



AUG 22 2007

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 MorganFranklin Corporation (A-03-06-00520)

This final report provides the results of our audit of the Program Support Center's (PSC) award process for a contract with MorganFranklin Corporation (the Corporation) of Waldorf, Maryland. 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 time-and-materials contract to the Corporation. The contract obligated the Corporation to provide communication capabilities to support the disaster relief efforts. The contract, effective September 13, 2005, provided \$182,298 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 contract 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)). With respect to full and open competition, FAR 6.102 states that competitive procedures include the use of the General Services Administration's (GSA) Multiple Award Schedule. Agencies also must develop a statement or description of the goods or services being requested (FAR 16.504(a)(4)(iii)).

A time-and-materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified, fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material-handling costs. A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. In addition, a time-and-materials contract may be used only after the contracting officer executes a determination and findings that no other contract type is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk (FAR 16.601). A "determination and findings" is a special form of written approval by an authorized official as a prerequisite to taking certain contract actions (FAR 1.701). The "determination" is a conclusion or decision supported by the "findings" (Id.). The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation (Id.).

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 Corporation.

Scope

We limited our audit to the award process for PSC's contract HHSP233200500174U, effective September 13, 2005, with the Corporation. 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 records of negotiation and other 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.

FINDING AND RECOMMENDATION

Finding

PSC generally complied with FAR and HHSAR requirements during the award process for contract HHSP233200500174U with the Corporation. PSC awarded the contract under GSA's Multiple Award Schedule, a list of contracts with commercial firms to provide supplies and services at stated prices for given periods of time. GSA had already determined that prices for goods and services on the schedule were fair and reasonable. Pursuant to FAR 6.102, contract awards under the schedule met the requirements for full and open competition. Further, PSC included a ceiling price, as required for time-and-materials contracts.

However, PSC did not execute a written determination and findings that no contract type other than a time-and-materials contract was suitable, as required by FAR 16.601(c)(1)¹ and 1.701. According to the contracting officer, PSC followed all of the required procedures and made a determination and findings that a time-and-materials contract was the only type of contract suitable under the circumstances. However, PSC did not document the results of the determination and findings in writing.

¹FAR 16.601(c)(1) was amended effective February 12, 2007. The applicable section is now FAR 16.601(d)(1), which provides a substantially similar requirement for a written determination and findings.

Recommendation

We recommend that PSC execute a written determination and findings when awarding time-and-materials contracts.

Program Support Center's Comments

In commenting on our draft report, PSC concurred with the audit finding.

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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.

Please send us your final management decision, including any action plan, as appropriate, within 60 days. If you have any questions or comments 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-03-06-00520.