

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**HHS DID NOT  
IDENTIFY AND REPORT  
ANTIDEFICIENCY ACT  
VIOLATIONS**

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**May 2017  
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# *Office of Inspector General*

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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.

## Report in Brief

Date: May 2017

Report No. A-03-13-03002

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Review

In 2008, HHS conducted a review of its acquisition process to determine whether HHS was in compliance with Federal acquisition policies and procedures, including compliance with appropriations law. The review concluded that HHS components, including the Program Support Center (PSC), did not always obligate and expend funds in compliance with Federal requirements. As a result, in July 2011, HHS reported a departmentwide Antideficiency Act violation totaling more than \$1.4 billion. Further, the review stated that HHS had implemented some corrective actions.

The objective of this review was to determine whether the PSC obligated and expended funds for its contracts in compliance with appropriations law and Federal acquisition requirements.

### How OIG Did This Review

During our audit period (October 1, 2011, through March 31, 2013) the PSC awarded or modified 216 contracts that had an estimated contract value that exceeded \$5 million each. We randomly selected 30 of these contracts, totaling \$498.3 million. We reviewed the 30 contracts to determine whether the services were properly funded as a nonseverable service (a single outcome) or severable services (continuing and recurring) and whether obligations and expenditures were made in accordance with fiscal policy and appropriations law.

## HHS Did Not Identify and Report Antideficiency Act Violations

### What OIG Found

The PSC obligated and expended funds for 17 of the 30 contracts we reviewed in accordance with appropriations law and Federal acquisition requirements; however, for the remaining 13 contracts, the PSC did not always obligate and expend funds for its contracts in compliance with applicable law and requirements, resulting in unreported Antideficiency Act obligation violations totaling \$20.3 million and expenditure violations totaling \$29.2 million. Also, for 4 of the 30 contracts reviewed, the PSC incorrectly extended the period of performance and the fiscal year funding beyond its 12-month period of availability. In addition, the PSC did not always submit contracts to the Office of Grants and Acquisition Policy and Accountability and Office of General Counsel for appropriations funding reviews before awarding the contracts. These conditions occurred because the PSC (1) funded nonseverable service contracts incrementally; (2) expended funds on a first-in, first-out basis instead of on the basis of a fund's period of availability; and (3) did not use correct product/service codes. Further, the Unified Financial Management System did not validate that expenditures were matched to obligations with an appropriate period of availability.

### What OIG Recommends and PSC Comments

We recommend that the PSC work with the HHS Office of the Secretary to report Antideficiency Act obligation violations totaling \$20.3 million and Antideficiency Act expenditure violations totaling \$29.2 million. We also recommend that the PSC make procedural changes that should help prevent violations of the Antideficiency Act and the Federal Acquisition Regulation in the future.

In written comments on our draft report, the PSC agreed with our findings and generally agreed with our recommendations. The PSC described actions that it has taken or planned to take in response to our findings, including holding training sessions on appropriations law; issuing guidance, standard templates, and standard operating procedures to PSC customers and staff; and instituting additional contract reviews. The PSC stated that it is not able to unilaterally report the Antideficiency Act violations because the appropriations and allotments belong to its customer agencies. However, the PSC stated that it would address our recommendations by working with the Office of the Secretary to determine which issues may require additional notifications under the Antideficiency Act.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

In 2008, the U.S. Department of Health and Human Services (HHS) conducted a review<sup>1</sup> of its acquisition process to determine whether HHS was in compliance with Federal acquisition policies and procedures, including compliance with appropriations law. The review concluded that HHS components, including the Program Support Center (PSC), did not always obligate and expend funds in compliance with Federal requirements. As a result of the review, in July 2011, HHS reported a departmentwide Antideficiency Act violation totaling more than \$1.4 billion. The review noted that HHS had implemented corrective actions, including adopting quality assurance procedures and conducting procurement management and internal control reviews to validate full compliance with appropriations laws and regulations and to ensure that there are no future violations of the Antideficiency Act.

We conducted this review to determine whether the PSC was now in compliance with appropriations law and, if not, to identify those areas of noncompliance and to quantify any funding errors.

See Appendix A for a list of Office of Inspector General reports related to compliance with Federal acquisition requirements and funding in accordance with appropriations law requirements.

### OBJECTIVE

The objective of this review was to determine whether the PSC obligated and expended funds for its contracts in compliance with appropriations law and Federal acquisition requirements.

### BACKGROUND

#### The Program Support Center

The PSC provides comprehensive acquisition management services to HHS and other Federal agencies. These acquisition management services include acquisition planning; soliciting and assessing offers; and negotiating, awarding, administering, and closing government contracts. HHS and other Federal agencies provide the PSC with a requisition that identifies the component's funding appropriation and certifies that those funds are available for the PSC to obligate on a contract award and to pay for the supplies and services procured. However, PSC contracting officers must ensure that all requirements of law have been met when awarding contracts.<sup>2</sup> For most of the contracts we reviewed, the PSC referenced the components'

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<sup>1</sup> The HHS review, *Tiger Team on Multiple Year Funding*, was initiated on October 21, 2008. The resulting HHS report, *Funding Multiple Year Contracts, Tiger Team Summary Report*, was issued July 29, 2009.

<sup>2</sup> The Federal Acquisition Regulation (FAR), 48 CFR § 1.602, lists the authority and responsibilities of contracting officers.

funding appropriations in the contract. For the remaining contracts we reviewed, the PSC deposited the components' funds into its Service and Supply Fund and cited the Service and Supply funding appropriation in the contract.

The PSC is one of four HHS accounting centers that uses the Unified Financial Management System (UFMS)<sup>3</sup> as its core financial system to support data standardization and facilitate departmentwide reporting. The PSC provides shared service accounting support to most of the operating and staff divisions across HHS.<sup>4</sup>

## **Federal Requirements**

The FAR (48 CFR chapter 1) is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. The HHS Acquisition Regulation (HHSAR, 48 CFR chapter 3) provides the regulatory framework for conducting acquisitions across HHS and supplements the FAR. Both provide a framework for awarding contracts, paying contractor invoices, and conducting management and oversight of contractor performance.

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized (31 U.S.C. § 1301(a)), (2) the obligation occurs within the time for which the appropriation is available (31 U.S.C. § 1502(a)), and (3) the obligation and expenditure are within the amounts that Congress has established (31 U.S.C. § 1341(a)). These are referred to as the purpose, time, and amount requirements of appropriation statutes.

The Antideficiency Act (31 U.S.C. § 1341(a)(1)) prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law. A fiscal year appropriation may be obligated only to meet a bona fide, or legitimate, need arising in, or in some cases arising before but continuing to exist in, the appropriation's period of availability (31 U.S.C. § 1502(a)). This is referred to as the "bona fide needs rule." Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved and on whether the services are nonseverable (a single outcome) or severable (continuing and recurring).

As a result of the 2008 HHS review, HHS issued interim guidance on contract formation and funding strategies applicable to contracts and orders exceeding 1 year of performance. This guidance clarified the intent of then-current HHS acquisition and funding policies and revised the HHSAR to eliminate possible ambiguities. HHS also established guidelines for the prospective appropriation-related review of HHS acquisitions by the Office of Grants and Acquisition Policy and Accountability (OGAPA) and Office of General Counsel (OGC) for

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<sup>3</sup> Within HHS, the Office of the Assistant Secretary for Financial Resources (ASFR) owns the UFMS system.

<sup>4</sup> The other three UFMS accounting centers are at the Centers for Disease Control and Prevention, the Food and Drug Administration, and the Indian Health Service. The National Institutes of Health and the Centers for Medicare & Medicaid Services have their own core financial systems.

contracts with a period of performance of greater than 12 months that had cumulative obligations totaling \$5 million or more for selected types of products and services.<sup>5</sup>

See Appendix B for a summary of Federal regulations referenced in this report.

