levinson/  
Inspector General

**SUBJECT:** Review of the Centers for Disease Control and Prevention's Compliance With Appropriations Laws and Acquisition Regulations—Contractor B (A-02-09-02005)

The attached final report provides the results of our review of the Centers for Disease Control and Prevention's (CDC) compliance with appropriations laws and acquisition regulations. This audit, which we initiated as a result of a congressional request, is one in a series of audits of CDC's contracting practices. It focuses on a research and development contract awarded to a company referred to as "Contractor B."

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through email at [Lori.Pilcher@oig.hhs.gov](mailto:Lori.Pilcher@oig.hhs.gov). We look forward to receiving your final management decision within 6 months. Please refer to report number A-02-09-02005 in all correspondence.

Attachment

Department of Health & Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF THE CENTERS FOR  
DISEASE CONTROL AND  
PREVENTION'S COMPLIANCE WITH  
APPROPRIATIONS LAWS  
AND ACQUISITION  
REGULATIONS—CONTRACTOR B**



Daniel R. Levinson  
Inspector General

November 2010  
A-02-09-02005

# *Office of Inspector General*

<http://oig.hhs.gov>

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The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health & Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## **EXECUTIVE SUMMARY**

### **BACKGROUND**

During fiscal years 2000 through 2008, the Centers for Disease Control and Prevention (CDC) awarded \$16.8 billion in contracts to help accomplish its mission. Like other Federal agencies, CDC is required to follow appropriations laws and the Federal Acquisition Regulation (FAR) when acquiring services with appropriated funds.

This audit, which we initiated as a result of a congressional request, is one in a series of audits of CDC's contracting practices. It focuses on a 10-year research and development contract that CDC awarded in 2002 to a scientific research company referred to in this report as "Contractor B." Under the contract, which was modified 18 times, CDC awarded \$205 million to Contractor B to complete vaccine safety research studies. Contractor B subcontracted for much of this work.

### **OBJECTIVE**

Our objective was to determine whether CDC's research and development contract awarded to Contractor B complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, subcontracting, additional performance activities, contract funding, and pricing.

### **SUMMARY OF FINDING**

CDC's research and development contract awarded to Contractor B complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, subcontracting, additional performance activities, and contract funding. However, the contract did not fully comply with appropriations laws and acquisition regulations with respect to pricing.

Specifically, CDC did not perform cost analyses for four contract modifications that exceeded \$650,000 each and that totaled \$10.9 million. The failure to perform cost analyses occurred because CDC did not adhere to its policies and procedures for determining the reasonableness of contract modifications. By failing to perform cost analyses, CDC violated the FAR. As a result, CDC did not ensure that it obtained vaccine safety research studies at fair and reasonable prices.

### **RECOMMENDATION**

We recommend that CDC adhere to its procedures for performing cost analyses on contract modifications exceeding \$650,000 each.

### **CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS**

In written comments on our draft report, CDC concurred with the above recommendation. However, CDC disagreed with the finding in our draft report that \$290,000 was obligated in excess of available funds and with the related recommendations. Under separate cover, CDC

provided documentation showing that certification for the \$290,000 in additional funds was provided to the contracting officer before the contract action. CDC stated that, accordingly, it did not violate the Antideficiency Act. CDC's comments are included in their entirety as the Appendix.

#### **OFFICE OF INSPECTOR GENERAL RESPONSE**

After reviewing CDC's comments and documentation, we agree that the \$290,000 was properly certified. We have revised this final report accordingly.

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## **INTRODUCTION**

### **BACKGROUND**

The mission of the Centers for Disease Control and Prevention (CDC) is to promote health and quality of life by preventing and controlling disease, injury, and disability. To help accomplish its mission, CDC contracts for certain services, such as research and development and medical, construction, professional, administrative, and technical assistance services. During fiscal years 2000 through 2008, CDC funding for contracts increased from \$439 million to \$3.9 billion per year, for a total of \$16.8 billion during the 9-year period.

This audit, which we initiated as a result of a congressional request, is one in a series of audits of CDC's contracting practices.

### **Contracting Responsibilities**

CDC's Procurement and Grants Office (PGO) is responsible for the award, administration, and closeout of all CDC contracts. Within PGO, contracting officers are responsible for ensuring effective contracting; ensuring compliance with contract terms; ensuring that contractors receive impartial, fair, and equitable treatment; and determining the adequacy of contractor performance.

CDC's centers, institutes, and offices (program offices) are the primary initiators of contracts. Contracting officers delegate certain administrative duties to program office employees referred to as "project officers." As the contracting officers' authorized representatives for administering contracts and task orders, project officers are responsible for ensuring proper Government oversight of contractors' performance. Project officers are not empowered to make any contractual commitments on the Government's behalf.

CDC's Financial Management Office is responsible for processing payments to contractors and for maintaining records of invoices, payments, and supporting documents. The Office is also responsible for ensuring that adequate funds are available and allocated for contracts.

