

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Department of Veterans Affairs

*Review of
Alleged Inappropriate
Contract Actions Related
to the Lease of a Digital
Imaging Network-Picture
Archival Communication
System*

June 7, 2017
15-04351-188

ACRONYMS

CRB	Contract Review Board
DoD	Department of Defense
DIN-PACS	Digital Imaging Network-Picture Archival Communication System
FAR	Federal Acquisition Regulation
IOP	Integrated Oversight Process
NAC	National Acquisition Center
OIG	Office of Inspector General
VA	Department of Veterans Affairs
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

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Highlights: Review of Alleged Inappropriate Contract Actions Related to VA's Lease of a DIN-PACS

Why We Did This Review

In June 2015, the Office of Inspector General received an allegation regarding the procurement strategy used by VA under the Department of Defense (DoD) Digital Imaging Network-Picture Archival Communication System (DIN-PACS) contract. The complainant alleged that VA did not perform a proper business-case analysis of its procurement strategy for leasing versus purchasing a DIN-PACS. The complainant further alleged technical evaluations were manipulated, excessive amounts of equipment were purchased, and an award was made at a cost 30 percent higher than recommended by the contracting officer.

What We Found

We reviewed the Veterans Integrated Service Network 1 DIN-PACS lease and found that VA did not adequately evaluate the advantages or disadvantages of leasing versus purchasing a DIN-PACS. Furthermore, VA did not comply with the Federal Acquisition Regulation (FAR), nor the DoD contract, and determine that prices were fair and reasonable once it elected to use the DoD contract to lease the DIN-PACS, as required by the contract terms. This occurred because VA's contracting officer misinterpreted an internal directive and did not fully comply with FAR Part 7.4, which requires a lease versus purchase analysis. The contracting officer did not ensure the acquisition team fully complied with FAR to conduct this analysis, even after receiving advice from VA's General Counsel. In addition, VA lacked

documented evidence of a formal contract oversight review as required by VA's Integrated Oversight Process. As a result, VA's contracting officer's decision to lease the DIN-PACS at an estimated value of \$9 million could lead to the wasteful spending of taxpayer dollars.

We did not substantiate that VA manipulated technical evaluations, purchased excessive amounts of equipment, or made an award 30 percent higher than recommended.

What We Recommended

We recommended the Deputy Assistant Secretary for Acquisition and Logistics develop procedures to ensure the acquisition team complies with the fundamental requirements of FAR and contracting officers comply with DoD contract terms.

Agency Comments

The Principal Executive Director concurred with our recommendations. We consider their corrective action plans acceptable and will follow up on the implementation.

A handwritten signature in black ink, reading "Larry M. Reinkemeyer".

LARRY M. REINKEMEYER
Assistant Inspector General
for Audits and Evaluations

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INTRODUCTION

Allegation

In June 2015, the Office of Inspector General received an allegation regarding the procurement strategy used by VA under the Department of Defense (DoD) Digital Imaging Network-Picture Archival Communication System(DIN-PACS) contract. VA's procurement strategy was to lease versus purchase a DIN-PACS, and its pricing strategy for these leases was cost-per-study basis. This meant the contractor would propose a unit price for each medical image and VA would estimate the number of images needed per year. The complainant alleged that VA did not perform a proper business-case analysis that would have properly identified the strengths and weaknesses of this strategy. The complainant further alleged that technical evaluations were manipulated, excess amounts of equipment were purchased, and that an award was made at a cost 30 percent higher than recommended by the contracting officer.

Background

On December 17, 2009, DoD issued a solicitation to acquire a DIN-PACS, its third-generation contract: DIN-PACS III. DIN-PACS are central archival structures placed in regional data processing centers to provide local medical facilities with electronic storage and rapid access to medical images, such as x-rays and computerized tomography scans. The systems eliminate the need for manual filing, retrieval, and transporting of medical images. The DIN-PACS III contract allowed DoD and VA to purchase DIN-PACS hardware and software, installation, training, maintenance, and upgrades. VA decided to lease a DIN-PACS using a cost-per-study pricing strategy. While the DoD DIN-PACS III contract allowed for leasing the systems, it did not include pricing for leasing. The DIN-PACS III contract we reviewed was for a 5-year performance period with an estimated value of \$9 million.