## **HOW WE CONDUCTED THIS REVIEW**

We reviewed 30 of the 216 contracts awarded by the PSC that had cumulative obligations of \$5 million or more and that had a contracting action<sup>6</sup> during our audit period (October 1, 2011, through March 31, 2013). The total value of the 30 contracts represented \$498.3 million of the \$4.9 billion obligated for the 216 contracts. The 30 contracts comprised 10 nonseverable service contracts and 20 severable services contracts.

We reviewed the 30 contracts to determine whether the services were properly funded as nonseverable or severable services and whether obligations and expenditures were made in accordance with fiscal policy and appropriations law. We limited our review of the PSC's internal controls to those in place to ensure compliance with requirements specified in appropriations statutes. Although we established reasonable assurance of the authenticity and accuracy of the data obtained from the PSC contract management database used to select the 30 contracts for review, we did not assess the completeness of the database.

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.

See Appendix C for the details of our scope and methodology and Appendix D for information related to the 30 contracts.

## **FINDINGS**

The PSC obligated and expended funds for 17 of the 30 contracts we reviewed in accordance with appropriations law and Federal acquisition requirements; however, for the remaining 13 contracts, the PSC did not always obligate and expend funds for its contracts in compliance with applicable law and requirements, resulting in unreported Antideficiency Act obligation violations totaling \$20,256,755 and expenditure violations totaling \$29,188,270. Also, for 4 of the 30 contracts we reviewed, the PSC incorrectly extended the period of performance and the fiscal year funding beyond its 12-month period of availability. In addition, the PSC did not

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<sup>5</sup> Acquisition Policy Memorandum (APM) 2011-04, *Appropriations Law Compliance Reviews*, October 6, 2011. This policy establishes two review thresholds: (1) \$5 million or more for the PSC and some HHS components and (2) \$10 million or more for the remaining HHS components.

<sup>6</sup> For the purposes of this review, a contracting action is either a new contract award or a modification to an existing contract awarded before our audit period.

always submit contracts to the OGAPA and the OGC for appropriations funding reviews before awarding the contract. These conditions occurred because the PSC (1) funded nonseverable service contracts incrementally; (2) expended funds on a first-in, first-out basis instead of on the basis of a fund's period of availability; and (3) did not use correct product/service codes. Further, the UFMS system did not validate that expenditures were matched to obligations with an appropriate period of availability.

## **UNREPORTED ANTIDEFICIENCY ACT VIOLATIONS**

### **Federal Requirements**

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. The Antideficiency Act prohibits the agency from entering into contracts that exceed the enacted appropriations for the year and from purchasing services and merchandise before appropriations are enacted (31 U.S.C. § 1341(a)(1)). Agencies must report Antideficiency Act violations to the President (through the Office of Management and Budget (OMB)), Congress, and the Comptroller General (31 U.S.C. § 1351). OMB Circular A-11 prescribes the methodology for this reporting.<sup>7</sup>

After fiscal year appropriations expire, they remain available to record, adjust, and liquidate obligations properly chargeable to the appropriation account for up to 5 years. After 5 years, the appropriation account is closed and the balance is canceled (31 U.S.C. § 1552). If fiscal year funds are no longer available because an account has been closed, an agency may charge the obligation to the current fiscal year appropriation account available for the same purpose. The amount charged to the current fiscal year appropriation account may not exceed 1 percent of the appropriation (31 U.S.C. § 1553). After the close of each fiscal year, the head of each agency must report to the President and Secretary of the Treasury any adjustments that the agency made to appropriation accounts during the year, including any obligation adjustments made in accordance with section 1553 (31 U.S.C. § 1554).

### **Total Unreported Antideficiency Act Violations**

The PSC did not always comply with the time and amount requirements specified in the appropriations statutes for 13 of the 30 contracts reviewed, resulting in Antideficiency Act obligation violations totaling \$20,256,755 and expenditure violations totaling \$29,188,270. (See contracts with condition code "A" in Appendix E.) None of these violations were reported in accordance with OMB Circular A-11.

### ***Antideficiency Act Violations for Nonseverable Service Contracts***

A contract for a nonseverable service must reflect a bona fide need identified in the fiscal year in which the agency awards the contract, although the contract's performance may extend into

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<sup>7</sup> OMB Circular A-11, *Preparation and Submission of Budget Estimates*, part 4, section 145, "Requirements for Reporting Antideficiency Act Violations," June 30, 2015.

subsequent fiscal years. An agency must fully fund nonseverable service contracts by obligating funds representing the entire amount of the contract from appropriations available during the fiscal year in which the agency awards the contract. The PSC obligated \$20,217,325 and expended \$11,927,715 using fiscal year funds that were not available when the three nonseverable service contracts were awarded, resulting in a violation of the Antideficiency Act (Table 1). (See contracts with condition code “B” in Appendix E.)

**Table 1: Antideficiency Act Violations for Nonseverable Service Contracts**

Sample Item–Contractor	Obligation Violations	Expenditure Violations
13–Westat, Inc.	\$10,094,696	\$9,953,338
16–Research Triangle Institute	0	519,152
28–MDRC	10,122,629	1,455,225
<b>Total</b>	<b>\$20,217,325</b>	<b>\$11,927,715</b>

**Antideficiency Act Obligation and Expenditure Violations—Incremental Funding.** For two contracts, the PSC incorrectly funded nonseverable service contracts incrementally with multiple fiscal year funds. This resulted in Antideficiency Act obligation violations totaling \$20,217,325 and expenditure violations totaling \$11,408,563.

- On September 27, 2006, the PSC awarded a 3-year nonseverable service contract (Appendix D, sample item 13) for an impact study of Head Start for the Administration for Children and Families. The contracting officer verified that the contract was for a nonseverable service. The PSC estimated that the contract would cost approximately \$9,594,875; however, the contract was only funded with \$100,000 from fiscal year 2006. The balance of the contract was funded using \$4,352,718 from fiscal year 2007, \$3,706,673 from fiscal year 2008, \$1,435,484 from fiscal year 2009, and \$599,821 from fiscal year 2010, which extended the period of performance through September 25, 2011, and increased total obligations to \$10,194,696. Because only the original obligation of \$100,000 was correctly obligated, the PSC obligations totaling \$10,094,696 and related expenditures totaling \$9,641,381 violated the Antideficiency Act. Subsequently, the PSC correctly obligated an additional \$398,144 using fiscal year 2012 funds, correctly paid \$37,535 using fiscal year 2012 funds, but incorrectly paid \$311,957 using fiscal year 2011 funds, increasing the total expenditure violation to \$9,953,338.
- On September 30, 2010, the PSC awarded a 5-year nonseverable service contract<sup>8</sup> (Appendix D, sample item 28) for a subsidized and transitional employment demonstration and evaluation project for the Administration for Children and Families.

<sup>8</sup> The contract also included options totaling \$10,705,949 for severable services during each year of the contract. At the time of our review, none of these severable service options had been exercised.

The PSC estimated that the contract would total \$24,653,708; however, the PSC funded the contract using only \$1,211,331 from fiscal year 2010 funds. The PSC obligated to the contract additional funds totaling \$10,122,629: \$4,484,553 from fiscal year 2011, \$4,788,076 from fiscal year 2012, and \$850,000 from fiscal year 2013. As a result, PSC obligations totaling \$10,122,629 and related expenditures totaling \$1,455,225 violated the Antideficiency Act.

