

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NIH SHOULD IMPROVE ITS
MANAGEMENT OF CONTRACTS FOR THE
ACQUISITION OF INFORMATION
TECHNOLOGY**

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Office of Inspector General

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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.

Report in Brief

Date: June 2023

Report No. A-18-21-11500

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



Why OIG Did This Audit

HHS relies extensively on contractors to fulfill its mission, and OIG has identified ensuring the financial integrity of HHS programs, including HHS's oversight of contracts, as a top management challenge for HHS. This audit is part of a portfolio of HHS OIG audits examining various aspects of HHS contracting operations. Our focus was on the National Institutes of Health's (NIH's) contract administration of large dollar information technology (IT) contracts with multiple task or delivery orders. NIH relies on contractors to support NIH and its research community and to facilitate the purchase and maintenance of IT products.

Our objective was to determine whether NIH administered contracts for the acquisition of IT in accordance with applicable Federal acquisition regulations and HHS acquisition regulations and policies.

How OIG Did This Audit

We reviewed four NIH orders totaling \$21.7 million paid to a contractor during fiscal years 2019 and 2020 for IT services. We examined acquisition planning documents, award documents, contract files and records, invoices, and supporting documentation; reviewed NIH policies and procedures related to acquisitions, procurement, and supply management; and conducted virtual interviews with NIH on its governance, contracting processes, practices, controls, and management support activities.

NIH Should Improve Its Management of Contracts for the Acquisition of Information Technology

What OIG Found

NIH contracting officers generally administered the call and task orders we reviewed for the acquisition of IT in accordance with Federal regulations and policies. However, we identified areas within NIH's management of these orders that were not always conducted consistent with applicable Federal acquisition regulations and HHS acquisition regulations and policies. Specifically, the contracting officers or contracting officer's representatives (CORs) did not: (1) include all requirements for information security and privacy in appropriate acquisition documents and properly complete information security certification checklists; (2) review invoices and recommend invoice payments for 3 of 24 invoices for 1 order; and (3) complete contractor performance assessments timely. Additionally, NIH did not fully comply with the HHS Competition Advocacy Directive for fiscal years 2019, 2020, and 2021.

These conditions occurred because NIH did not: (1) adhere to existing NIH acquisition and procurement procedures, (2) have CORs and contracting officers that coordinated and managed their workloads and responsibilities effectively, and (3) work with HHS to meet its obligation to comply with the HHS Competition Advocacy Directive.

What OIG Recommends and NIH Comments

We recommend that NIH provide additional training and implement oversight controls to improve compliance with Federal acquisition requirements related to information technology procurements, contractor performance assessments, and competition advocacy reporting. The full recommendations are in the report.

In written comments on our draft report, NIH concurred with all of our recommendations and described actions it plans to take to address the findings. NIH stated that it will create training and awareness initiatives for staff and acquisition personnel regarding requirements for IT security and privacy in acquisitions of information technology, contractor performance assessments, and competition advocacy reporting.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Department of Health and Human Services (HHS) relies extensively on contractors to fulfill its mission, and the Office of Inspector General (OIG) has identified ensuring the financial integrity of HHS programs, including HHS's oversight of contracts, as a top management challenge for HHS. This audit is part of a broad portfolio of HHS OIG audits examining various aspects of HHS contracting operations, including payment accuracy, eligibility verification, management and administration, and data security. Our focus was on the National Institutes of Health's (NIH's) contract administration of large dollar information technology (IT) contracts with multiple task or delivery orders.

We audited NIH's contracts for the acquisition of IT because NIH relies on contractors to support NIH and its research community and to facilitate the purchase and maintenance of IT products. During fiscal year (FY) 2021, NIH awarded contracts totaling \$1.1 billion for IT equipment and services.

OBJECTIVE

Our objective was to determine whether NIH administered contracts for the acquisition of IT in accordance with applicable Federal acquisition regulations and HHS acquisition regulations and policies.

BACKGROUND

The National Institutes of Health

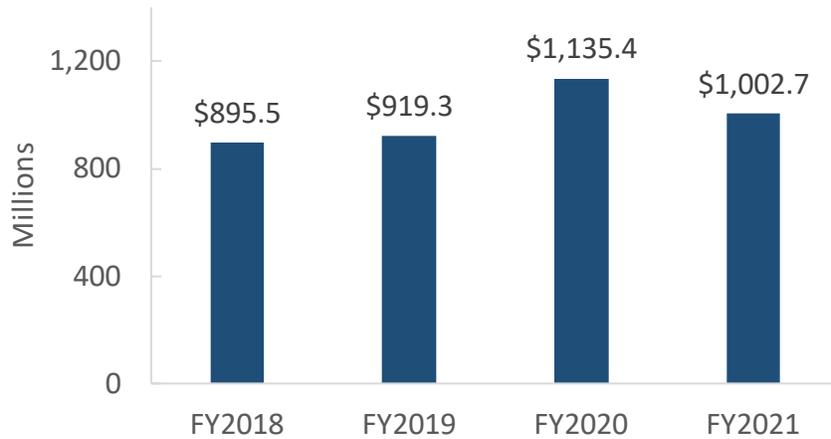
Within HHS, NIH's mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. NIH is the largest biomedical research agency in the world and is made up of 27 different institutes and centers.