Responsible VA Offices

The National Acquisition Center (NAC), a part of the Office of Acquisition and Logistics, is responsible for supporting health care procurement requirements for VA and other Government agencies. NAC awards and manages over 2,000 contracts for pharmaceuticals; medical, surgical, dental, and patient mobility supplies and equipment; and high technology medical equipment. NAC acquires medical imaging equipment and support for VA medical facilities using DoD's DIN-PACS contract.

RESULTS AND RECOMMENDATIONS

Finding **VA's Cost-Per-Study Pricing Strategy Used To Lease a DIN-PACS Could Result in the Waste of Taxpayer Dollars**

We substantiated the allegation that VA's DIN-PACS III acquisition team did not perform an adequate lease versus purchase analysis before electing to lease a DIN-PACS for the Veterans Integrated Service Network (VISN) 1. Furthermore, VA did not comply with the Federal Acquisition Regulation (FAR) and DoD contract, as required by the contract terms,¹ and determine that prices were fair and reasonable once it elected to use the DoD contract to lease the DIN-PACS for VISN 1. This occurred because VA's contracting officer misinterpreted an internal directive and did not ensure the acquisition team complied with FAR Part 7.4 requirements for conducting a lease versus purchase analysis based on a case-by-case evaluation. In addition, VA lacked documented evidence of a formal contract oversight review as required by VA's Integrated Oversight Process (IOP).

We did not substantiate the allegations that technical evaluations were manipulated, excess amounts of equipment were purchased, or that VA awarded a contract at a 30 percent higher price than recommended by the contracting officer.

Inadequate Analysis of Lease Versus Purchase

VA's contracting officer agreed to lease the VISN 1 DIN-PACS without ensuring an adequate lease versus purchase analysis was performed by VA's program office. No detailed analysis of pricing was performed.

VA's lease versus purchase analysis relied on a February 2009 Executive Decision Memo that included outdated vendor purchase prices from 1996-2008. Since VA did not request the current purchase pricing from DoD's DIN-PACS III vendors, VA staff were unable to provide the pricing to us. As a result, we could not determine what the effect would have been had VA used current purchase pricing. However, for VA to use the 1996-2008 costs in a rapidly changing technology environment, such as for a DIN-PACS, was not a prudent business decision. The DIN-PACS III acquisition team should have obtained each vendor's current purchase and lease cost data to perform an adequate comparative analysis that appropriately assessed the financial advantages of leasing DIN-PACS.

¹According to DoD's Solicitation Number SPM2D1-10-R-0011, clause 52.216-18—Ordering, all delivery orders or task orders are subject to the terms and conditions of the contract. In the event of a conflict between a delivery order or task order and the contract, the contract shall control.

**DoD Contract
Terms Not
Followed for
Determining
Price
Reasonableness**

VA's contracting officer did not determine that prices were fair and reasonable once it elected to use the DoD contract to lease the DIN-PACS for VISN 1. Since the DoD contract only included price reasonableness for purchasing DIN-PACS, the contracting officer was required to use a reasonable basis to establish price reasonableness for leasing the systems. For example, DoD's contract terms required VA to obtain vendors' commercial price lists and to ensure vendors recorded its pricing in the *DIN-PACS III Contractor Price Book Spreadsheet* when determining price reasonableness. The contracting officer did not comply with DoD contract terms requiring vendors to submit commercial price lists.

A vendor's commercial price list helps to safeguard the Government from waste of taxpayer dollars by ensuring the Government receives prices that are the same or lower than those offered to the public. Furthermore, the contracting officer did not require respective vendors to record its pricing in the *DIN-PACS III Contractor Price Book Spreadsheet*, which would have allowed vendors to record discounts and rebates.