**Antideficiency Act Expenditure Violations—Incorrect Expenditures.** The PSC awarded one contract with two nonseverable service requirements but expended the wrong year funds for services. This resulted in an Antideficiency Act expenditure violation totaling \$519,152.

On May 3, 2011, the PSC awarded a cost-reimbursement, nonseverable service contract (Appendix D, sample item 16) for a national survey of child and adolescent well-being for the Administration for Children and Families. The PSC funded the initial award for a nonseverable service using \$1,902,879 from fiscal year 2011 funds. The PSC modified the contract to add a second nonseverable service to the contract on July 21, 2011, using \$4,009,432 from fiscal year 2011 funds. On August 17, 2012, additional work was added to the second nonseverable service using \$1,477,147 from fiscal year 2012 funds. The PSC correctly obligated fiscal year funds for each of these requirements. However, the PSC used \$511,885 from fiscal year 2012 funds to pay for services provided for the first nonseverable service and used \$7,267 from fiscal year 2011 funds to pay for services for the fiscal year 2012 addition to the second nonseverable service. In both cases, the contractor properly identified the services for which it billed on its invoices. The PSC must only use the fiscal year funds that were obligated for each nonseverable service, including the additional work added to the second nonseverable service. As a result, PSC expenditures totaling \$519,152 violated the Antideficiency Act.

### ***Antideficiency Act Violations for Severable Services Contracts***

Federal statutes limit the time for which an appropriation may be used. The bona fide needs rule requires that a fiscal year appropriation be obligated only during the appropriation's period of availability. Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved. Severable services are continuing and recurring. A contract for severable services must reflect a bona fide need identified for each program year, which may not exceed 12 months. When an agency does not follow the bona fide needs rule, an Antideficiency Act violation occurs.

For 10 contracts, the PSC violated the Antideficiency Act for severable services contracts by expending \$17,260,555 in funds authorized for one program year to pay for costs incurred in either a prior or a subsequent program year (Table 2).<sup>9</sup> Also, for 1 of the 10 contracts, the PSC changed the period of performance at the start of the third program year. This caused a 2-day funding gap, which resulted in a \$39,430 obligation and expenditure violation of the Antideficiency Act.

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<sup>9</sup> Five of the 10 contracts used both prior and subsequent program year funds to pay for current program year costs.

**Table 2: Antideficiency Act Violations for Severable Services Contracts**

Sample Item—Contractor	Expenditure Violations		Obligation/ Expenditure Violation
	Prior Year Funds	Subsequent Year Funds	
1—General Dynamics Info Tech	\$252,602	\$0	\$0
6—STG International, Inc.	38,205	3,308,329	39,430
7—ICF Incorporated, LLC	1,791,656	0	0
8—National Fatherhood Initiative	3,152,377	405,388	0
10—Deloitte Consulting LLP	355,616	0	0
18—McKing Consulting Corporation	324,867	74,131	0
21—Terremark Federal Group, Inc.	31,751	0	0
23—Research Triangle Institute	2,257,829	3,896,839	0
27—Securityhunter, Inc.	1,123,806	0	0
29—Wildon Solutions, Inc.	214,431	32,728	0
<b>Subtotal</b>	<b>\$9,543,140</b>	<b>\$7,717,415</b>	<b>\$39,430</b>
<b>Total</b>	<b>\$17,260,555</b>		

The PSC did not adjust the estimated need for each program year or obligate appropriate fiscal year funds to meet current needs. Rather, it used obligated funds on a first-in, first-out basis to record expenditures as they were invoiced, regardless of the program year for which the funds were obligated or in which the work was performed. The PSC may not expend funds (1) that were not obligated, (2) that remain from any program year for costs incurred in subsequent program years, or (3) that were obligated in subsequent periods to pay for costs incurred in prior program years.

**Antideficiency Act Expenditure Violations—Use of Prior Program Year Funds.** For 10 contracts, the PSC used \$9,543,140 in funds remaining from one or more prior program years to pay for costs incurred in a current program year, resulting in expenditure violations of the Antideficiency Act. (See contracts with condition code “C” in Appendix E.) For example:

- On September 27, 2006, the PSC awarded a 5-year no-fee, cost-reimbursable, severable services contract (sample item 8) for a national responsible fatherhood clearinghouse for the Administration for Children and Families. The PSC correctly funded the 12-month base program year using \$2,279,979 from fiscal year 2006 and funded each successive 12-month program year using appropriate fiscal year funds. At the end of the base year, the PSC had only expended \$1,376,236, leaving a balance of \$903,743. The PSC incorrectly used most of those remaining funds to pay for costs incurred during

the next program year and continued this practice of using funds on a first-in, first-out basis throughout the contract. Consequently, the PSC used a total of \$3,152,377 from prior program years to pay for services incurred in following program years. The PSC should have used the funds that were obligated for each program year for the cost of services provided in each program year.

**Antideficiency Act Expenditure Violations—Use of Subsequent Program Year Funds.**

For five contracts, the PSC used \$7,717,415 in funds obligated for subsequent program years to pay for costs incurred in a current program year, resulting in expenditure violations of the Antideficiency Act. (See contracts with condition code “D” in Appendix E.) For example:

- On September 29, 2006, the PSC awarded a 61-month cost-reimbursement, severable services contract (Appendix D, sample item 23) for a national survey of child and adolescent well-being for the Administration for Children and Families. The contract was estimated to total \$23,875,261, and the PSC planned to fund it for 1 month followed by five 12-month periods of performance. However, the PSC incrementally funded the contract for five 12-month periods of performance, generally near the end of each fiscal year, followed by recurring “no cost” extensions. During the third program year, beginning in September 2008, the PSC funded the contract with \$5,955,000 using fiscal year 2008 funds. Before the end of the third program year, the contract ran out of fiscal year 2008 funds, and the PSC used \$997,530 from the fourth program year (fiscal year 2009 funds) to pay for services provided during the third program year. Similarly, the PSC used \$2,899,309 from the fifth program year (fiscal year 2010 funds) to pay for services provided during the fourth program year. As a result, the PSC used a total of \$3,896,839 from subsequent program years to pay for services provided in prior program years.

**Antideficiency Act Obligation and Expenditure Violation.** For one contract, the PSC did not obligate \$39,430 but expended that amount for a 2-day period when the contract was modified to change the period of performance after the start of the third contract program year. (See the contract with condition code “E” in Appendix E.)

On September 29, 2006, the PSC awarded a 5-year severable services contract (Appendix D, sample item 6) to provide administrative, technical, and legal support services for the Assistant Secretary for Administration and Management. The PSC estimated that the contract would cost \$36,523,694. At the time of our review, the contract had been modified a total of 41 times, principally to incrementally fund the contract. Contract modifications did not always identify the period of performance funded or follow the funding methodology outlined in the original contract. Consequently, we established periods of performance by interpreting all available funding and performance information. Our interpretation was the most conservative approach that resulted in the smallest of funding errors.

During the third program year, the contracting officer exercised option year 2, which started on September 29, 2008, but changed the ending date from September 28 to September 30, 2009, and funded it using \$7,067,578 from fiscal year 2009. On October 7, 2009, the PSC changed the

start date to October 1, 2008, because fiscal year 2009 funds were not available to fund a period of performance beginning on September 29, 2008. However, this resulted in a 2-day funding gap (September 29–30, 2008). The contractor submitted a separate invoice totaling \$39,430 for this 2-day period, and the PSC used fiscal year 2008 funds remaining from the second program year. However, the contract never explicitly obligated the funding for those 2 days by extending the period of performance for the second program year.