NIH's Office of Acquisition and Logistics Management (OALM) provides acquisitions guidance and oversight to NIH's institutes and centers and works in conjunction with 10 acquisition offices servicing the NIH acquisition community. OALM's mission is to provide acquisition, logistics, and business services and products that support NIH's mission in a manner that preserves the public trust.

From FY 2018 through FY 2021, NIH spent over \$3.9 billion for IT products and services. See Figure 1 on the following page.¹

¹ USASPENDING.gov is the source of the data used in Figure 1.

Figure 1: NIH Spending on IT Products and Services



Federal Requirements

The Federal Acquisition Regulation (FAR) is the primary regulation that all executive branch agencies must follow when acquiring products and services with appropriated funds (FAR, 48 CFR chapter 1). According to FAR 2.101, acquisition begins when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and technical and management functions directly related to the process of fulfilling agency needs by contract.

The HHS Acquisition Regulation (HHSAR) supplements the FAR and provides the regulatory framework for conducting acquisitions across HHS (HHSAR, 48 CFR chapter 3). The HHS Acquisition Policy, Guidance, and Instructions (HHS Acquisition PGI) provides internal instructions, procedures, and guidance for processing procurement-related activities. In addition, the NIH Policy Manual provides documentation of NIH-wide policies, responsibilities, and procedures that govern the acquisition of supplies and services, including task and delivery order contracting, research and development (R&D) contracts, and payment of invoices.

These requirements provide a framework for awarding contracts, paying contractor invoices, managing contracts, and conducting management and oversight of contractor performance throughout NIH's contracting cycle.

Appendix B contains the Federal requirements referenced in this report.

NIH Contracting Process

NIH Acquisition Offices and Consolidated Operations Acquisition Center

The institutes and centers' acquisition offices and Consolidated Operations Acquisition Center² (COAC) provide guidance and acquisition services and assist program staff in the procurement of supplies and services throughout the contracting cycle.

Within the acquisition offices and COAC, contracting officers are individuals with the authority to enter into and terminate contracts and make related determinations and findings.³ Before entering into a contract, contracting officers must ensure that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.⁴ The contracting officer may designate a contracting officer's representative (COR) in writing and thus give the COR the authority to assist in the monitoring and administration of the contract. A COR must possess relevant technical knowledge and oversees the contractor's work, directs technical aspects of its work, and notifies the contracting officer if there are any deviations in performance from what is required by the contract.

Acquisition Management Systems

The Federal Procurement Data System (FPDS) is the Government repository for information on Government contracts. FPDS collects contract data from all executive branch agencies. Congress and Federal departments and agencies use FPDS to track small business goals, report numbers, amounts of contracts, geographical locations of contracts, and contract data for each contractor, among other things, in accordance with FAR 4.11 and 52.204. NIH collects and reports its contract data to FPDS.

Until December 2019, NIH used the Departmental Contract Information System (DCIS), which transmitted NIH contract information to FPDS. DCIS was used to support the acquisition-related mission needs of HHS. HHS no longer actively uses DCIS to track new contract actions.⁵ However, NIH personnel can still use DCIS data as a resource since it is still available and contains contract information from before January 2020.

² The COAC is an NIH center that provides acquisition services and facilitates procurement functions for other institutes and centers. The primary function of the COAC is to plan, award, administer, and close R&D and non-R&D contracts and acquisitions.

³ The FAR, 48 CFR § 1.602, lists the authority and responsibilities of contracting officers.

⁴ Ibid.

⁵ A contract action is an oral or written action that results in the purchase, rent, or lease of supplies, equipment, services, or construction using appropriated dollars over a certain threshold. Contract actions do not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, and other non-FAR based transactions.

HHS currently utilizes the acquisition processing and management functionality of the Purchase Request Information System (PRISM), a commercial off-the-shelf application that allows end users to formulate, administer, and distribute contract documents subject to the FAR. PRISM provides a single solution for integrating acquisitions with financial management.

NIH's Contracting Cycle

The contracting cycle for NIH-awarded contracts generally consists of four phases: identification of the need, acquisition planning, contract formulation, and contract administration. See Figure 2.

Figure 2: General Contracting Cycle



The contracting cycle begins when an agency identifies a need. In identifying a need, an agency describes and justifies the purpose of a proposed acquisition in terms of the function to be performed, the performance requirements, or the essential physical characteristics of the proposed product or service.

Acquisition planning is the process through which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling an agency need in a timely manner and at a reasonable cost. As part of acquisition planning, the agency develops the acquisition strategy, which is a high-level description of how the program or project will procure the necessary resources to satisfy an agency need. The acquisition strategy provides sufficient detail to allow senior leadership and other decision makers to assess whether the strategy makes good business sense. The acquisition strategy is the overall strategy for managing the acquisition and is meant to effectively implement laws and policies and accurately reflect management priorities. An acquisition strategy typically serves as the foundation for the development of multiple acquisition plans to support a specific program or project.