Without each vendor's commercial price list, there could be no assurance that VA adequately determined whether proposed cost-per study unit prices were fair and reasonable.

**Why This
Occurred**

VA did not conduct an adequate lease versus purchase analysis for DIN-PACS primarily because VA's contracting officer misinterpreted an internal directive and did not ensure the acquisition team fully complied with FAR Part 7.4 requirement for conducting a lease versus purchase analysis. This was not done even after receiving legal advice from VA's General Counsel. In addition, we found no documented evidence of a formal contract oversight review to ensure price reasonableness for leasing the systems.

FAR Factors

In a lease versus purchase determination, agencies are required by FAR to address, at a minimum, the following seven factors:

- Factor 1. Estimated length of the period the equipment is to be used and the extent of use within that period
- Factor 2. Financial and operating advantage of alternative types and makes of equipment
- Factor 3. Cumulative rental payments for the estimated period of use
- Factor 4. Net purchase price
- Factor 5. Transportation and installation costs
- Factor 6. Maintenance and other service costs
- Factor 7. Potential obsolescence of the equipment because of imminent technological improvements

On May 30, 2013, VA's General Counsel notified the contracting officer that VA's February 17, 2009 Executive Decision Memo, which implemented VA's standardization of DIN-PACS VISN-wide, did not fully address the requirements of FAR Part 7.4 for a lease versus purchase determination. The memo only covered two of the seven minimum factors and General Counsel advised that another memo should be drafted that specifically covered all of the factors.

On November 14, 2013, General Counsel sent an email to the contracting officer stating:

"I think we agreed to solicit prices BOTH ways (cost-per-study and capital purchase) and then the contracting officer would select whichever method and offeror provided the best value"

In response to legal advice, VA's DIN-PACS III acquisition team created an Acquisition Consideration Memo to comply with FAR 7.401, dated September 25, 2014, that addressed each of the seven FAR factors. However, we determined that VA's analysis was inadequate for a lease versus purchase determination. For example, VA addressed Factor 1 by stating the length of the lease contract was to be 5 years. According to the FAR at Part 7.402(a)(1), for the purchase method to be appropriate, VA needed to analyze whether the equipment would be used beyond a point in time when the cumulative lease cost exceeded the purchase cost. VA also addressed Factor 4 by using historical 1996-2008 purchase prices to compare current to 2014 lease prices, which was inconsistent with legal advice to solicit prices for both cost-per-study and capital purchase.

By not adequately addressing FAR requirements, VA's contracting officer's decision to proceed with leasing the VISN 1 DIN-PACS was based on analysis that did not sufficiently demonstrate the advantages or disadvantages of this approach.

*Oversight
Contract
Review*

According to VA's IOP, Section III for contract actions whose total contract value exceeds \$5 million, a Contract Review Board (CRB) should have been performed, and that review should have been documented in the contract file accordingly. In June 2009, VA implemented IOP reviews as oversight of contract award actions. These reviews are designed to promote quality throughout the acquisition cycle. Depending on the contract type and estimated award value, a peer review or second-level review is required by a CRB.

The CRB is responsible for reviewing all contract actions at the solicitation and pre-award phases whose total contract value is estimated to exceed \$5 million. The CRB is required to provide categorized findings as mandatory or advisory. In response, the contracting officer is required to provide corrective actions taken on the mandatory findings. Moreover, the

contracting officer must annotate the contract file as to the disposition of the advisory findings.

We found no documented evidence of a formal CRB review for this lease in VA's official files located in the Electronic Contract Management System. This review should have included a pre-award package that contained pertinent contract documents approved by the CRB chairperson. The review would also provide evidence of supervisory and technical reviews showing mandatory or advisory comments requiring corrective action by the contracting officer.