Retroactively changing the contract's start date after 2 years of performance was not appropriate and would have resulted in an Antideficiency Act violation totaling \$6,771,635. However, by changing a future period of performance's start date without providing funding for September 29–30, 2008, the PSC created a 2-day funding gap totaling \$39,430. Beginning with the third program year, the PSC correctly made all obligations and expenditures using appropriate fiscal year funds.

### **Financial Control Deficiencies Resulted in Violations That Were Not Reported**

The PSC is one of four accounting centers that uses the UFMS as its core financial system to provide shared-service accounting support. The PSC records all obligations into the UFMS and authorizes expenditures against those obligations for each contract awarded by the PSC. However, the UFMS has no automated controls to ensure that expenditures are paid using funds obligated for the period in which the goods or services were provided. The contracting officer, the contracting officer's representative, or financial accounting personnel who process payments for contractor invoices determine which funds to expend for each payment. Consequently, many payments are charged to obligations with funding balances that were obligated for a period of availability outside an invoice's period of performance, resulting in Antideficiency Act violations.

### **PERIODS OF PERFORMANCE WERE EXTENDED AT NO COST TO THE GOVERNMENT**

#### **Federal Requirements**

Generally, agencies may only enter into severable services contracts if the contract period does not exceed 1 year (41 U.S.C. § 3902).<sup>10</sup> The OGAPA issued interim guidance (APM 2010-01) on June 28, 2010, to ensure that HHS staff understand and appropriately use sound contract formation and funding strategies for contracts exceeding 1 year, in compliance with appropriations law. The guidance clarified the intent of then-current HHS acquisition and funding policies pertinent to contracts exceeding 1 year and revised pertinent aspects of the HHSAR to eliminate possible ambiguities.<sup>11</sup>

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<sup>10</sup> When annual appropriations are used to fund a severable services contract, each contract or option period can begin in one fiscal year and end in the next fiscal year, but each period cannot exceed 1 year. When multiple-year or no-year appropriations are used, the contract or option period cannot exceed the period of availability of the funds used.

<sup>11</sup> The guidance includes interim changes to the HHSAR pending formal incorporation in the HHSAR.

The interim guidance in APM 2010-01 stated that:

Under an annual appropriation, a modification to authorize a no-cost extension of a contract for severable services is permitted only if it is for the continuation of the same services and would not extend the performance period involved beyond 12 months. This limitation includes situations involving an excusable delay or Government-caused delay—neither justifies a no-cost extension that would extend the funded performance period beyond 12 months. Given the above, and the common HHS practice to structure contracts for severable services with a base period and option periods of 12 months each, the use of a no-cost extension under a contract for severable services should be a very rare occurrence. Further, a no-cost extension cannot be used to add work that is outside the scope of the original contract.

On July 19, 2013, the OGAPA issued Acquisition Alert 2013-01, which updated and rescinded the interim guidance and provided interim HHSAR coverage. On December 18, 2015, HHS issued the revised HHSAR, which did not incorporate the guidance included in either APM 2010-01 or Acquisition Alert 2013-01 but rescinded the alert.

### **Incorrectly Extended Contract Periods of Performance**

For four contracts reviewed, the PSC incorrectly extended the period of performance and the related annual fiscal year funding beyond its period of availability. The PSC's use of annual fiscal year funds for periods that exceeded 12 months on a severable services contract constituted an obligation of funds in advance of an appropriation and thus violated the Antideficiency Act. (See contracts with condition code "F" in Appendix E.)

For example, on September 27, 2006, the PSC awarded a severable services contract (Appendix D, sample item 8) with annual periods of performance from September 27<sup>th</sup> through September 26<sup>th</sup>. On September 30, 2009, the PSC exercised Option 3 of the contract using \$2,560,957 from fiscal year 2009 funds for the 12-month period of performance from September 27, 2009, through September 26, 2010. On September 24, 2010, the PSC modified the contract to provide for a no-cost extension of Option 3 extending the contract to December 31, 2010, a period of performance totaling more than 15 months.

Similarly, on September 27, 2010, the PSC exercised Option 4 of the same contract using \$2,626,253 from fiscal year 2010 funds for the 12-month period of performance from September 27, 2010, through September 26, 2011. On September 14, 2011, the PSC modified the contract to provide for a no-cost extension of Option 4 extending the contract to October 26, 2011, a period of performance totaling 13 months. The period of performance was then extended to January 26, 2012, using \$25,000 from fiscal year 2012.

When it modified the original periods of performance of Options 3 and 4, the PSC extended the use of the obligated fiscal year funds beyond their 12-month period of availability. Also, the

no-cost extension created overlapping periods of performance and overlapping funding sources (fiscal year 2009 and fiscal year 2010) from September 27, 2010, through December 31, 2010.

## **APPROPRIATIONS COMPLIANCE REVIEWS**

### **Federal Requirements**

In 2011, HHS established a requirement that the OGAPA and the OGC perform an appropriations review before a contract is awarded when the period of performance, including all contract options and modifications, increases the length of the contract to more than 12 months and, for the PSC, when the dollar value, including all options and modifications, exceeds \$5 million. These guidelines were established to ensure that a proposed award is funded in compliance with appropriations laws and regulations before a contracting officer awards a contract. APM 2011-02 and APM 2011-04 outline the contract types, the dollar value thresholds, and the proposed contract actions to be reviewed.

Specifically, APM 2011-04 requires the review of three service categories: research and development (product/service codes beginning with “A”), studies (codes beginning with “B”), and data collection (code R702).<sup>12</sup> The PSC assigns product/service codes using the description of the product or service as defined in the contract statement of work.

### **Failure To Obtain Appropriation Compliance Reviews**

Generally, the PSC did not forward contracts that met the appropriations review criteria to the OGAPA and the OGC before a contract or modification was awarded. Of the 216 contracts the PSC awarded or modified during our audit period, 7 met the appropriations review criteria. However, the PSC sent only one of the seven contracts to the OGAPA and the OGC for review; the remaining six were not reviewed.

### **Miscoded Product/Service Codes**

The product/service code that the PSC assigned for 5 of the 30 contracts in our sample was not correct. We reviewed the statement of work for the 30 contracts to determine whether the PSC assigned the correct product/service code and found that the PSC often assigned generic product/service codes that would not require an appropriations review before the contract was awarded. For the five contracts, we identified more specific product/service codes that would have required an appropriations review before the contract had been awarded. The PSC stated that product/service codes were not validated before they were entered into the contract database because, before the requirement for appropriations reviews, the codes were not used as “review criteria.” Assigning specific product/service codes that reflect the contract statement of work would ensure that contracts that met the appropriations review criteria are identified for review.

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<sup>12</sup> The Federal Procurement Data System–Next Generation identifies all Federal procurements and includes a four-character product/service code for each acquisition, including contract awards and modifications.

For example, the statement of work for one contract was “to collect, manage, and report Federally mandated ... data.” The PSC assigned product/service code “R421, Technical Assistance” to the contract, and it was not submitted for an appropriations review. A more accurate product/service code would have been “R702, Support–Management: Data Collection.” Even if the contract had been coded correctly, the contract also exceeded both the 12-month period of performance and the \$5 million review criteria and the PSC should have sent it to the OGAPA and the OGC for an appropriations review.

## **RECOMMENDATIONS**

We recommend that the PSC:

- work with the HHS Office of the Secretary to report Antideficiency Act obligation violations totaling \$20,256,755,
- work with the HHS Office of the Secretary to report Antideficiency Act expenditure violations totaling \$29,188,270,
- collaborate with ASFR to identify changes to UFMS to ensure that contract expenditures for each program year are paid using the appropriate program year obligations,
- use “no cost” contract extensions for severable services contracts only when they do not extend the period of performance for a program year to more than 12 months, and
- use product/service codes that accurately reflect the contract statement of work.