Acquisition planning also includes developing an acquisition plan that documents all cost, schedule, technical, business, management, and other considerations that will govern a specific acquisition. The acquisition plan is derived from the acquisition strategy. The acquisition plan summarizes the acquisition planning discussions and identifies milestones in the acquisition

process. An acquisition plan is required by statute and implemented through FAR 7.1. According to the HHSAR and the *HHS Directive for the Acquisition Plan*, a written acquisition plan must be developed and approved for all acquisitions above the simplified acquisition threshold.⁶

Once acquisition planning is complete, contract formulation can begin. Contract formulation begins with the agency's solicitation for contractors to submit offers or quotations to the Government. Among other things, a solicitation identifies what the agency wants to buy and how a contractor's proposal will be evaluated and includes a deadline for contractors to submit their proposals.

After receiving the contractors' proposals, the agency evaluates the proposals, assessing the proposals and the offerors' ability to perform the prospective contract successfully. Contract formulation results in the award of a contract, which occurs when the Government accepts a contractor's agreement to furnish and deliver the items or to perform services to the extent stated in the solicitation. The contracting officer has primary responsibility for generating the award document and ensuring that applicable IT clauses and provisions are incorporated in the award. Additionally, the contracting officer may designate a COR.

After the contract is awarded, the contracting officer administers the contract. During this contract phase, the agency pays contractor invoices and conducts oversight of the contractor's performance. If designated by the contracting officer, the COR is responsible for the technical monitoring of the contract, review of deliverables for acceptability, identification of performance issues, and the performance of annual contractor performance assessments (HHSAR, 48 CFR § 302.101(b)).

When the contract is physically complete and the contracting officer has received evidence of complete receipt of property or services, the contract is closed out as required by the FAR and HHS regulations. A contract is closed once the contractor has completed contract requirements and the Government has completed all required administrative actions.

HOW WE CONDUCTED THIS AUDIT

We reviewed two call orders placed against a blanket purchase agreement (BPA) and two task orders placed under indefinite delivery/indefinite quantity (IDIQ) contracts totaling \$21.7 million paid to a contractor (Information Management Services, Inc.) during FYs 2019 and 2020 (audit period) for IT services.⁷ Of the four orders selected, two were with the National Cancer

⁶ The simplified acquisition threshold in place at the time of the contracts was \$250,000.

⁷ FAR 16.501 defines a task-order contract as a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

Institute, one was with the National Heart, Lung, and Blood Institute, and one was with the National Institute on Drug Abuse.

To accomplish our objective, we examined acquisition planning documents, award documents, contract files and records, invoices, and supporting contract file documentation. We reviewed NIH policies and procedures related to acquisitions, procurement, and supply management; and conducted virtual interviews with NIH institutes and centers on NIH governance, contracting processes, practices, controls, and management support activities. We communicated to NIH our preliminary findings in advance of issuing our draft report.

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 A describes our audit scope and methodology.

FINDINGS

NIH contracting officers generally administered the call and task orders we reviewed for the acquisition of IT in accordance with Federal regulations and policies. However, we identified areas within NIH's management of these orders that were not always conducted consistent with applicable Federal acquisition regulations and HHS acquisition regulations and policies. Specifically, the contracting officers or CORs did not:

- include all requirements for information security and privacy in appropriate acquisition documents and properly complete information security certification checklists;
- review invoices and recommend invoice payments for 3 of 24 invoices for 1 order; and
- complete contractor performance assessments timely.

Additionally, NIH did not fully comply with the HHS Competition Advocacy Directive for FYs 2019, 2020, and 2021 because it did not submit an Annual Competition Advocate Report (ACAR).

These conditions occurred because NIH did not: (1) adhere to existing NIH acquisition and procurement procedures, (2) have CORs and contracting officers that coordinated and managed their workloads and responsibilities effectively, and (3) work with HHS to meet its obligation to comply with the HHS Competition Advocacy Directive. As a result, acquisition documents for IT products and services procurements and the completion of contractor performance assessments are at increased risk of repeating nonconformity with federally-mandated security and privacy controls and standards and acquisition regulations and requirements. NIH also

missed opportunities to further improve competition for IT procurements within its centers and institutes.

Appendix C identifies the contract management findings for each NIH institute and center.

ACQUISITION DOCUMENTS WERE MISSING INFORMATION SECURITY AND PRIVACY LANGUAGE AND CLAUSES, AND INFORMATION SECURITY CERTIFICATION CHECKLISTS WERE INCOMPLETE

The *HHS Policy for Information Technology Procurements - Security And Privacy Language* standard (the Standard) requires the completion of information security and privacy certification checklists to determine agency-specific requirements and identify any additional security language applicable to the contract. Directions in the Standard detail applicable language and FAR and HHSAR clauses to include in acquisition documentation for the procurement of information and IT that requires: (1) information security or physical access; (2) personally identifiable information or records of individuals; (3) cloud services; and (4) IT application design, development, or support, among other procurement types. The Standard applies to all new and existing IT solicitations and contracts, irrespective of dollar amount.