### **Federal Laws and Regulations**

Federal agencies are required to follow appropriations laws and the Federal Acquisition Regulation (FAR) when acquiring supplies and services with appropriated funds. Selected requirements are summarized below.

#### *Competition*

Pursuant to FAR 6.101(a), with certain limited exceptions, contracting officers must provide for full and open competition in soliciting offers and awarding Government contracts.

#### *Inherently Governmental Functions*

FAR 7.503(a) states that "contracts shall not be used for the performance of inherently governmental functions." Inherently governmental functions include determining agency policy,

such as the content and application of regulations; determining budget policy, guidance, and strategy; and directing and controlling Federal employees.

#### *Personal Services*

FAR 37.104 prohibits agencies from awarding personal service contracts unless specifically authorized by statute. The FAR characterizes a personal service contract as one in which an employer-employee relationship is created between the Government and contractor personnel. This relationship may be created by the contract terms or by subjecting contractor personnel to relatively continuous supervision and control by agency employees during contract performance.

#### *Subcontracting*

FAR pt. 44 allows contractors to use subcontractors, with certain restrictions, to furnish supplies or services during contract performance. The contracting officer must ensure that the contract includes a subcontracting clause and may require the contractor to obtain the Government's consent to subcontract if it has been determined that such consent is required to protect the Government's interests.

#### *Change Orders for Additional Performance Activities*

FAR 43.201 permits contracting officers to modify contracts to require additional performance activities that are within the general scope of the original contracts.

#### *Contract Funding*

FAR 32.702 and FAR 43.105 state that officers and employees of the Government may not authorize obligations in excess of the funds available or in advance of appropriations unless otherwise authorized by law. In addition, before executing any contract, the contracting officer must obtain written assurance from the responsible fiscal authority that adequate funds are available or must expressly condition the contract upon the availability of funds.

#### *Fair and Reasonable Pricing*

FAR 15.402(a) states that contracting officers must "[p]urchase supplies and services from responsible sources at fair and reasonable prices." FAR 15.403-4 requires contracting officers to obtain cost or pricing data for all contract modifications that exceed \$650,000, and FAR 15.404 requires contracting officers to perform cost analyses to determine the reasonableness of the costs proposed under the modifications.

### **Research and Development Contract Awarded to Contractor B**

In 2002, CDC awarded a 10-year research and development contract to a scientific research company referred to in this report as "Contractor B." Under the contract, which was modified 18 times, CDC awarded \$205 million to Contractor B to complete vaccine safety research studies. With assistance from various subcontractors, Contractor B was required to provide written reports to CDC summarizing the results of the research studies. CDC expected to use these reports to enhance its efforts in the area of vaccine safety.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether CDC's research and development contract awarded to Contractor B complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, subcontracting, additional performance activities, contract funding, and pricing.

### **Scope**

Our audit covered CDC's research and development contract with Contractor B for the period September 20, 2002, through July 8, 2008. We did not review CDC's overall internal control structure. We limited our internal control review to obtaining an understanding of CDC's policies and procedures for awarding and administering contracts.

We performed our fieldwork at CDC in Atlanta, Georgia, from May through July 2009.

### **Methodology**

To accomplish our objective, we:

- reviewed relevant Federal laws, regulations, and guidance;
- gained an understanding of CDC's policies and procedures related to contract award and administration;
- gained an understanding of the contract administration responsibilities of PGO, the Financial Management Office, and program officials;
- interviewed CDC officials to gain an understanding of the types of services provided by Contractor B and its subcontractors;
- reviewed documentation maintained by PGO, the Financial Management Office, and program offices related to the contract;
- reviewed the competitive procedures used to award the contract;
- reviewed contract documentation to determine whether Contractor B or its subcontractors performed any inherently governmental functions or personal services;
- reviewed the subcontracting plan that Contractor B submitted to CDC;
- reviewed documentation to determine whether the additional performance activities of Contractor B and its subcontractors were within the general scope of the contract; and
- assessed the procedures used to fund and price the contract.

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 finding and conclusions based on our audit objective.

## **FINDING AND RECOMMENDATION**

CDC's research and development contract awarded to Contractor B complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, subcontracting, additional performance activities, and contract funding. However, the contract did not fully comply with appropriations laws and acquisition regulations with respect to pricing. Specifically, contrary to the FAR, CDC did not perform cost analyses for four contract modifications that exceeded \$650,000 each and that totaled \$10.9 million. The failure to perform cost analyses occurred because CDC did not adhere to its policies and procedures for determining the reasonableness of contract modifications. As a result, CDC did not ensure that it obtained vaccine safety research studies at fair and reasonable prices.

### **PRICING**

#### **Federal Requirements**

Pursuant to FAR 15.402, the contracting officer must purchase supplies and services from responsible sources at fair and reasonable prices. FAR 15.403-4 requires the contracting officer to obtain cost or pricing data for each contract modification that exceeds \$650,000, and FAR 15.404 requires the contracting officer to perform a cost analysis to determine the reasonableness of the costs proposed under the modification.