## **PROGRAM SUPPORT CENTER COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

### **PROGRAM SUPPORT CENTER COMMENTS**

In written comments to our draft report, the PSC agreed with our findings and generally agreed with our recommendations. The PSC described actions that it has taken or planned to take in response to our findings, including holding numerous training sessions on appropriations law; issuing guidance, standard templates, and standard operating procedures to PSC customers and staff; and instituting second-level reviews for all contracts and in-depth quality reviews for larger complex requirements. The PSC stated that its customer agency offices have also instituted many changes to address the concerns in our report.

In response to our recommendations, the PSC stated that it is not able to unilaterally report the Antideficiency Act violations noted in our report because the appropriations and allotments belong to its customer agencies. However, the PSC stated that it would address our recommendations by working with the Office of the Secretary to determine which issues may require additional notifications under the Antideficiency Act. Additionally, the PSC noted that ASFR owns the UFMS system and that the PSC would need to collaborate with ASFR to identify changes to UFMS that would aid in avoiding improper expenditure of funds. Finally, the PSC

stated that it has instituted training on the use of “no cost” extensions for severable services and that it will work with its contracting officers to ensure they choose the most appropriate product/service codes to reflect the contract statement of work.

The PSC’s comments are included in their entirety as Appendix F.

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

In response to the PSC’s comments, we modified our recommendations to address the PSC’s concerns that it is unable to unilaterally report the Antideficiency Act violations noted in our report, that it does not own the UFMS system, and that it will need to collaborate with ASFR to identify potential changes in UFMS.

The PSC also provided technical comments to our report that we addressed as appropriate.

**APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract N01-AI-30068 With PPD Development, LP</i>	<a href="#"><u>A-03-10-03116</u></a>	09/14/2012
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract HHSN266-2005-00022C With PPD Development, LP</i>	<a href="#"><u>A-03-10-03118</u></a>	09/14/2012
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract HHSN272-2008-00013C With The EMMES Corporation</i>	<a href="#"><u>A-03-10-03115</u></a>	10/31/2011
<i>Appropriations Funding for National Institute on Drug Abuse Contract HHSN271-2007-00009C With Charles River Laboratories, Inc.</i>	<a href="#"><u>A-03-10-03104</u></a>	10/26/2011
<i>Appropriations Funding for Eunice Kennedy Shriver National Institute of Child Health and Human Development Contract HHSN275-03-3345 With Westat, Inc.</i>	<a href="#"><u>A-03-10-03106</u></a>	10/17/2011
<i>Appropriations Funding for National Institute of Diabetes and Digestive and Kidney Diseases Contract HHSN267-2007-00014C With the University of South Florida</i>	<a href="#"><u>A-03-10-03110</u></a>	10/17/2011
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract N01-AI-3-0052 With Avecia Biologics Limited</i>	<a href="#"><u>A-03-10-03117</u></a>	09/21/2011
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract HHSN266-2006-00015C With NexBio, Inc.</i>	<a href="#"><u>A-03-10-03119</u></a>	09/21/2011
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract N01-AI-15416 With the University of California at San Francisco</i>	<a href="#"><u>A-03-10-03120</u></a>	06/10/2011
<i>Appropriations Funding for National Institutes of Health Office of Research Facilities Development and Operations Contract C2000326 With Higgins Development Partners, LLC</i>	<a href="#"><u>A-03-10-03105</u></a>	05/31/2011
<i>Appropriations Funding for National Institutes of Health Office of Research and Facilities Development and Operations Contract HHSN292-2004-00002C With Jacobs Facilities Inc.</i>	<a href="#"><u>A-03-10-03103</u></a>	05/26/2011

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Appropriations Funding for National Institutes of Health Office of Acquisitions Contract HHSN263-2006-00011I With Computer Packages Inc.</i>	<a href="#"><u>A-03-10-03102</u></a>	04/20/2011
<i>Appropriations Funding for National Heart, Lung, and Blood Institute Contract HHSN268-2006-4276G With WorldTravelService</i>	<a href="#"><u>A-03-10-03113</u></a>	04/20/2011
<i>Appropriations Funding for National Institute of Allergy and Infectious Diseases Contract HHSN266-2006-00011C With SRI International</i>	<a href="#"><u>A-03-10-03114</u></a>	04/20/2011
<i>Appropriations Funding for National Heart, Lung, and Blood Institute Contract HHSN268-2008-00012C With Information Management Services, Inc.</i>	<a href="#"><u>A-03-10-03121</u></a>	11/01/2010
<i>Appropriations Funding for National Institutes of Health Contract HHSN292-03-D-0107 (Call Order Number NJE37991) With Gilbane Building Company</i>	<a href="#"><u>A-03-10-03101</u></a>	05/26/2010
<i>Appropriations Funding for National Library of Medicine Contract HHSN276-2007-00005U with Dell Marketing, LP</i>	<a href="#"><u>A-03-10-03111</u></a>	05/11/2010
<i>Appropriations Funding for National Library of Medicine Contract HHSN276-2007-00186U With Dell Marketing, LP</i>	<a href="#"><u>A-03-10-03112</u></a>	05/11/2010
<i>Follow-Up Review of Procurements Made by the National Institutes of Health for the Department of Defense</i>	<a href="#"><u>A-03-08-03000</u></a>	05/04/2009
<i>Procurements Made by the National Institutes of Health for the Department of Defense</i>	<a href="#"><u>A-03-07-03000</u></a>	01/10/2008

## **APPENDIX B: FEDERAL REQUIREMENTS RELATED TO APPROPRIATIONS**

### **FEDERAL REGULATIONS**

#### **31 U.S.C. § 1301(a), Application**

This section states that appropriations are limited to the purpose for which the appropriations were made, except as otherwise provided by law.

#### **31 U.S.C. § 1341(a), Limitations on expending and obligating amounts**

This section identifies the limitations that prohibit an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law. This section is commonly referred to as the Antideficiency Act.

#### **31 U.S.C. § 1351, Reports on violations**

This section requires the head of an agency to report violations of the Antideficiency Act (31 U.S.C. § 1341(a)) to the President, Congress, and the Comptroller General in accordance with the reporting requirements prescribed in OMB Circular A-11, part 4, section 145.

#### **31 U.S.C. § 1502(a), Balances available**

This section states that the balance of an appropriation is limited for obligation to a definite period and is available only for payment of expenses properly incurred during the period of availability. Further, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

#### **31 U.S.C. § 1552, Procedure for appropriation accounts available for definite periods**

This section states that a fixed appropriation account is closed 5 years after the period of availability during which the funds were available for obligation. At that time, the appropriation account is closed and the balance is canceled and not available for further obligation or expenditure.

#### **31 U.S.C. § 1553(b), Availability of appropriation accounts to pay obligations**

This section states that after a fixed appropriation account is closed and canceled, an agency may charge an obligation or an adjustment to an obligation chargeable to the canceled account to a current year appropriation account available for the same purpose. However, the amount charged may not exceed 1 percent of the current appropriation.

### **31 U.S.C. § 1554, Audit, control, and reporting**

This section requires the head of each agency to report to the President and the Secretary of the Treasury any obligation adjustments that the agency made during the year pursuant to section 1553.

### **41 U.S.C. § 3902, Severable services contracts for periods crossing fiscal years**

This section states that the contract period for the procurement of severable services cannot exceed 1 year but can begin in one fiscal year and end in the next fiscal year. Also, fiscal year funds may be obligated for the total amount of the contract.

## **FEDERAL ACQUISITION REGULATION**

### **The FAR, 48 CFR § 1.602, General Information about the Authority and Responsibilities of Contracting Officers**

This section describes the authority and responsibilities, including the limitations of contracting officers' authority, received from the appointing authority.