The requiring activity representative and contracting office, in coordination with the agency's Information System Security Officer (ISSO), Senior Official for Privacy, System Owner, and the Chief Information Security Officer, are responsible for ensuring that acquisition documentation includes the appropriate information security and privacy requirements.⁸ Additionally, NIH requires the ISSO and Project Officer to complete and sign the *Information Security Program Requirements and Checklist and Certification* (Certification Checklist) before NIH requests contractors to submit to NIH offers or quotations.⁹

According to NIH, the contracting officer has the primary responsibility for obtaining all pre-award clearances, including an IT security requirements clearance, and ensuring that applicable IT clauses and provisions and any specific IT contract language are included in contract documentation. All procurements for IT and information services must undergo a review and certification of information security requirements and privacy. HHS's policy and NIH's review and certification of information security requirements and privacy better prepares contractors and service providers to be compliant with HHS and federal security and privacy requirements.

⁸ The term "requiring activity" refers to the entity acquiring goods or services.

⁹ The Certification Checklist is an internal document used to determine specific information security requirements (i.e., security to protect the availability, integrity, and confidentiality of information). If the procurement involves personally identifiable information and Privacy Act records, NIH also uses the Certification Checklist to identify applicable information security and privacy language to include in acquisition documents. According to the Certification Checklist, if information security is applicable for the procurement, the ISSO and Project Officer must complete and sign an additional Certification Checklist form before the award of a contract.

Also, the FAR states that no contract may be entered into unless the contracting officer ensures that applicable procedures, including clearances and approvals, have been met.¹⁰

We determined that one FAR clause and two HHSAR clauses relating to information security contract language were not properly documented in the BPA and indefinite delivery contract examined. Specifically:

- FAR clause 52.204-21, Basic Safeguarding of Covered Contractor Information Systems,
- HHSAR clause 352.224-71, Confidential Information, and
- HHSAR clause 352.239-74, Electronic and Information Technology Accessibility were missing.

Additionally, HHS standard baseline security and privacy contract language was not properly documented in three of six statements of work examined (BPA, IDIQ contract, 4 orders). Specifically, the statements of work were missing:

- privacy language for work involving Privacy Act records and a system of record,¹¹ and
- security language for work involving IT design, development, and support.

Also, a mandatory Certification Checklist form was not properly completed for three of four task orders examined. Specifically:

- the "Position Sensitivity Designation" section of the pre-solicitation Certification Checklist form was not completed by the ISSO for one order,
- the "Prospective Offeror Non-Disclosure Agreement" section of the pre-solicitation Certification Checklist was not completed and signed by the ISSO for one order, and
- the pre-award Certification Checklist was not completed and signed by ISSO and the Project Officer for three orders.

The contracting officer, COR, project officer, the acquiring activity representative, and the ISSO failed to consistently adhere to the procedures, instructions, and guidance in the *HHS Security and Privacy Language for Information and Information Technology Procurements* standard. The inclusion of applicable requirements and contract language for information security and privacy in acquisition documents helps to ensure that both the contractor and the requiring activity understand the information security and privacy requirements. The omission of an information

¹⁰ FAR 1.602-1(b).

¹¹ Under the Privacy Act, a system of records is a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual. Systems of record may be under the control of any agency (5 U.S.C. § 552a).

security or privacy clause or HHS baseline information security or privacy contract language in acquisition documents could impact NIH's ability to hold a vendor accountable for HHS and Federal security and privacy requirements and protect the Government's interests and information. Additionally, if a contract does not contain the appropriate information security and privacy requirements, NIH may have to change the contract terms, and potentially incur additional program costs and disrupt the timely delivery of good and services.

CONTRACTING OFFICER'S REPRESENTATIVES DID NOT ALWAYS REVIEW INVOICES AND RECOMMEND INVOICE PAYMENT

HHS Acquisition Regulation (HHSAR) 302.101 states that a "COR's responsibilities may include verifying that: (1) The contractor's performance meets the standards set forth in the contract or order." According to the HHS Acquisition PGI, the COR must "review and certify contractor invoices" among other duties. The NIH COR Appointment Memorandum states that the COR must "review contractor's invoices (fixed-price contracts) or vouchers (cost-reimbursement type contracts); [and] make recommendations to the [contracting officer] for payments for work completed and related charges on the basis of the terms and conditions of the contract." NIH policy 6332-9, *Receipt, Processing and Payment of Invoice and Contract Financing Requests for Research Contracts*, and NIH invoice processing procedures involve a review of the contractor's request for payment. In addition, FAR 1.604 requires the COR to include in the contract file "at a minimum— (c) Documentation of COR actions taken in accordance with the delegation of authority."¹²

For 1 of the 4 orders examined, there was no evidence that the COR reviewed the invoices or recommended invoice payment for 3 of the 24 contractor payment requests (13 percent) received prior to May 2020 for contractor work completed from November 16, 2019, through November 15, 2020.¹³ According to the contracting officer and COR, the documentation for the acquisition could not be located. Without documentation, there was no assurance that invoice review and payment recommendation occurred.

NIH's written procedures in place at the time of the invoice payments allowed for the NIH Office of Financial Management (OFM) to process invoice payments without an invoice review and recommendation for payment by the COR. As a result, OFM processed invoice payments absent the invoice review and invoice recommendation by the contracting officer or COR confirming that the services and goods required by the contract were received. However, NIH's written procedures were not consistent with FAR 32.905(a) and (b). Invoice review and recommendation validates that NIH received the goods and services for which it was billed and that the costs billed were allowable and supported. Without this validation, NIH is at an increased risk of paying for goods and services that do not meet contract requirements, and the Government may not be able to recoup payments made for services that were not rendered or

¹² The authority delegated to a COR is listed in the *COR Appointment Memorandum*.