According to the contracting officer, all comments from the CRB review for pre-award action were addressed and required changes made, but the email containing this information was deleted during an "email sweep." He also stated that the final award action was not submitted for CRB review. Without documented evidence of a CRB review, we were unable to review the documentation to determine if VA conducted the required review in accordance with policy requirements.

**Manipulation
of Technical
Evaluations
Not
Substantiated**

We did not substantiate that VA manipulated technical evaluations or that non-evaluators interfered or influenced technical ratings. We reviewed the summary technical evaluation, which is a consensus document that contains evaluation input from each of the technical evaluation members and the overall evaluation of the technical aspects of each proposal. We then compared the summary technical evaluation to the technical evaluation portion of the price negotiation memo. The price negotiation memo included the principal elements of the Government's negotiated agreement, per FAR Part 15.406-3. We spoke to VA's Chief of Medical/Surgical Standardization, the DIN-PACS III contracting officer, the Acting Chief of Logistics Office and the Network Materiel Manager to determine indicators that the technical evaluations were manipulated and possibly influenced by non-evaluators. We also verified each of the team members identified on the summary technical evaluation were part of the acquisition team and found no evidence that individuals not assigned to the evaluation team provided input to the evaluations or interfered with the award.

**Procurement
of Excess
Equipment Not
Substantiated**

We did not substantiate that VA purchased excess equipment or that VA made these procurements at a cost 30 percent higher than recommended by the contracting officer. Specifically, we noted a vendor had expressed concern that the number of workstations solicited for the VISN appeared to be too high. Since VA was paying for the number of medical images produced and not for the number of workstations requested, the number of workstations would not affect the value of the award. In addition, our review of the price negotiation memo and various emails provided by the complainant showed no evidence that the contracting officer recommended a price 30 percent lower than the awarded price.

Conclusion

VA's procurement strategy of leasing versus purchasing a DIN-PACS under the DIN-PACS III contract could result in the waste of taxpayer dollars. VA used a cost-per study pricing strategy. However, the contracting officer did not ensure the acquisition team fully complied with FAR for conducting an analysis of leasing versus purchasing based on a case-by-case evaluation for each purchase or determining price reasonableness. In addition, VA's contracting officer did not comply with DoD contract terms for obtaining vendor commercial price lists. As a result, VA lacked assurance that the lease method provided the best price for procuring medical images at an estimated \$9 million over a 5-year period.

Recommendations

1. We recommended the Deputy Assistant Secretary for Acquisition and Logistics develop procedures to ensure acquisition teams fully comply with the fundamental requirements of the Federal Acquisition Regulation on all Digital Imaging Network-Picture Archival Communication System acquisitions.
2. We recommended the Deputy Assistant Secretary for Acquisition and Logistics ensure adequate oversight reviews are conducted for the Digital Imaging Network-Picture Archival Communication System to ensure contracting officers comply with Department of Defense contract terms to obtain commercial price lists by using the *Contractor Price Book Spreadsheet*.

Management Comments

The Principal Executive Director for Acquisition, Logistics, and Construction concurred with our recommendations and has started taking corrective action.

Regarding Recommendation 1, the Principal Executive Director reported all picture archival communication system (PACS) awards were temporarily suspended. The Principal Executive Director further reported it would work with program offices to determine if future procurements will be leased or purchased. The Principal Executive Director will ensure supervisory reviews of each award package are completed to ensure adherence to and compliance with all applicable FAR requirements, VA Acquisition Regulations 801-602-70, and the NAC Procedural Guideline #001, Contract Review Process. Training will also be provided to new and existing PACS staff on fundamental requirements of FAR including required review processes.

Regarding Recommendation 2, the Principal Executive Director reported supervisory reviews of each award package will be performed to ensure compliance with DoD contract terms including the provision to obtain commercial pricelists. The Principal Executive Director further reported training will be provided to new and existing PACS staff on solicitation and DoD requirements.

