



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 D (A-04-09-01066)

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 an information technology service contract awarded to a company referred to as "Contractor D."

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-04-09-01066 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 D**



Daniel R. Levinson
Inspector General

November 2010
A-04-09-01066

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 2009, the Centers for Disease Control and Prevention (CDC) awarded more than \$1.3 billion in information technology (IT) service contracts to help accomplish its mission. Like other Federal agencies, CDC is required to follow appropriations laws and the Federal Acquisition Regulation 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 2003 IT service contract that CDC awarded to a company referred to in this report as "Contractor D." Under the contract, CDC awarded 96 task orders totaling \$569 million to Contractor D from 2003 to 2009. Our review covered six of these task orders. The six task orders generally called for severable services, which are services that are recurring and continuing in nature and that are not intended to provide a specific end product, such as a report. The six task orders were valued at \$179 million.

OBJECTIVE

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

SUMMARY OF FINDINGS

CDC's IT service contract and six sampled task orders awarded to Contractor D complied with acquisition regulations with respect to competition, inherently governmental functions, and personal services. However, the task orders did not fully comply with appropriations laws and acquisition regulations with respect to contract funding and pricing. Specifically, for three of the six task orders, CDC used annual appropriations to pay for expenses incurred after the appropriations' 1-year period of availability had expired. Additionally, CDC did not sufficiently document price or cost analyses under all six task orders.

These deficiencies occurred because CDC's policies and procedures did not address funding requirements for severable service contracts. Furthermore, CDC's policies and procedures were inadequate to ensure the establishment of fair and reasonable prices. As a result, CDC violated the bona fide needs statute by expending \$1.6 million of annual appropriations beyond their period of availability and did not ensure that the pricing of task orders and modifications totaling \$73 million was fair and reasonable.

RECOMMENDATIONS

We recommend that CDC:

- determine whether the \$1,599,612 expended outside the 1-year period of availability violated the Antideficiency Act and, if so, report the violation as required;
- develop and implement policies and procedures to address compliance with appropriations statutes and acquisition regulations regarding obligating and expending funds; and
- implement and monitor the effectiveness of policies and procedures for documenting determinations of fair and reasonable pricing.

CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS

In its comments on our draft report, CDC described its corrective actions to address each of our recommendations. The complete text of CDC's comments is included 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 information technology (IT) services, such as automated information systems design, computer-aided design, and programming services. During fiscal years (FY) 2000 through 2009, CDC funding for IT service contracts increased from \$110 million to \$157 million per year, for a total of more than \$1.3 billion during the 10-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 service contracts. Contracting officers delegate certain administrative duties to program office employees referred to as "contracting officers' technical representatives" (project officers) and "technical monitors." As the contracting officers' authorized representatives for administering contracts and task orders, respectively, project officers and technical monitors are responsible for ensuring proper Government oversight of contractors' performance. Project officers and technical monitors are not empowered to make any contractual commitments or to authorize any contractual changes 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

FAR 6.101(a) requires that contracting officers promote and provide for full and open competition in soliciting offers and awarding Government contracts. FAR 16.505(b)(1)(i) requires, with certain limited exceptions, that contracting officers provide each awardee under a

multiple-award, indefinite-delivery, indefinite-quantity contract a fair opportunity to be considered for each order exceeding \$3,000.¹

Inherently Governmental Functions

FAR 7.503(a) states that “[c]ontracts 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.

Contract Funding

Pursuant to the bona fide needs statute (31 U.S.C. § 1502), agencies generally are required to fund severable service contracts with funds that are current and available for the year in which performance takes place.² The bona fide needs statute requires that “[t]he balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period” However, pursuant to 41 U.S.C. § 253l, an agency may enter into a contract for severable services for a period that begins in one FY and ends in the next FY if the contract period does not exceed 1 year. Such contracts may be funded entirely with funds available in the earlier year.

The FAR reflects the bona fide needs statute, as well as the statutory exception. FAR 32.703-3 states that “[a] contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization ...” or when the contract is for nonseverable services.

Fair and Reasonable Pricing

FAR 4.801 states that documentation in the contract files must be, among other things, sufficient to support actions taken and to provide information for reviews and investigations.