¹³ These three payment requests were for invoice amounts of \$57,065, \$86,275, and \$84,672.

requirements not met. After these payments were made, NIH's Office of Acquisitions implemented a procedural change to require input from the contracting officer or COR before invoices can be processed for payment.

NIH DID NOT TIMELY COMPLETE CONTRACTOR PERFORMANCE ASSESSMENTS

The FAR requires that agencies collect contractor performance information, complete an evaluation of contractor performance, and report on the contractor's performance at the time the work under the contract is completed.¹⁴ FAR 42.1501(b) instructs agencies to use the Contractor Performance Assessment Reporting System (CPARS) to create and measure the quality and timely reporting of performance information and specifies that CPARS is the official source for past performance information. According to the FAR, "[p]ast performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts or orders."¹⁵ In accordance with FAR 42.1502, HHS requires that contractor performance assessments¹⁶ be entered into CPARS within 120 calendar days after the date when contracted work is completed.¹⁷

For all four of the task orders examined, NIH did not complete the contractor performance assessments in CPARS within the required reporting timeframe of 120 calendar days after completion of the work. Specifically:

- for one task order, work was completed on May 9, 2020, but the contractor performance assessment was not completed until November 16, 2021, 436 days (over 14 months) past the 120-day required timeframe;
- for one task order with option years, work was completed on June 30, 2020, and June 30, 2021, but the contractor performance assessments were not completed until December 13, 2021, and January 25, 2022, respectively, 411 days (over 13 months) and 89 days (nearly 3 months) past the 120-day required timeframe;
- for one task order with option years, work was completed on November 14, 2020, and November 14, 2021, but the contractor performance assessments were not completed until August 24, 2021, and June 15, 2022, respectively, 162 days (over 5 months) and 93 days (3 months) past the required 120-day required timeframe; and

¹⁴ FAR 42.1502.

¹⁵ FAR 42.1501.

¹⁶ The contractor performance assessment includes NIH's ratings and narratives that reflect the contractor's performance during the specified period of work.

¹⁷ HHS's *Reporting of Contractor Performance Information Guidance* § 3.0, Reporting Requirements.

- for one task order, work was completed on July 2, 2021, but the contractor performance assessment was not completed until January 11, 2022, 73 days (over 2 months) past the 120-day required timeframe.

According to NIH's Office of Acquisitions and the COR, these contractor performance assessments were completed late for several reasons. Specifically, they stated that the assessments were late due to staff vacancies, a contractor dispute with NIH, a contracting officer transition, heavy workloads, and busy periods during which the assessments "fell through the cracks."

The CPARS information is critical to ensuring that the Federal Government only does business with companies that provide quality products and services in support of the agency's missions. According to HHS's *Reporting of Contractor Performance Information Guidance*, collecting and reporting contractor performance information is critical because officials can use this data to make informed business decisions when awarding Government contracts and orders. Not completing the contractor's performance assessment could lead to future contract awards decisions being made without the benefit of contractor performance information. It also minimizes the effectiveness of CPARS as a tool to deter fraud, waste, and abuse by a contractor.

NIH DID NOT FULLY COMPLY WITH THE HHS COMPETITION ADVOCACY DIRECTIVE

Each HHS operating and staff division's competition advocate must prepare and submit to the HHS Department Competition Advocate an ACAR covering the prior FY in accordance with the requirements of FAR 6.502(b)(2).¹⁸ Federal law (41 U.S.C. § 1705(b)(4)) states that the advocate for competition of an executive agency must prepare and transmit to the senior procurement executive an annual report describing the advocate's activities under this section, new initiatives required to increase competition, and remaining barriers to full and open competition. The ACAR describes the status of the operating or staff division's efforts to promote competition for the procurement of goods and services at fair and reasonable prices without reducing quality, readiness, or safety throughout HHS, and it addresses: (1) any steps the operating or staff division had taken during the previous fiscal year to remedy any organizational problems, policies, or procedures that inhibit competition; (2) hinderances to the acquisition of commercial items; and (3) opportunities and actions taken to improve the quality of planning, executing, and managing task and delivery orders, among other efforts.

NIH did not prepare and submit ACARs for FYs 2019, 2020, and 2021 and therefore did not comply with the requirements of the HHS Competition Advocacy Directive for those 3 years.

NIH assumed that the HHS Department Competition Advocate prepared the ACAR independently because NIH did not receive a request from the HHS Department Competition Advocate for NIH's ACARs. Without NIH's ACAR, the HHS Department Competition Advocate is

¹⁸ HHS Acquisition PGI 306.503 and the HHS Competition Advocacy Directive. The HHS Competition Advocacy Directive prescribes instructions, policies, and responsibilities for the HHS Competition Advocacy Program.

not able to fully comply with Federal law (41 U.S.C. § 1705(b)(4) and FAR 6.502(b)(2)), and perform all Department Competition Advocate responsibilities established in the HHS Competition Advocacy Directive. In addition, NIH may have missed opportunities to further improve its overall competitive contract performance within HHS and to identify trends and emerging challenges in competition that reduce quality, readiness, or safety of products and services.

