



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 C (A-02-09-02006)

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 C."

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. We look forward to receiving your final management decision within 6 months. Please refer to report number A-02-09-02006 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 C**



Daniel R. Levinson
Inspector General

November 2010
A-02-09-02006

Office of Inspector General

<http://oig.hhs.gov>

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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 5-year research and development contract that CDC awarded in 2002 to a scientific research company referred to in this report as "Contractor C." The contract was a single-award, indefinite-delivery, indefinite-quantity contract. Under the contract, CDC awarded 67 task orders totaling \$13.4 million to Contractor C to conduct health-monitoring studies and to develop strategies for preventing infectious diseases. Our review covered the contract and 10 task orders valued at \$1.7 million.

OBJECTIVE

Our objective was to determine whether CDC's research and development contract and selected task orders awarded to Contractor C complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, pricing, and contract funding.

SUMMARY OF FINDING

CDC's research and development contract and 10 sampled task orders awarded to Contractor C complied with appropriations laws and acquisition regulations with respect to inherently governmental functions, personal services, pricing, and contract funding. However, the contract did not fully comply with appropriations laws and acquisition regulations with respect to competition. Specifically, CDC awarded task orders to Contractor C that significantly exceeded the estimated contract cost without recompeting the contract. CDC's cumulative award of \$13.4 million exceeded the estimated contract cost by \$12.1 million because CDC failed to adhere to its procedures for periodically monitoring cumulative contract costs.

By failing to adequately monitor the cumulative costs incurred by Contractor C, CDC violated the FAR's requirement for full and open competition. As a result, CDC did not ensure that it obtained information related to the prevention of infectious diseases in the most economical and efficient manner.

RECOMMENDATION

We recommend that CDC adhere to its procedures for periodically monitoring cumulative contract costs.

CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS

In written comments on our draft report, CDC concurred with our finding and recommendation and described the corrective actions that it was taking. CDC's comments are included in their entirety as the Appendix.

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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.

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.

Pursuant to 41 U.S.C. § 253h(c), indefinite-delivery, indefinite-quantity (IDIQ) contracts must be awarded, with certain limited exceptions, pursuant to full and open competition. Task orders issued under an IDIQ contract may not exceed the scope, period, or maximum value of the contract under which they are issued (41 U.S.C. § 253h(e)). Government Accountability Office

(GAO) authorities provide that significant additional work that exceeds a contract's scope is a separate procurement that must be separately competed (*Data Transformation Corporation* (B-274629, Dec. 19, 1996); *T3 Corporation* (B-276535, June 27, 1997)).

FAR 52.243-2(e) states that "... the estimated cost of this contract ... shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost"

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.

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."

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.

Research and Development Contract Awarded to Contractor C

In 2002, CDC awarded a 5-year research and development contract to a scientific research company referred to in this report as "Contractor C." The single-award IDIQ contract, which was estimated to cost \$1.3 million, required Contractor C to conduct health-monitoring studies and to develop strategies for preventing infectious diseases. CDC subsequently awarded 67 task orders totaling \$13.4 million to Contractor C to conduct these studies. CDC expected to use the studies to assist in budgetary, legislative, regulatory, and long-range planning.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether CDC's research and development contract and selected task orders awarded to Contractor C complied with appropriations laws and acquisition regulations with respect to competition, inherently governmental functions, personal services, pricing, and contract funding.

Scope

Our audit covered CDC's research and development contract with Contractor C and 10 task orders awarded under the contract between September 18, 2002, and July 8, 2008. The cumulative contract award totaled \$13.4 million, and the 10 task orders were valued at \$1.7 million.

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 and program officials;
- interviewed CDC officials to gain an understanding of the types of services provided by Contractor C;
- judgmentally selected¹ 10 task orders awarded to Contractor C (task orders 27, 41, 42, 43, 45, 49, 51, 61, 66, and 67) for detailed review;
- reviewed documentation maintained by PGO, the Financial Management Office, and program offices related to the contract and the 10 task orders;

¹ Our selection factors included whether the task orders were competed and whether the task orders potentially included inherently governmental functions or personal services. We also considered the dollar value of the task orders.

- reviewed the competitive procedures used to award the contract and the 10 task orders;
- reviewed contract documentation to determine whether Contractor C performed any inherently governmental functions or personal services; and
- assessed the procedures used to price and fund the contract and the 10 task orders.

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 and 10 sampled task orders awarded to Contractor C complied with appropriations laws and acquisition regulations with respect to inherently governmental functions, personal services, pricing, and contract funding. However, the contract did not fully comply with appropriations laws and acquisition regulations with respect to competition. Specifically, CDC awarded task orders to Contractor C that significantly exceeded the estimated contract cost without recompeting the contract. CDC’s cumulative award of \$13.4 million exceeded the estimated contract cost by \$12.1 million because CDC failed to adhere to its procedures for periodically monitoring cumulative contract costs.