FAR 15.402 states that “[c]ontracting officers must—(a) [p]urchase supplies and services from responsible sources at fair and reasonable prices.” FAR 15.404-1 states that contracting officers are responsible for evaluating the reasonableness of the offered prices and may use price analysis

¹ The fair opportunity threshold was changed from \$2,500 to \$3,000 in 2006 (71 Fed. Reg. 57363 (Sept. 28, 2006)).

² Severable services are services that are recurring and continuing in nature and that are not intended to provide a specific end product, such as a report.

or cost analysis to ensure that the final price is fair and reasonable, depending on the complexity and circumstances of the acquisition.

Contract Awarded to Contractor D

In 2003, CDC awarded task order contracts to two companies for the ongoing acquisition of “a broad array of data, information, information technology, and information system support on an ‘as-needed’ basis.” Under the two contracts, CDC issued 126 task orders totaling almost \$670 million.

CDC awarded 96 task orders totaling \$569 million to 1 of the 2 contractors (Contractor D) from 2003 to 2009.³ Contractor D is a global security company, employing approximately 120,000 people, which provides services in such areas as aerospace, electronics, shipbuilding, and information systems.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

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

Scope

Our audit covered CDC’s IT service contract with Contractor D (contract 200-2004-03409) and six task orders awarded under the contract between July 1, 2004, and February 9, 2009. The six task orders were valued at \$179 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 12, 2009, through March 31, 2010.

Methodology

To accomplish our objective, we:

- reviewed relevant Federal laws, regulations, and guidance;

³ The second contractor is the subject of another report (A-04-09-06108).

- 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;
- conducted a risk assessment of the 96 task orders awarded to Contractor D and judgmentally selected⁴ 6 task orders (task orders 17, 21, 24, 33, 35, and 55) for detailed review;
- reviewed documentation maintained by PGO, program offices, and the Financial Management Office related to the contract and the 6 task orders;
- reviewed the competitive procedures used to award the contract and the 6 task orders;
- interviewed CDC officials to gain an understanding of the types of services provided under the 6 task orders and the extent to which:
 - contractor personnel performed inherently governmental functions,
 - CDC employees provided direction and supervision to contractor personnel, and
 - other elements of personal services existed in contract administration;
- assessed the procedures used to fund and price the 6 task orders and related modifications;
- reviewed the terms and conditions of, and subsequent modifications to, the 6 task orders to determine whether annual appropriations were used beyond their period of availability; and
- reviewed CDC’s financial records to quantify the payments made using appropriations beyond their period of availability.

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 objective.

⁴ Our selection factors included whether the task orders were competed, whether Contractor D was the only bidder, and whether the task orders potentially included inherently governmental activities. We also considered the dollar value of the task orders.

FINDINGS AND RECOMMENDATIONS

CDC's IT service contract and six sampled task orders awarded to Contractor D complied with acquisition regulations with respect to competition, inherently governmental functions, and personal services. However, the task orders did not fully comply with appropriations laws and acquisition regulations with respect to contract funding and pricing. Specifically, for three of the six task orders, CDC used annual appropriations to pay for expenses incurred after the appropriations' 1-year period of availability had expired. Additionally, CDC did not sufficiently document price or cost analyses under all six task orders.

These deficiencies occurred because CDC's policies and procedures did not address funding requirements for severable service contracts. Furthermore, CDC's policies and procedures were inadequate to ensure the establishment of fair and reasonable prices. As a result, CDC violated the bona fide needs statute by expending \$1.6 million of annual appropriations beyond their period of availability and did not ensure that the pricing of task orders and modifications totaling \$73 million was fair and reasonable.

TASK ORDER FUNDING

Federal Laws and Regulations

Pursuant to the bona fide needs statute (31 U.S.C. § 1502), agencies generally are required to fund severable service contracts with funds that are current and available for the year in which performance takes place. The bona fide needs statute requires that "[t]he balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period" However, pursuant to 41 U.S.C. § 2531, an agency may enter into a contract for severable services for a period that begins in one FY and ends in the next FY if the contract period does not exceed 1 year. Such contracts may be funded entirely with funds available in the earlier year.

The FAR reflects the bona fide needs statute, as well as the statutory exception. FAR 32.703-3 states that "[a] contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization ..." or when the contract is for nonseverable services.

The Antideficiency Act (31 U.S.C. § 1341) provides that officers or employees of the Government may not make or authorize an obligation in excess of the available funds or in advance of appropriations. This Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351).