RECOMMENDATIONS

We recommend that the National Institutes of Health provide additional training and implement oversight controls to ensure that:

- acquisition workforce and program staff adhere to the roles and responsibilities defined in the *HHS Policy for Information Technology Procurements - Security And Privacy Language*, including that staff must:
 - incorporate all applicable information security and privacy requirements, contract language, and clauses into acquisition documents, and
 - complete the *Information Security Program Requirements Checklist and Certification* properly for all acquisitions involving the procurement of information and IT products and services;
- contractor performance assessments are completed and uploaded to the Contractor Performance Assessment Reporting System timely; and
- NIH Competition Advocates prepare and submit timely Annual Competition Advocate Reports to HHS in accordance with the requirements of FAR 6.502(b)(2) and the HHS Competition Advocacy Directive.

NIH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, NIH concurred with all of our recommendations and described actions it plans to take to address the findings. NIH stated that it is coordinating IT security and privacy requirement communications to acquisition personnel. NIH further stated that it is working on initiatives for training and oversight, including reporting and guidance for staff, to address the timely completion of contractor performance assessments. In addition, NIH stated that it will continue to do on-the-job training for staff on a one-on-one basis to foster competition and that it provided HHS with the fiscal year 2022 Annual Competition Advocate Report on February 24, 2023.

NIH's comments are included in their entirety as Appendix D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered four NIH orders totaling \$21,715,645 paid to a single contractor (Information Management Services, Inc.) for IT services during FYs 2019 and 2020. Of the four orders selected, two were with the National Cancer Institute, one was with the National Heart, Lung, and Blood Institute, and one was with the National Institute on Drug Abuse. We evaluated these orders for compliance with the FAR, HHSAR, HHS Acquisition PGI, and relevant NIH acquisition and procurement policies.

We did not assess NIH's overall internal controls. Rather, we limited our review of internal controls to those applicable to our audit objective. Specifically, we assessed the policies, procedures, and practices applicable to NIH awarding orders for the acquisition of IT.

We conducted our audit from August 2021 through January 2023.

METHODOLOGY

To accomplish our objective, we:

- interviewed NIH management and acquisition offices' staff, and the National Cancer Institute, National Heart, Lung, and Blood Institute, and the National Institute on Drug Abuse program staff on NIH governance, contracting process, controls, and management support activities;
- examined acquisition planning documents, award documents, invoices, justifications, and supporting documentation, including NIH acquisition offices, institutes, and centers' internal acquisition determinations, recommendations, approvals, and evaluations;
- reviewed HHS and NIH policies and procedures related to the acquisition of supplies and services;
- verified the implementation of processes, procedures, and review and approval activities; and
- discussed the results of our audit with NIH 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 the findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: FEDERAL REQUIREMENTS

FEDERAL ACQUISITION REGULATION

48 CFR § 1.301(a)(1)

. . . an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

48 CFR § 1.602-1(b)

No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

48 CFR § 1.602-2

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. . . . Contracting officers shall –

- (c) Request and consider the advice of specialists in . . . information security . . . as appropriate.

48 CFR § 1.604

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (see 1.602-2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum -

- (c) Documentation of COR actions taken in accordance with the delegation of authority.

48 CFR § 4.801

- (a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.
- (b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of . . .

(2) Supporting actions taken;

(3) Providing information for reviews and investigations; . . .

48 CFR § 4.803

The following are examples of the records normally contained, if applicable, in contract files:

(c) Paying office contract file. . . .

(2) Bills, invoices, vouchers, and supporting documents.

48 CFR § 42.1502(a)

Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. . . . Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders.

HHS POLICY FOR INFORMATION TECHNOLOGY PROCUREMENTS – SECURITY AND PRIVACY LANGUAGE

The HHS Policy for Information Technology Procurements - Security and Privacy Language is to mandate the standard security and privacy language for information and information technology (IT) procurements throughout HHS. . . .

The Requiring Activity Representative and contracting office, in coordination with the [operating division] Information System Security Officer (ISSO), Senior Official for Privacy (SOP), System Owner and the Chief Information Security Officer (CISO), must ensure procurement documentation includes the applicable security and privacy language with sufficient details to enable Contractors and service providers to fully understand the requirement. The Requiring Activity Representative must also ensure sufficient information regarding security and privacy regulations, mandates, and requirements to which they will be subject under the contract or task order that may be awarded to them are understood.

The Department and [operating divisions] must implement the following baseline policy requirements and standards in Appendix B: . . .

2. The Requiring Activity Representative must collaborate with the ISSO and complete an Information Security & Privacy Certification Checklist for Procurements for all acquisitions involving information and IT products and

services in the initial stage of the procurement to determine the applicable security and privacy requirements. . . .

4. Requiring Activity Representatives must include the applicable clauses and language set forth in Appendix B of this Policy in all . . . contracts involving records that are or will be subject to the Privacy Act of 1974 (5 U.S.C. 552a).

Appendix B: Standards

I. Procurements Requiring Information Security and/or Physical Access Security

The language . . . must be included in the Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), or other purchase description involving information and/or information technology (IT) procurements.