#### **Cost Analyses Not Performed**

CDC made five modifications to the research and development contract awarded to Contractor B that exceeded \$650,000 each. These modifications increased the total contract award by \$12.1 million. Contractor B submitted all required cost and pricing data to CDC. However, CDC did not perform the required cost analyses for four modifications totaling \$10.9 million.

According to CDC's pricing procedures, the contracting officer was required to obtain contractor cost or pricing data for proposed contract modifications that exceeded \$650,000 each and to perform a cost analysis. The extent of the cost analysis depended on the dollar amount and technical complexity of the modification. PGO officials acknowledged that the contracting officers responsible for the four contract modifications failed to perform cost analyses to determine the reasonableness of the \$10.9 million in proposed costs.

By failing to perform cost analyses of proposed contract modifications, CDC violated the FAR. As a result, CDC did not ensure that it obtained information related to vaccine safety at fair and reasonable prices.

## **RECOMMENDATION**

We recommend that CDC adhere to its procedures for performing cost analyses on contract modifications exceeding \$650,000 each.

## **CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS**

In written comments on our draft report, CDC concurred with the above recommendation. However, CDC disagreed with the finding in our draft report that \$290,000 was obligated in excess of available funds and with the related recommendations. Under separate cover, CDC provided documentation showing that certification for the \$290,000 in additional funds was provided to the contracting officer before the contract action. CDC stated that, accordingly, it did not violate the Antideficiency Act. CDC's comments are included in their entirety as the Appendix.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

After reviewing CDC's comments and documentation, we agree that the \$290,000 was properly certified. We have revised this final report accordingly.

# **APPENDIX**

**APPENDIX: CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS**



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333

AUG 31 2010

TO: Daniel R. Levinson  
Inspector General  
Department of Health and Human Services

FROM: Director, Centers for Disease Control and Prevention  
Administrator, Agency for Toxic Substances and Disease Registry

SUBJECT: Draft Report (A-02-09-02005) - Review of CDC's Compliance with  
Appropriations Laws and Acquisition Regulations – Contractor B

In the Draft Report (A-02-09-02005), the Office of the Inspector General (OIG) made three recommendations to the Centers for Disease Control and Prevention (CDC). CDC's responses are explicated below.

- 1. Recommendation:** Adhere to its procedures for performing cost analyses on contract modifications exceeding \$ 650,000 each.

**Response:** CDC concurs with this finding. The documentation confirming that cost analyses were performed was not in the official contract file and therefore we were unable to substantiate that they were completed.
- 2. Recommendation:** Determine whether the \$ 290,000 obligated in excess of available funds violated the Antideficiency Act and, if so, report the violation as required.

**Response:** CDC does not agree with the facts or with the recommendations related to the section of the draft report titled "Contract Modification Issued in Excess of Available Funds."

The finding states that CDC improperly awarded a contract modification in excess of available funds. Our review of the approval actions for contract #200-2002-00732 shows initial funds certifications for \$800,000 and \$250,000, certified on July 15 and August 31, 2005, respectively. The procurement system also shows that an additional funds certification was provided for \$290,000 on August 31, 2005. This additional budget authority was made available to support the award of Modification #12 on contract #200-2002-00732, which was not awarded until September 13, 2005, 13 days later. Accordingly, there was not a violation of the Antideficiency Act as certifications of funds availability were

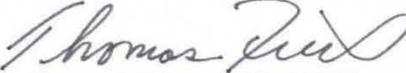
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provided to the contracting office prior to the award of the contract action. Accordingly, CDC does not agree with either the finding or the recommendations related to contract funding.

3. **Recommendation:** Develop and implement policies and procedures to address compliance with federal laws and regulations on obligating and expending funds.

**Response:** CDC does not concur with this recommendation. This recommendation was directed at correcting the condition noted in Recommendation #2 above. Since CDC does not agree that the noted condition occurred, we do not agree that additional policies and procedures are needed. CDC has internal controls in place to ensure that adequate funding is made available prior to the award of procurement actions. The Integrated Contract Expert (ICE) system will not allow a contract obligation in excess of the commitment (funds certification) amount, outside of a set tolerance level of 10% or \$10,000, whichever is less. In addition, the commitment accounting processes within the Unified Financial Management System (UFMS) have funds control processes that prevent the posting of transactions in excess of available funds, avoiding an Antideficiency Act violation. Accordingly, we do not believe additional policies or procedures are required in this area.

Please have your staff direct any questions or comments to Mr. Michael Tropauer, CDC's OIG Liaison, by telephone at (404) 639-7009, or by e-mail at [iggao@cdc.gov](mailto:iggao@cdc.gov). I appreciate your review of this important matter.



Thomas R. Frieden, M.D., M.P.H.