**OIG
Response**

The Principal Executive Director's comments and corrective action plans are responsive to the recommendations. We will monitor implementation of these planned actions and close the recommendations when we receive sufficient evidence demonstrating their completion. Appendix B provides the full text of the Principal Executive Director's comments.

Appendix A Scope and Methodology

Scope

We conducted our review from September 2015 through February 2017. The review focused on contracting-related events mentioned in the allegation. Although the allegation targeted VISNs 1 and 7, the contracting officer reported that VA had not awarded orders for VISN 7. Therefore, our review focused on the DIN-PACS III acquisition at VISN 1. We also reviewed the DoD DIN-PACS III contract awarded in 2011 to determine VA's terms as prescribed in the DoD contract.

Methodology

To determine the merit of the allegations, we:

- Reviewed the FAR and VA procurement policies and procedures
- Obtained and reviewed various emails provided by the complainant and contract documents, including solicitations, request for quotes, technical evaluations, and award decision documents
- Observed the operations of a DIN-PACS at the VA medical center in Dallas, TX, on October 2, 2015

Data Reliability

While performing this review, we did not use computer-processed data to support our findings, conclusions, or recommendations.

Government Standards

We conducted this review in accordance with the Council of Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix B Management Comments

Department of Veterans Affairs Memorandum

Date: April 3, 2017

From: Principal Executive Director, Office of Acquisitions, Logistics, and Construction (003)

Subj: Draft Report, Review of Alleged Inappropriate Contract Actions Related to the Digital Imaging Network-Picture Archival Communication (DIN-PAC) System (Project Number 2015-04351-AR-0262) dated March 7, 2017 (VAIQ 7774132)

To: Assistant Inspector General for Audits and Evaluations (52)

1. The Office of Acquisition, Logistics, and Construction (OALC) has completed its review of the draft report. OALC concurs with the draft report findings. OALC also concurs with both recommendations and provides our action plan and proposed target dates for each recommendation below:

RECOMMENDATION 1: We recommend the Deputy Assistant Secretary for Acquisition and Logistics develop procedures to ensure acquisition teams fully comply with the fundamental requirements of the Federal Acquisition Regulation (FAR) on all Digital Imaging Network-Picture Archival Communication System acquisitions.

OALC response: Concur.

Plan of Action	Target Completion Date
Temporarily suspend all picture archival communication system(PACS) awards	2/28/17 - Completed
Work with program office to determine if future procurements will be leased or purchased.	5/1/17
Ensure adherence to and compliance with all applicable FAR requirements, VA Acquisition Regulations 801.602-70, and NAC Procedural Guideline #001, <i>Contract Review Process</i> , by performing supervisory review of each award decision package.	Effective immediately
Train new and existing PACS staff on fundamental requirements of the FAR including required review processes.	5/31/17

RECOMMENDATION 2: We recommend the Deputy Assistant Secretary for Acquisition and Logistics ensure adequate oversight reviews are conducted for the Digital Imaging Network-Picture Archival Communication System to ensure contracting officers comply with Department of Defense contract terms to obtain commercial price lists by using the Contractor Price Book Spreadsheet.

OALC response: Concur.

Plan of Action	Target Completion Date
Ensure the Department of Defense contract terms including the provision to obtain commercial pricelists are complied with and confirmed during supervisory review of each award decision package.	Effective immediately
Train new and existing PACS staff on solicitation requirements including the Department of Defense requirements.	5/31/17

2. We appreciate the opportunity to review the recommendations and to provide our response. Should you have any questions, please contact Craig Robinson, Associate Deputy Assistant Secretary for National Healthcare Acquisitions (003A4) at (708) 786-5157.

(Original signed by:)

Gregory L. Giddens

*For accessibility, the format of the original memo has been modified to
fit in this document.*

Appendix C OIG Contact and Staff Acknowledgments

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Judith Sterne, Director Roland Baltimore Christopher Bowers Melissa Colyn Jamie Wright

Appendix D Report Distribution

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