COMPETITION

Federal Requirements

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.

Pursuant to 41 U.S.C. § 253h, IDIQ contracts must be awarded, with certain limited exceptions, pursuant to full and open competition. Task orders issued under an IDIQ contract may not exceed the scope, period, or maximum value of the contract under which they are issued (41 U.S.C. § 253h(e)). GAO authorities provide that significant additional work that exceeds a contract’s scope is a separate procurement that must be separately competed (*Data Transformation Corporation* (B-274629, Dec. 19, 1996); *T3 Corporation* (B-276535, June 27, 1997)).

FAR 52.243-2(e) states that “... the estimated cost of this contract ... shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost”

Cumulative Contract Award in Excess of Estimated Contract Cost

CDC inappropriately awarded funds to Contractor C that significantly exceeded the estimated contract cost without recompeting the contract. During the contract award process, the estimated contract cost was set at \$1.3 million, the amount of Contractor C's bid proposal. However, CDC subsequently issued 67 task orders totaling \$13.4 million to Contractor C without making any written modifications to increase the estimated contract cost. Therefore, the cumulative funds awarded exceeded the estimated contract cost by \$12.1 million.

According to CDC contract-monitoring procedures, the project officer was required to periodically compare cumulative costs incurred with the estimated contract cost to determine whether costs were reasonable and consistent with technical progress under the contract. CDC officials stated that the project officer failed to make this comparison. The officials acknowledged that task orders providing funds in excess of the estimated contract cost should not have been awarded without modifying the contract.

By failing to adequately monitor the cumulative costs incurred by Contractor C, CDC violated the FAR's requirement for full and open competition. As a result, CDC did not ensure that it obtained information related to the prevention of infectious diseases in the most economical and efficient manner.

RECOMMENDATION

We recommend that CDC adhere to its procedures for periodically monitoring cumulative contract costs.

CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS

In written comments on our draft report, CDC concurred with our finding and recommendation and described the corrective actions that it was taking. CDC's comments are included in their entirety as the Appendix.

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

SEP 1 2010

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

FROM: Thomas R. Frieden, M.D., M.P.H.
Director, Centers for Disease Control and Prevention
Administrator, Agency for Toxic Substances and Disease Registry

SUBJECT: OIG Draft Report -- "*Review of the Centers for Disease Control and Prevention's Compliance with Appropriations Laws and Acquisition Regulations-Contractor C*" (A-02-09-02006)

In the Draft Report Response (A-02-09-02006), the Office of the Inspector General (OIG) made a recommendation to the Centers for Disease Control and Prevention (CDC). CDC's responses are explicated below.

OIG Recommendation: "We recommend that CDC adhere to its procedures for periodically monitoring cumulative contract costs."

CDC Response: CDC concurs with the finding and recommendation as stated in the section of the draft report titled "Recommendation."

The finding, stated in the section titled "Cumulative Contract Award in Excess of Estimated Contract Cost," was that CDC should have recomputed the contract awarded to Contractor C because funds in the amount of \$ 12.1 million were added that significantly exceeded the estimated ceiling of \$ 1.3 million. CDC acknowledges this oversight and agrees that ideally a modification should have been issued to increase the ceiling of the base contract.

CDC concluded, however, that the contracting staff operated under the premise of the Department of Health and Human Services' Acquisition Regulation (HHSAR) citation that was included in Section B of the contract (200-2002-00776) and is provided below. The cost ceilings were increased on the task orders and should have been increased by modification to the contract a priori. It was an administrative oversight that a contract modification was not processed to increase the ceiling on the contract before the increased ceilings on the task orders. The contract provision below allows for the cost ceiling increases and competition was obtained up front prior to contract award.

B.2 HHSAR 352.232-74 Consideration -- Estimated Cost and Fixed Fee
(Apr 1984) TASK ORDER TYPE CONTRACT

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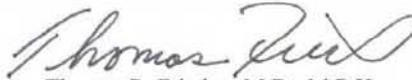
(d) The Government reserves the right to increase annual cost ceilings, to the extent that CDC's actual prevention effectiveness assessment studies support service needs during any contract year(s) exceed original contract estimates. The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

The Procurement and Grants Office (PGO) has and will implement the following quality assurance actions for improved review and control of contracts administration:

- Review and update policy and guidance on source selection procedures.
- Develop and provide training on new or recently revised relevant procedures including but not limited to *Contract Review and Approval Threshold PGO Standard Operating Procedure*, 03-01 (Revised 4/02/10) and the *Preparing the Negotiation Memorandum*, PGO SOP 2010-05.
- Evaluate contract review and approval processes among the operational acquisition branches, the policy and oversight office, and the office of the Head Contracting Activity to identify areas in which business process change are needed and implement appropriate change.
- Set a criteria and dollar value based system to identify procurements that will require a legal review and include in SOP 03-01 if needed.

We ask that 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.

Thank you for your review of this important matter.


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