II. Requirements for Procurements Involving Privacy Act Records

If the Privacy Act applies, the Contracting Officer (CO)/CO Representative must ensure that the language . . . is included in the Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), or other purchase description. This language does not alleviate the requirement to properly incorporate the three (3) FAR and HHSAR clauses identified in the Procedures Appendix ... into the applicable contract clauses section of the . . . resultant contract.

III. Procurements Involving Government Information Processed on Government-Owned/Contractor-Operated (GOCO) or Contractor-Owned/ Contractor-Operated (COCO) Systems

The language . . . must be included in the Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), or other purchase description. This language does not alleviate the requirement to properly incorporate the applicable FAR and HHSAR clauses into the applicable contract clauses section of the . . . resultant contract.

V. Other IT Procurements

The language . . . must be included in the Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), or other purchase description. FAR and HHSAR clauses are referred to in . . . contract language herein. This language does not alleviate the requirement to properly

incorporate such clauses into the applicable contract clauses section of the resultant contract.

HHS ACQUISITION POLICY, GUIDANCE, AND INSTRUCTION

Part 342.7001, Contract Monitoring Responsibilities

(a) The Contracting Officer is the only person authorized to modify the contract and shall confirm all modifications in writing.

(b) The Contracting Officer shall inform the contractor of the name and contact information of the individual designated as the COR, if any, for the contract.

(c) The Contracting Officer shall primarily rely on the COR to perform the duties as described in the Contracting Officer Representative (COR) Desk Directive. Examples include:

(i) provide technical direction to the contractor;

(ii) monitor contractor performance and to promptly report any issues;

(iii) report any request from the contractor for a change in contract terms;

(iv) inspect and accept deliverables;

(v) review and certify contractor invoices;

Part 306.503, Annual Competition Advocate Report

Each OPDIV/STAFFDIV Competition Advocate (CA) must submit an ACAR report to the Department CA by the 15th of November annually (or the following business day if November 15th is not a normal business day). The ACAR report is based upon instructions from the Department CA which will be sent on or about October 1 annually.

HHS DIRECTIVES

HHS Competition Advocacy Directive

Chapter 1 § 2.3, Agency Operating Division and Staff Division Competition Advocate

Each OPDIV and STAFFDIV Competition Advocate shall prepare an Annual Competition Advocate Report (ACAR), covering the prior fiscal year, in accordance with the requirements of FAR 6.502(b)(2) and provide it to the HHS Competition Advocate in accordance with instructions sent by the HHS

Competition Advocate on or about the 1st of October. HHS requires that each ACAR be prepared in a standard format. The template for the report will be included with the instructions sent by the HHS Competition Advocate on or about the 1st of October.

Chapter 2 § 2.1, The ACAR and Competition Plans

FAR part 6.502(b)(2) requires that the department CA prepare and submit an annual report on the status and activities to promote competition. Each agency (OPDIV/STAFFDIV) CA provides status on their efforts to promote competition throughout their organization to the Department CA. This annual report is the Annual Competition Advocate Report (ACAR) prepared by the Department CA.

Process for reporting:

- In accordance with the FAR 6.502(b), all HHS Competition Advocates must develop an annual report. The ACAR provides an opportunity to conduct meaningful analysis of competition achievements across the Department that highlights actions taken to promote competition.
- The Agency Competition Advocates will be provided instructions for the collection of data and instruction needed for preparation of the fiscal year ACAR by the Department CA in advance of the report request on or about October 1. . . .

HHS GUIDANCE

Reporting of Contractor Performance Information Guidance, 3.0 Reporting Requirements

CPARS

In accordance with FAR 42.1502, past performance evaluations shall be prepared and entered into CPARS at least annually and at the time the work under a contract or order is completed.

Contracts/Orders	Dollar Threshold	Timeframe for Entering into CPARS
Contracts and orders placed under Federal Supply Schedule, multiagency, government-wide acquisition, or single-agency task and delivery contracts	> Simplified Acquisition Threshold (SAT)	120 Calendar Days (includes the Contractor's 60 day comment period)

NIH POLICIES

NIH Policy Manual 6332-9 - Receipt, Processing and Payment of Invoice and Contract Financing Requests for Research Contracts

The contracting officer shall promptly review payment requests.

Upon receipt of the request for payment from the contractor, the contracting officer shall:

- Promptly scan the payment request for obvious errors or defects.
- Make a detailed review of the payment request to determine whether it is proper.

Appointment of Contracting Officers Representative (COR) Memorandum

The COR will perform the following duties:

- Maintain a complete working file for the assigned contractual instrument.
- Review contractor's invoices (fixed-price contracts) or vouchers (cost-reimbursement type contracts); make recommendations to the CO for payments for work completed and related charges on the basis of the terms and conditions of the contract. The COR is required to return the invoice to the CO with a recommendation for payment within 5 calendar days of receipt.
- Annual evaluations will be prepared during the contract period following the first twelve (12) months of performance under the contract.