## **HHS REQUIREMENTS**

### **APM 2010-01, Guidance Regarding Funding of Contracts for Services Exceeding One Year of Performance Using Annual Appropriations, June 28, 2010**

This acquisition policy memorandum provides guidance on contract formation and funding strategies applicable to contracts and orders exceeding 1 year of performance. It clarifies the intent of current HHS acquisition and funding policies and revises pertinent aspects of the HHSAR to eliminate possible ambiguities. (See Acquisition Alert 2013-01 on the next page.)

### **APM 2011-02, HHS Prospective Service Acquisition Reviews, June 3, 2011**

This acquisition policy memorandum establishes guidelines for the prospective reviews of designated service acquisitions meeting specified dollar thresholds or qualitative criteria. These reviews ensure that service acquisitions: (a) meet mission needs in a cost effective manner; (b) comply with all relevant statutory and regulatory requirements; and (c) support the efficient and effective use of resources.

### **APM 2011-04, Appropriations Law Compliance Reviews, October 6, 2011**

This acquisition policy memorandum establishes guidelines for the prospective appropriation-related review of HHS acquisitions by the OGAPA and the OGC. For the PSC, these reviews are required for all contracts that exceed 12 months in performance and that exceed \$5 million for all awards, options, and contract modifications. These reviews are required for contracts for research and development, studies, and data collection identified by specific product/service

codes. Those codes include those beginning with the letter “A” (research and development), the letter “B” (studies), or code “R702” (data collection).

**Acquisition Alert 2013-01, Guidance Regarding Funding of Contracts for Services Exceeding One Year of Performance Using Annual Appropriations, July 19, 2013**

This memorandum provides guidance on contract formation and funding strategies applicable to contracts and orders for services exceeding 1 year of performance using annual appropriations. It also provides interim HHSAR coverage pending formal incorporation into the HHSAR, including: (a) policies related to contract funding requirements for severable and non-severable services and (b) standard solicitation provisions and contract clauses to be used when cost-reimbursement contracts will be incrementally funded. This interim guidance, which updated policy included in APM 2010-01 (see on the previous page), was rescinded when the revised HHSAR was issued on December 18, 2015.

**OFFICE OF MANAGEMENT AND BUDGET CIRCULAR**

**OMB Circular No. A-11, Preparation and Submission of Budget Estimates, June 30, 2015**

This circular provides guidance on preparing the Federal budget and includes instruction on budget execution. Section 145, *Requirements for Reporting Antideficiency Act Violations*, defines what an Antideficiency Act violation is and provides the appropriate reporting requirements, including sample transmittal letters to the President through the Director of OMB, the Congress, and the Comptroller General of the Government Accountability Office.

## APPENDIX C: AUDIT SCOPE AND METHODOLOGY

### SCOPE

During our audit period (October 1, 2011, through March 31, 2013) the PSC awarded or modified 216 contracts that exceeded 1 year and had a cumulative estimated contract value exceeding \$5 million each. Contracts that exceed 1 year have a greater potential for appropriations statute violations because they use funds from more than one fiscal year. From the 216 contracts totaling \$4,915,605,432, we randomly<sup>13</sup> selected 30 contracts totaling \$498,252,938. These 30 contracts comprised 10 nonseverable service and 20 severable services contracts.

We limited our review of internal controls to those in place to ensure compliance with the purpose, time, and amount requirements specified in appropriations statutes for awarding contracts. We established reasonable assurance of the authenticity and accuracy of the data obtained from the PSC contract database but did not assess the completeness of the database.

We did not review the procedures that the PSC used to award or modify the 30 contracts selected for review. Those procedures were outside the scope of our review. Unless otherwise noted in the report, we considered that the PSC had followed all acquisition policies and procedures.

We conducted our audit intermittently from April 2013 to 2016 and performed fieldwork at the PSC offices in Rockville, Maryland.

### METHODOLOGY

To accomplish our objective, we:

- reviewed Federal appropriations and acquisition laws and regulations and contract requirements;
- reviewed HHS acquisition policy memorandums and contract review guidance;
- randomly selected 30 contracts for detailed review;
- reviewed contract file documentation, including the statement of work, to determine the nature of the products or services to be provided;
- reviewed contract funding documents and payment invoices to determine what appropriations were obligated, recorded, and expended;

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<sup>13</sup> We used a random number generator to select the sample contracts for review. However, we are not using the results of the review to make an estimate of the error or any other population totals or percentages.

- reviewed contract award and modification documentation to determine whether “no-cost” contract extensions were in compliance with Federal requirements;
- reviewed contracts that the PSC provided to the OGAPA and the OGC for an appropriations law compliance review;
- verified whether the PSC forwarded to the OGAPA and the OGC contracts that met the requirement for an appropriations compliance review;
- compared the product/service codes for the 216 contracts with the description of the contract actions to determine whether the codes accurately identified the product or service acquired; and
- discussed the results of our review with and provided the detailed Antideficiency Act violations for the 13 contracts to PSC officials.

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.

**APPENDIX D: CONTRACT TYPE AND SERVICE AND  
TOTAL OBLIGATIONS AND EXPENDITURES**

<b>Sample Item</b>	<b>Type*</b>	<b>Product/Service Description</b>	<b>Obligations</b>	<b>Expenditures</b>
1	S	Technical Assistance	\$4,173,629	\$2,819,988
2	S	Evaluate/Review/Develop Support	2,115,530	1,051,502
3	S	Information Technology (IT) and Telecom–Other IT	3,286,289	2,470,258
4	S	Maintain, Repair, Rebuild Equipment	44,853,592	39,399,893
5	N	Prof. Special Development Support	5,262,107	5,262,096
6	S	Other Management Support	26,007,006	25,749,344
7	S	Other Administrative Support	5,252,679	5,252,641
8	S	Management Support Data Collection	11,574,644	11,309,375
9	N	Other Administrative Support	5,783,026	2,764,436
10	S	Other Administrative Support	10,403,231	9,027,089
11	N	Strategy and Architecture	6,379,077	6,320,589
12	N	Prof. Program Management Support	8,295,115	8,054,949
13	N	Other Professional Support	10,592,840	10,090,873
14	S	Trans/Travel/Relocation	7,652,406	6,394,679
15	S	Other Management Support	19,595,229	15,742,539
16	N	Other Administrative Support	7,389,458	6,425,398
17	S	IT and Telecom–Programming	10,060,762	9,998,588
18	S	Professional Support	4,805,679	3,739,839
19	S	IT and Telecom–Other	6,449,942	5,148,051
20	N	Office Furniture	8,816,233	4,279,332

<b>Sample Item</b>	<b>Type*</b>	<b>Product/Service Description</b>	<b>Obligations</b>	<b>Expenditures</b>
21	S	IT and Telecom Network Management	2,424,618	1,670,316
22	S	Medical–General Health Care	71,776,629	62,070,483
23	S	Other Professional Support	27,863,534	27,071,870
24	S	Prof. Program Management Support	18,635,287	14,896,162
25	N	Other Administrative Support	11,933,252	9,412,561
26	N	Other Administrative Support	9,076,450	6,563,657
27	S	Maintain, Repair, Rebuild Equipment	13,933,839	12,601,954
28	N	Program Evaluation Services	11,333,960	2,397,141
29	S	Advertising Management Support	6,687,588	6,648,627
30	S	Other Education and Training	3,671,165	2,917,181
<b>Total</b>			<b>\$387,084,796</b>	<b>\$327,551,411</b>