Annual Appropriations Used Beyond Period of Availability

For three task orders for severable services, CDC used annual appropriations to pay for expenses incurred after the appropriations' 1-year period of availability had expired.⁵

- In September 2004, CDC awarded task order 35 in the amount of \$63,979,560⁶ to provide management, analysis, and support to HIV/AIDS prevention data systems. Under the task order, services were to be provided during a 1-year base period (September 1, 2004, through August 31, 2005); two 1-year option periods ending August 31, 2007; and a 16-month option period ending December 31, 2008. CDC incrementally funded the option periods by using annual appropriations from FYs 2004 through 2008 but did not properly fund the option period that extended into FY 2009. Specifically, CDC inappropriately funded \$1,345,471 in costs incurred from September 2007 through December 2008 with FYs 2004 through 2007 appropriations.
- In July 2004, CDC awarded task order 17 in the amount of \$21,413,030⁷ for information systems support for the National Center for HIV, STD, and TB Prevention. Under the task order, services were to be provided during a 1-year base period (July 1, 2004, through June 30, 2005) and two 1-year option periods ending June 30, 2007. CDC incrementally funded each period by using annual appropriations from FYs 2004 through 2007. Although the task order ended on June 30, 2007, CDC paid for contractor services provided from July 2007 through October 2008 (16 months after the project end date). FY 2007 funds were available for expenses incurred from July 2007 through March 2008; however, FY 2007 funds expired as of March 2008 based on the last obligation date of FY 2007 funding. CDC inappropriately used \$249,770 of these expired FY 2007 funds for costs incurred from April 2008 through October 2008.
- In July 2004, CDC awarded task order 24 in the amount of \$26,907,587⁸ for information systems support for bioterrorism preparedness activities. Under the task order, services were to be provided during a 1-year period (July 1, 2004, through June 30, 2005). Through modifications, CDC added a second period of performance spanning 19 months and ending March 8, 2007. CDC incrementally funded each period by using FYs 2004 through 2006 appropriations. Contractor D billed CDC \$4,371 for services provided from July 2007 through November 2008. CDC inappropriately used unexpended appropriations from FYs 2006 and 2007 to fund these expenses.

⁵ The terms of the basic contract defined two types of task orders: "product" task orders and "term" task orders. Per the contract, term task orders are for ongoing work with no identifiable end product (i.e., severable services). CDC identified all six sampled task orders as "term" task orders. Our review of the task order statements of work also suggests that the services were severable.

⁶ The \$63,979,560 included \$55,495,243 for the original award and \$8,484,317 for modifications.

⁷ The \$21,413,030 included \$16,914,202 for the original award and \$4,498,828 for modifications.

⁸ The \$26,907,587 included \$8,109,112 for the original award and \$18,798,475 for modifications.

Inadequate Policies and Procedures on Funding Limitations

CDC inappropriately expended annual appropriations beyond their 1-year period of availability because it had not developed and implemented adequate policies and procedures to ensure compliance with appropriations statutes and acquisition regulations on obligating and expending funds. Specifically, CDC's policies and procedures did not address funding requirements for severable service contracts. CDC's policies and procedures also did not address the funding of contract extensions that cause periods of performance to exceed 1 year and did not prohibit the use of prior-year appropriations for costs incurred in a subsequent year.

Violations of the Bona Fide Needs Statute

By extending the periods of performance for three task orders beyond 1 year, CDC expended \$1,599,612 of annual appropriations outside their 1-year period of availability and violated the bona fide needs statute. Such expenditures will violate the Antideficiency Act if sufficient funds from applicable appropriations are not available to cover the expenditures.

CDC could resolve the violations of the bona fide needs statute by adjusting its accounts (assuming sufficient funds are available) and recording the expenditures against the correct FY appropriations. This would require CDC to research the proper use of funds totaling \$1,599,612 and to determine the correct period of availability for those funds.

TASK ORDER PRICING

Federal Regulations

Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices (FAR 15.402). Depending on the complexity and circumstances of the acquisition, contracting officers may use price analysis or cost analysis to ensure that the final price is fair and reasonable (FAR 15.404-1). Documentation in the contract files must be sufficient to support the actions taken (FAR 4.801).