APPENDIX C: CONTRACT MANAGEMENT FINDINGS BY NIH INSTITUTE OR CENTER

Task Order	Institute or Center	Missing Security and Privacy Contract Language, and Clauses	No COR Review and Recommendation for Invoice Payments	Late Contractor Performance Assessments
1	NCI	X	–	X
2	NCI	X	–	X
3	NHLBI	X	X	X
4	NIDA	X	–	X

NIH Institute/Center:

NCI – National Cancer Institute

NHLBI – National Heart, Lung, and Blood Institute

NIDA – National Institute on Drug Abuse

An 'X' in a box denotes a finding in that area.

APPENDIX D: NIH Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892
www.nih.gov

DATE: May 2, 2023

TO: Amy J. Frontz,
Deputy Inspector General for Audit Services

FROM: Acting Principal Deputy Director, National Institutes of Health

SUBJECT: NIH Comments on HHS Office of Inspector General (OIG) Draft Report Entitled: "NIH Should Improve Its Management of Contracts for the Acquisition of Information Technology" (A-18-21-11500)

Attached are the National Institutes of Health's (NIH) comments on the draft HHS Office of Inspector General (OIG) Draft Report Entitled: "NIH Should Improve Its Management of Contracts for the Acquisition of Information Technology" (A-18-21-11500).

NIH appreciates the review conducted by the OIG and the opportunity to provide clarifications on the draft report. If you have questions or concerns, please contact Meredith Stein in the Office of Management Assessment at 301-402-8482.

A handwritten signature in black ink, appearing to read "Tara A. Schwetz".

Tara A. Schwetz, Ph.D.

Attachments

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT, OIG'S DRAFT REPORT ENTITLED, "NIH SHOULD IMPROVE ITS MANAGEMENT OF CONTRACTS FOR THE ACQUISITION OF INFORMATION TECHNOLOGY" (A-18-21-11500)

The National Institutes of Health (NIH) appreciates the review conducted by the Office of Inspector General (OIG) and the opportunity to provide clarifications on this draft report. NIH respectfully submits the following general comments.

OIG Recommendation 1:

The National Institutes of Health provide additional training and implement oversight controls to ensure that the acquisition workforce and program staff adhere to the roles and responsibilities defined in the *HHS Policy for Information Technology Procurements – Security and Privacy Language*, including the staff must:

- Incorporate all applicable information security and privacy requirements, contract language, and clauses into acquisition documents, and
- Complete the *Information Security Program Requirements Checklist and Certification* properly for all acquisitions involving the procurement of information and IT products and services.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation regarding Acquisition workforce and program staff adhere to the roles and responsibilities defined in the *HHS Policy for Information Technology Procurements – Security and Privacy Language*. NIH management is coordinating IT security and privacy requirement communications to acquisition personnel. NIH will provide a detailed action plan with a target completion date to address the recommendation in our 180-day response to the OIG.

OIG Recommendation 2:

The National Institutes of Health provide additional training and implement oversight controls to ensure contractor performance assessments are completed and uploaded to the Contractor Performance Assessment Reporting System timely.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation regarding completing and uploading performance assessments to the Contractor Performance Assessment Reporting System (CPARS) timely. To address the timely completion of CPARS, NIH is working on initiatives to address training and oversight, including reporting and guidance for staff. NIH will provide a detailed action plan with a target completion date to address the recommendation in our 180-day response to the OIG.

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT, OIG'S DRAFT REPORT ENTITLED, "NIH SHOULD IMPROVE ITS MANAGEMENT OF CONTRACTS FOR THE ACQUISITION OF INFORMATION TECHNOLOGY" (A-18-21-11500)

OIG Recommendation 3:

The NIH provide additional training and implement oversight controls to ensure that NIH Competition Advocates prepare and submit timely Annual Competition Advocate Reports (ACAR) to HHS in accordance with the requirements of FAR 6.3502(b)(2) and the HHS Competition Advocacy Directive.

NIH Response:

NIH generally concurs with the OIG recommendation.

On January 6, 2023, NIH received a template with instructions from the HHS Competition Advocate for the FY2022 ACAR. On February 24, 2023, NIH prepared a response and provided a signed report to HHS.

While the HHS Office of Acquisitions (OA) acknowledges that the HHS Competition Advocacy Directive (dated March 2019) Section 2.5 assigns a responsibility to the HHS Department Competition Advocate (CA) to "Notify the [OpDivs] Competition Advocates of the ACAR Report data call on October 1, due November 15th...", Section 2.3 of the Directive also states that OpDiv/StaffDiv CAs shall prepare an annual ACAR in accordance with the format provided in FAR 6.502(b)(2) and the instructions provided by the HHS Department Competition Advocate. In FYs 2019-2021, HHS did not provide such instructions to the OpDiv/StaffDivs. HHS is in the process of updating the Directive to clarify the roles and responsibilities of all parties and provide a standard reporting template.

In addition, NIH recognizes that training is key to fostering competition. NIH acquisition staff continues to spend a significant amount of time doing on-the-job training for staff on a one-on-one basis. NIH strives to use increased acquisition planning in the initial stages of an acquisition, as well as the review process at the pre-award stage to maintain and improve these results. The planning stage requires consideration of possible acquisition strategies, for which competition is a primary consideration and any restriction to competition requires review and approval based on the dollar value of the acquisition with increasing levels of approval. NIH continues to take initiative to promote competitive acquisitions by posting special notices of procurement forecasting opportunities for the upcoming fiscal year through SAM.gov.