\*S = severable services contract, N = nonseverable service contract

**APPENDIX E: RESULTS OF AUDIT CONDITION CODES**

Sample Item–Contractor Name HHS Operating/Staff Division	Contract Number Order Number	Condition Codes*					
1–General Dynamics Information, Inc. Administration for Children and Families	HHSN263-9999-00127I HHSP233-2011-75071W		A		C		
2–Mathematica Policy Research, Inc. Administration for Children and Families	HHSP233-2012-50024A	X					
3–STG International, Inc. PSC, HHS Service and Supply Fund	HHSP233-2010-0003JB	X					
4–Tiburon Associates, Inc. PSC, HHS Service and Supply Fund	HHSP233-2012-00006C	X					
5–Accenture LLP Office of the Secretary, HHS	HHSN263-9999-000045I	X					
6–STG International, Inc. Departmental Management	GS10F0135R HHSP233-2006-00481G		A		C	D	E
7–ICF Incorporated, LLC Administration for Children and Families	HHSP233-2009-5636WC HHSP233-37005T		A		C		F
8–National Fatherhood Initiative Administration for Children and Families	HHSP233-2006-2924YC		A		C	D	F
9–Booz Allen Hamilton, Inc. Office of the Secretary, HHS	HHSP233-2009-5627WC	X					
10–Deloitte Consulting LLP Office of the Secretary, HHS	HHSP233-2009-5633WC		A		C		F
11–Acumen Solutions, Inc. Office of the Secretary, HHS	HHSP233-2010-00182G	X					
12–Deloitte Consulting LLP Office of the Secretary, HHS	HHSP233-2010-00106W	X					
13–Westat, Inc. Administration for Children and Families	HHSP233-2006-2929YC		A	B			F
14–Starry Associates, Inc. PSC, HHS Service and Supply Fund	HHSP233-2011-00260G	X					
15–Millennium Health & Fitness, Inc. PSC, HHS Service and Supply Fund	HHSP233-2201-00010DC	X					
16–Research Triangle Institute Administration for Children and Families	HHSP233-2009-5651WC HHSP233-37019T		A	B			
17–Foresee Results, Inc. PSC, HHS Service and Supply Fund	HHSP350-2010-00009I HHSP350-36001T	X					

Sample Item–Contractor Name HHS Operating/Staff Division	Contract Number Order Number	Condition Codes*					
			A		C	D	
18–McKing Consulting Corporation Centers for Disease Control and Prevention	GS00F0042P HHSP233-2009-00441G		A		C	D	
19–Macro Solutions, Inc. PSC, HHS Service and Supply Fund	HHSP233-2010-0007WI HHSP233-37002T	X					
20–Cazador Apparel, LLC PSC, HHS Service and Supply Fund	HHSP233-2012-00002I HHSP233-37002T	X					
21–Terremark Federal Group, Inc. PSC and Departmental Management	GS35F0073U HHSP233-2011-00338G		A		C		
22–Lockheed Martin Services, Inc. PSC, HHS Service and Supply Fund	HHSP233-2008-5306DC	X					
23–Research Triangle Institute Administration for Children and Families	HHSP233-2006-2930YC		A		C	D	
24–Deloitte Consulting LLP PSC, HHS Service and Supply Fund	GS35F0060L HHSP233-2009-00392G	X					
25–Booz Allen Hamilton, Inc. Office of the Secretary, HHS	HHSP233-2009-5627WC HHSP233-37004T	X					
26–Mathematica Policy Research, Inc. Departmental Management	HHSP233-2009-5642WC HHSP233-37021T	X					
27–Securityhunter, Inc. PSC and Departmental Management	HHSP233-2011-0001XB HHSP233-37023		A		C		
28–MDRC Administration for Children and Families	HHSP233-2010-0029YC		A	B			
29–Wildon Solutions, Inc. Administration for Children and Families	HHSP233-2008-2902YC		A		C	D	
30–Zero To Three: National Center For Infants, Toddlers And Families Administration for Children and Families	HHSP233-2011-0018YC	X					

\*Condition Codes:

X–No error condition identified

A–Unreported Antideficiency Act obligation and/or expenditure violation

B–Nonseverable service contract with an obligation and/or expenditure violation: incrementally funded a nonseverable service contract

C–Severable services contract with a bona fide needs expenditure violation: used prior program year funds

D–Severable services contract with a bona fide needs expenditure violation: used subsequent program year funds

E–Severable services contract with a bona fide needs obligation and expenditure violation: 2-day funding gap

F–Improper extension of period of performanc

## APPENDIX F: PROGRAM SUPPORT CENTER COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Program Support Center

Bethesda, MD 20857

### MEMORANDUM

To: Office of Inspector General

From: Allen Sample /Allen Sample/  
Director, Program Support Center

Subject: Report Number A-03-13-03002

**FEB 14 2017**

The Program Support Center (PSC) has appreciated the review and professionalism of the Office of Inspector General (OIG) staff over the past three years. We respectfully support the following comments/clarifications:

#### Background

The U.S. Department of Health and Human Services (HHS) conducted a departmental review and report identifying contract and appropriation issues on July 14, 2011. That report resulted in an Antideficiency Act (ADA) Letter explaining systemic issues at HHS that originated with faulty guidance issued by the department. The findings in the OIG report dated December 29, 2016 are consistent with the previous HHS report. It appears that the issues identified by OIG are from either that prior period or during the retraining period following the July 2011 Antideficiency Act Letter. Since 2011 HHS has issued numerous changes across the department in acquisition policy. HHS has issued guidance on proper funding of contract actions (since rescinded but still instructive) and instituted legal reviews for certain contracts (policy in the process of being updated). In December 2015, HHS issued revised HHS Acquisition Regulations (HHSAR). The department currently is developing guidance and instruction as a supplement to the new HHSAR to ensure greater oversight and standardization across HHS.

At the PSC level we have mirrored HHS's risk mitigation approach. We have held numerous training sessions on appropriation law (both online and through in-person expert trainers). We have issued guidance, standard templates, and standard operating procedures to PSC-serviced customers and staff. PSC has instituted second level reviews on all contracts and in-depth quality reviews on larger complex requirements. PSC holds customer and staff training sessions as HHS issues supplemental guidance and instructions on the new HHSAR. PSC has instituted a monthly Acquisition Points of Contact (APOC) call with program and budget officials and Federal Acquisition Certification-Contracting Officer's Representatives (FAC-COR) certified staff. On the APOC calls, PSC routinely discusses acquisition policy, changes, and departmental and federal acquisition initiatives. PSC also has a quarterly newsletter that is specific to the acquisitions office that helps reinforce the information on the APOC calls. PSC Finance holds monthly Business Points of Contact (BPOC) calls with HHS agency budget and funds certifiers. On the BPOC calls, PSC discusses process and system procedures for accounting and invoice receiving. Finally, PSC leadership meets one-on-one with customer OPDIVs on a regular basis. These meetings

focus on discussing any policy changes or initiatives. Proper funding of contracts has been a regular topic of discussions since 2011.

Additionally, the requiring offices have instituted many changes to address the concerns in this report and other administration activities. A sampling of program office actions are below:

#### Office of the National Coordinator for Health Information Technology (ONC)

- In accordance with HHS guidelines, all ONC CORs and the ONC Office of Procurement and Grants (OPG) liaisons are required to complete appropriations law training.
- ONC buttressed their staffing with highly experienced contracting personnel within the 1102 Series to provide subject matter expertise and guidance to all ONC project officers, CORs, and directors.
- OPG recently centralized all invoice processing across ONC to ensure all invoices are processed correctly and efficiently.
- ONC has a Blanket Purchase Agreement (BPA) to provide training to ONC CORs, managers, and office directors on the various stages of the acquisition process.
- OPG hosts a Quarterly Acquisition Advisory Week, which provides targeted information to the ONC community on agency specific rules and regulations, as well as the stipulations provided in the Federal Acquisition Regulations.
- OPG conducts quarterly reconciliation meetings with all of the program offices to discuss any issues or concerns they have pertaining to their contracts. Specifically, they discuss contractor performance, invoicing instructions, contractor schedule, and provide general guidance on contracting law.

