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TO: Joe Ellis
Assistant Secretary for Administration
and Management

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

SUBJECT: Emergency Response to Hurricanes Katrina and Rita: Audit of Program Support Center's Award Process for a Contract With the Nevada Hospital Association (A-03-06-00509)

This report provides the results of our audit of the Program Support Center's (PSC) award process for a contract with the Nevada Hospital Association (the Association) of Reno, Nevada. The audit is one of several reviews of procurements by PSC and other components of the Department of Health and Human Services (HHS) in response to Hurricanes Katrina and Rita in 2005.

BACKGROUND

Hurricane Relief Efforts

Following Hurricanes Katrina and Rita, Congress provided more than \$63 billion to the Department of Homeland Security for disaster relief. Under its National Response Plan, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) coordinated relief efforts by assigning tasks, known as missions, to other Federal agencies. FEMA agreed to reimburse the other agencies for their costs.

FEMA assigned HHS the responsibility for relief operations in the areas of public health and medical services. As part of the HHS relief operations, PSC awarded a fixed-price contract to the Association. The contract obligated the Association to furnish a 100-patient mobile hospital unit for hurricane victims. The contract, effective September 9, 2005, provided \$1,225,588 for this purpose.

PSC's Strategic Acquisition Service was responsible for soliciting, negotiating, awarding, and administering the contract.

Federal Acquisition Regulations

The Federal Acquisition Regulation (FAR) defines a contract as a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate a Government expenditure of appropriated funds, including awards, job orders, letter contracts, orders, and bilateral contract modifications (FAR 2.101).

The FAR establishes the basic requirements for acquisitions by Federal agencies. The Health and Human Services Acquisition Regulation (HHSAR) implements and supplements the FAR and provides requirements that specifically govern the HHS acquisition process.

The FAR and the HHSAR provide, among other things, that HHS agencies award each contract to a responsible party (FAR 9.103(a)) and document compliance with requirements for full and open competition and the determination that the price was fair and reasonable (FAR 6.101(b) and 15.402(a)). Agencies also must develop a statement or description of the goods or services being requested (FAR 16.504(a)(4)(iii)).

Only contracting officers have the authority to commit the Government to a contract. If a Government representative who is not a contracting officer enters into an agreement with a contractor, the FAR and the HHSAR include procedures for ratifying the contract (i.e., making it a proper contract), provided that certain conditions are met (FAR 1.602-3 and HHSAR 301.602-3). Whenever possible, agencies should minimize the need for using the ratification process.

Pursuant to FAR 1.602-3(c), the head of the contracting activity may ratify an unauthorized commitment if (1) the Government has received and accepted the services; (2) the ratifying official is authorized to enter into a contractual commitment; (3) the resulting contract would have been proper if made by an appropriate contracting officer; (4) the contracting officer determines the price to be fair and reasonable; (5) the contracting officer recommends payment, and legal counsel concurs in the recommendation, unless agency procedures do not expressly require such concurrence; (6) funds are available and were available at the time the unauthorized commitment was made; and (7) the ratification is in accordance with any other limitations prescribed under agency procedures. HHSAR 301.602-3(c)(5) provides that the concurrence of legal counsel is optional.

Letter contracts may be used only for urgent needs. Unpriced orders, which must contain price ceilings, may be used only when it is impractical to obtain pricing. In addition, agencies must consider the appropriate contract type pursuant to guidance in FAR part 16. In certain situations, consideration must be given to small and minority businesses and local firms.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to determine whether PSC complied with FAR and HHSAR requirements during the award process involving the Association.

Scope

We limited our audit to the award process for PSC's contract HHSP23320064152EC, effective September 9, 2005, with the Association. We did not assess PSC's overall internal control environment. We also did not review contract performance or the acceptance and inspection of goods and services received.

We performed fieldwork at PSC's Strategic Acquisition Service in Rockville, Maryland, from January through March 2006.

Methodology

To accomplish our objective, we:

- reviewed FAR and HHSAR requirements,
- met with PSC officials to ensure an adequate understanding of PSC's actions during the award process and the basis for those actions, and
- examined the documentation related to the award of the contract to determine whether PSC followed FAR and HHSAR requirements.

We performed our audit in accordance with generally accepted government auditing standards.

RESULTS OF AUDIT

PSC complied with FAR and HHSAR requirements during the award process for contract HHSP23320064152EC with the Association. Because the mobile hospital unit was urgently needed to provide emergency services to hurricane victims, a Government representative who was not a contracting officer committed the Government to the contract. The head of the PSC contracting activity ratified the contract and met all conditions for ratification prescribed by the FAR and the HHSAR.

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This audit was conducted in conjunction with the President's Council on Integrity and Efficiency (PCIE) as part of its examination of relief efforts provided by the Federal Government in the aftermath of Hurricanes Katrina and Rita. As such, a copy of the report has been forwarded to

the PCIE Homeland Security Working Group, which is coordinating Inspectors General reviews of this important subject.

If you have any questions about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov. Please refer to report number A-03-06-00509.