Inadequate Documentation of Price or Cost Analyses

CDC did not adequately document required price or cost analyses for the 6 sampled task orders (2 original task orders⁹ and 25 modifications applicable to all 6 task orders).

Although the six task order files contained "Determination of Price/Cost Reasonableness" memos and email correspondence between contracting officers and project officers or technical monitors, this documentation did not sufficiently support the conclusions reached about price or cost reasonableness. The "Determination of Price/Cost Reasonableness" memos stated that the prices were determined to be fair and reasonable through comparisons with prices for similar work under other task orders. However, these memos did not indicate which other task orders were reviewed.

⁹ Task orders 24 and 33.

Similarly, email correspondence in the task order files documented that project officers or technical monitors had agreed with the reasonableness of the proposed pricing. However, the correspondence did not indicate how the project officers or technical monitors had reached their conclusions.

Inadequate Policies and Procedures on Documentation Requirements

CDC's policies and procedures were inadequate to ensure sufficient documentation of price or cost analyses. Although CDC's policies and procedures required contracting officers to adhere to the FAR's provisions on contract pricing, the policies did not address the FAR requirement that sufficient documentation be included in the contract files to support the actions taken to ensure fair and reasonable pricing.

Contracting officers told us that CDC was in the process of developing new documentation procedures to support pricing decisions.

No Assurance of Fair and Reasonable Pricing

Without adequate documentation of price or cost analyses, CDC could not demonstrate that prices were fair and reasonable. The lack of adequate documentation prevented independent verification that proposed prices totaling \$73 million for 2 task order awards and 25 modifications applicable to all 6 task orders were fair and reasonable.

RECOMMENDATIONS

We recommend that CDC:

- determine whether the \$1,599,612 expended outside the 1-year period of availability violated the Antideficiency Act and, if so, report the violation as required;
- develop and implement policies and procedures to address compliance with appropriations statutes and acquisition regulations regarding obligating and expending funds; and
- implement and monitor the effectiveness of policies and procedures for documenting determinations of fair and reasonable pricing.

CENTERS FOR DISEASE CONTROL AND PREVENTION COMMENTS

In its comments on our draft report, CDC described its corrective actions to address each of our recommendations. CDC stated that it had adjusted its accounts to avoid a potential Antideficiency Act violation and that it had issued policy and/or conducted training on appropriations law and severability, contract funding, and contract development and issuance. The complete text of CDC's comments is included 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

DATE: September 14, 2010

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

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

SUBJECT: *OIG Draft Report -- "Review of the Centers for Disease Control and Prevention's Compliance with Appropriations Laws and Acquisition Regulations-Contractor D" (A-04-09-01066)*

In the Draft Report Response (A-04-09-01066), the Office of the Inspector General (OIG) made several recommendations to the Centers for Disease Control and Prevention (CDC). The CDC responses are below.

OIG Recommendation (1): Determine whether the \$ 1,599,612 expended outside of the one-year period of availability violated the Anti-deficiency Act, and if so, report the violation as required.

CDC Response (1): CDC concluded that the Contracting Officer did allow funds to be expended outside the one-year period of availability. Corrective actions have been taken in policy and training to ensure correct application of the bona fide need rule. CDC's Financial Management Office (FMO) has adjusted its accounts to properly record funds expended outside the one-year period of availability, thus eliminating a potential Anti-Deficiency Act violation.

OIG Recommendation (2): Develop and implement policies and procedures to address compliance with appropriate statutes and acquisition regulations regarding obligating and expending funds.

CDC Response (2): CDC's Procurement and Grants Office (PGO), in coordination with FMO, has issued corrective policy and conducted a series of training sessions on appropriations law and severability. The course has been attended by the preponderance of PGO Contracting Officers, FMO Budget Analysts, and program personnel who work on contracts.

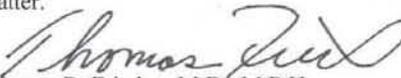
OIG Recommendation (3): Implement and monitor the effectiveness of policies and procedures for documenting determinations of fair and reasonable pricing.

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CDC Response (3): CDC concurs with the finding and recommendation as stated in this section of the draft report. CDC has implemented the following quality assurance actions for improved review and control of contract funding:

- Issued update policy and guidance on contract funding.
- Developed and provided training to CDC personnel involved in the development and issuance of contracts.
- Updated the *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.

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.