#### Assistant Secretary for Public Affairs (ASPA)

- ASPA has consolidated budget and contract activities within the business operations team.
- ASPA's business operations are responsible for all contracts and receiving of invoices.
- ASPA has hired and trained CORs for contract administration.
- ASPA developed processes and procedures for reviewing contract requests, funds approval, and invoice management.

#### Administration for Children and Families (ACF)

- ACF hired a procurement advisor who provides advice and consultation to program offices on acquisition regulations and options (e.g., contracting vehicles) and serves as a liaison between ACF and external stakeholders (e.g., PSC, OGAPA).
- ACF maintains the list of all CORs, including certification level and certification dates, and requires all ACF CORs take appropriations law as part of the certification process.
- ACF provides their offices with resources (e.g., web links, training materials) to better determine appropriate product/service codes.

- ACF provides monthly informal training to their acquisition workforce (including CORs, PMs, and other acquisition workforce members). Past topics have included the following:
  - Acquisition life-cycle,
  - Market research, requirements development (severable and non-severable services),
  - Independent government cost estimate development, and
  - Source selection planning.
- ACF disseminates acquisition updates regarding policy, regulations, or process changes to all ACF acquisition workforce members.
- ACF created and maintains an online information repository for ACF’s acquisition workforce containing sample and template documents.

Findings

The OIG report details improper funding of two non-severable contracts. PSC agrees that the contracts from 2006 and 2010 respectively were not fully funded at the time of award. This was one of the major findings detailed in the HHS review that culminated in the July 14, 2011 report and the Antideficiency Act Letter. Since that time, HHS and PSC have both instituted training specific to non-severable contracts for the acquisition workforce (contracting, budget, and program staff). Specifically, PSC has started making specific severability determinations and including the rationale and justification in the file. Note the customer OPDIVs provide and certify funding for all contract actions and customer CORs are now trained to understand severable and non-severable contracts.

Sample Number	CONTRACT PO #	ORDER CALL #	CUSTOMER DESCRIPTION
<b>13</b>	HHSP23320062929YC		ACF
<b>28</b>	HHSP23320100029YC		ACF

The OIG report also discusses a 2006 awarded contract where the period of performance change resulted in a funding gap of two days and an improper funding amount of \$39,430. The program office requested the change to the period of performance due to funding issues at the agency. The PSC contracting officer, who is no longer employed at HHS, was mistaken in the belief that the gap would not be funded and thus would not result in a violation. HHS and PSC have instituted training in the area of appropriation law for the acquisition workforce (contracting, budget, and program staff). PSC has held both in-person and online training specific to the issue.

Sample Number	CONTRACT PO #	ORDER CALL #	CUSTOMER DESCRIPTION
6	GS10F0135R	HHSP233200600481G	OS Office of Medicare Hearings and Appeals (OMHA)

PSC agrees that expenditure violations occurred on 11 contracts awarded between 2006 and 2011. These expenditure violations occurred because invoices were paid against the improper contract line or payment of invoices for the contracts referenced above. PSC customers have included training in the proper funding of contracts in the COR certification program. Working with customers, PSC will continue to emphasize the proper methods for paying invoices.

Sample Number	CONTRACT PO #	ORDER CALL #	CUSTOMER DESCRIPTION
1	HHSN263999900127I	HHSP233201175071W	ACF
6	GS10F0135R	HHSP233200600481G	OMHA
7	HHSP23320095636WC	HHSP23337005T	ACF
8	HHSP23320062924YC		ACF
10	HHSP23320095633WC	HHSP23337003T	ONC
16	HHSP23320095651WC	HHSP23337019T	ACF
18	GS00F0042P	HHSP233200900441G	Centers for Disease Control and Prevention (CDC)
21	GS-35F-0073U	HHSP233201100338G	ASPA
23	HHSP23320062930YC		ACF
27	HHSP23320110001XB	HHSP23337023	OS Assistant Secretary for Administration (ASA)
29	HHSP23320082902YC		ACF

PSC agrees that the periods of performance were extended at “no-cost” for four contracts. HHS and PSC have instituted training in the area of appropriation law for the acquisition workforce (contracting, budget, and program staff). PSC has held both in-person and online training specific to this issue. The use of “no-cost” extension specifically has been addressed with PSC staff on numerous occasions.

Sample Number	CONTRACT PO #	ORDER CALL #	CUSTOMER DESCRIPTION
7	HHSP23320095636WC	HHSP23337005T	ACF
8	HHSP23320062924YC		ACF
10	HHSP23320095633WC	HHSP23337003T	ONC
13	HHSP23320062929YC		ACF

PSC agrees with OIG that PSC did not always forward contracts for appropriation law review in accordance with Acquisition Policy Memorandum 2011-04, which is in the process of being rescinded and updated. In the meantime, PSC will continue to review appropriate actions at the Head of Contracting Activity level and work with the HHS Office of General Counsel (OGC) to review such actions. PSC has not reviewed the statement of work for the five contracts OIG indicated were under the wrong Product Service Codes. Product Service Codes are general in description and statements of work generally may fall under multiple Product Service Codes. Our contracting officers are trained to use the Product Service Code that best reflects the intent and purpose of the contract. Differences of opinion are common. The contracting officer has the ultimate authority to choose the Product Service Code that best reflects the statement of work. We will continue to work with our contracting officers to ensure they are choosing the most appropriate Product Service Code.

#### OIG Recommendations

OIG recommends that PSC report the ADA obligation violation in the amount of \$20,256,755 and ADA expenditure violation in the amount of \$29,188,270. PSC is not able to unilaterally report since the appropriation and allotments belong to our customer agencies. PSC will work with the Office of the Secretary to determine which issues Congress was constructively notified in 2011; which are correctable errors; and which ones may require additional notifications under the Antideficiency Act.

OIG recommends that PSC “develop automated controls in UFMS to ensure that contract expenditures for each program year are paid using the appropriate program year obligation”. The UFMS system is owned by ASFR. PSC will collaborate with ASFR to identify changes to the system that will aid in avoiding improper expenditure of funds. We will use this report to emphasize the importance of proper receiving and the consequences when it is not done properly.

OIG recommends that PSC not use “no cost” extensions for severable services that exceed 12 months. PSC has instituted training on this subject since the July 14, 2011 ADA notification by HHS. We will continue to hold training in appropriation law to help staff understand the issues involved.

OIG recommends that PSC use accurate Product Service Codes to reflect the contract statement of work. We will continue to work with our contracting officers to ensure they choose the most appropriate Product Service Codes.

#### PSC Recommendation of Changes to the Report

PSC requests that OIG change the title to “HHS did not identify and report Anti-deficiency Act violations,” as the report involves appropriations from several HHS agencies.

PSC requests that OIG change the Findings statement on Page 10 that refers to Acquisition Alert 2013-01 and the revised HHSAR issued on December 18, 2015 to state that Acquisition Alert 2013-01 was rescinded in December 2014 and that the new HHSAR does not incorporate the guidance from the 2010 APM or the 2013 Acquisition Alert.

PSC requests that the Recommendations section of the report suggest that HHS issue department-wide appropriation law guidance similar to the 2010 APM or 2013 Acquisition Alert, or lacking such guidance that PSC should continue to use the most current documents for guidance.