




July 22, 2019

**MEMORANDUM FOR:** Jeff Bratcher  
Chief Technology and Operations Officer, Performing the  
Executive Functions of the Chief Executive Officer  
First Responder Network Authority

**FROM:**   
Carol N. Rice  
Assistant Inspector General for Audit and Evaluation

**SUBJECT:** *FirstNet Has Opportunities to Address Control Weaknesses*  
Final Report OIG-19-019-A

This final report provides the results of our audit to assess the First Responder Network Authority's (FirstNet's) oversight of the contract awarded to develop and implement the Nationwide Public Safety Broadband Network (NPSBN). Our audit objective was to determine whether FirstNet properly administered the contract's Task Order Number 3 (TO3), *Deployment, Operation, and Maintenance of the Nationwide Core*.

We identified control weaknesses where FirstNet made a contractor payment of \$336 million prior to properly documenting and timely modifying the NPSBN contract to move 1 of 18 required contract milestones to a later period. During the audit, we found that no modification had been executed to address this outstanding milestone or when it will be met.

This report includes recommendations to strengthen FirstNet's management control. See appendix A for specific details on our objective, scope, and methodology.

## Background

The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) established FirstNet as an independent authority within the National Telecommunications and Information Administration of the Department of Commerce (Department), with the duty and responsibility to deploy and operate the NPSBN.<sup>1</sup> In addition, the Act authorizes FirstNet to enter into a public-private arrangement to construct, manage, and operate the NPSBN.<sup>2</sup>

On March 28, 2017, the Department of the Interior (DOI),<sup>3</sup> on behalf of the Department and FirstNet, signed a contract with AT&T (contractor) to provide for a single interoperable

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<sup>1</sup> Pub. L. No. 112-96, *Middle Class Tax Relief and Job Creation Act of 2012*, §§ 6204(a), 6206(b).

<sup>2</sup> *Id.* at §6206(b)(4).

<sup>3</sup> The First Responder Network Authority entered into an interagency agreement with the Department of Interior on March 20, 2015, to provide acquisition assistance.

NPSBN. The 25-year public-private contract is an indefinite-delivery, indefinite-quantity fixed price contract.<sup>4</sup> On March 30, 2017, DOI awarded TO3—valued at \$960 million—with a 25-year period of performance. In December 2017, DOI transferred the contract administration responsibilities to FirstNet. TO3 required AT&T “to deploy, operate, and maintain the nationwide Core.”<sup>5</sup> The initial operational capability (IOC)<sup>6</sup> for TO3 details FirstNet’s objectives for deployment of various features and associated coverage milestones.<sup>7</sup> Per the contract, the contractor must meet the milestones, and FirstNet must accept the contractor’s performance prior to initiating payment.

## Finding and Recommendations

For managing TO3, FirstNet officials implemented monitoring processes to review

- the contractor’s progress, including monthly contractor meetings and reporting;
- contractor schedule tracking; and
- the use of subject matter experts to verify technical requirements.

However, we identified opportunities to address control weaknesses in, and improve management of, TO3 and future task orders. Specifically, we found that FirstNet did not comply with contractual terms, because it issued payment before properly documenting and modifying the NPSBN contract to move 1 of 18 IOC2 milestones to a later period. Further, it had not yet modified the contract to request that the contractor meet the final remaining milestone that FirstNet had already paid for.

FirstNet would benefit overall from strengthening controls to improve contract management. It plans to spend \$6.5 billion for the construction, implementation, and operations of the NPSBN—of which it has already paid approximately \$2 billion as of February 8, 2019. By strengthening controls to manage its contract, FirstNet can enhance its overall contract management and reduce the risk that portions of the remaining \$4.5 billion of the contract budget will be spent before the contractor fulfills its obligations to the government.

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<sup>4</sup> The Federal Acquisition Regulation (FAR), Part 16, Types of Contracts, states, in part, “[a]n indefinite quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period” (FAR 16.504(a)), and “[a] firm-fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract” (FAR 16.202-1).

<sup>5</sup> The FirstNet Core is a secure network that transfers data, “processes and reformats information, [and] stores and maintains data....” The Core is “a key component for ensuring that users have a single interoperable platform nationwide.... The Core interfaces with other state, local and federal networks, including 911 and the internet.”

<sup>6</sup> IOCs are comprised of contract requirements and the associated periods for completion. The IOC timelines are in intervals of 6, 12, 24, 36, 48, and 60 months after the contract award (March 2017). For example, IOC1 requirements were due in September 2017, followed by IOC2 requirements due in March 2018.

<sup>7</sup> Milestones are part of the contract and include TO3 services, applications, devices, architecture, infrastructure and operations with items for completion associated with an IOC.

## Opportunities to Strengthen Contract Management Controls Found

FirstNet did not comply with the terms of the NPSBN contract prior to approving payment. We reconciled contract milestones to FirstNet’s tracking mechanism—which originates from the contractor—and acceptance documentation. We determined that FirstNet had accepted IOC2 contractor milestones and initiated the payment process that led to the contractor payment of \$336 million, but 1 of 18 required contract milestones was not completed prior to payment. The contractor did not complete the milestone titled “Complete Non-Band 14 Public Safety User Migration Phase 2.” This milestone required the migration of public safety users from existing wireless systems to the FirstNet Core and systems. The migration of the public safety users to the NPSBN is consistent with the intent of the legislation establishing FirstNet. TO3 of the contract states that “[p]ayments to the Contractor will only be payable upon Government acceptance of the [IOC] milestones.” The contract does not include allowances for partial acceptance of milestones or partial payments.

FirstNet acquisition staff stated that they were aware that the contractor would not complete the required milestone and provided email documentation sent by the contracting officer’s representative to the contractor acknowledging the situation; however, the email did not specify if or when the milestone would have to be completed. Although FirstNet was aware that the milestone would not be completed within the IOC2 performance period, FirstNet did not include the milestone as requiring follow-up in the acceptance memorandum—the official milestone acceptance document—nor did FirstNet modify the contract to move the milestone to a future IOC period. The performance period corresponding to the payment ended on March 30, 2018, and FirstNet had not modified the contract more than a year later.

Further, because the milestone was not moved to a subsequent IOC performance period, the risk that FirstNet will lose track of the milestone increases. This could lead to the contractor not accomplishing the milestone within a reasonable time or by the end of contract period. Additionally, due to the complex nature of the program, there continues to be risk that FirstNet will miss other milestones during the remaining 23 years of the contract.

### *Recommendations*

We recommend that the Chief Procurement Officer do the following:

1. Modify the contract to move the IOC2 milestone, which was not completed, to a future IOC period.
2. Ensure that, in the future, prior to approving an IOC requirement for payment, FirstNet accepts all milestones, notes any exception and required follow-up in the acceptance memorandum prior to payment, and timely modifies the contract.

## Summary of Agency Response and OIG Comments

On June 6, 2019, FirstNet responded to the draft report dated May 7, 2019 (see appendix B). FirstNet agreed with our recommendations and reported that it is in the process of implementing corrective actions. FirstNet stated that it was drafting a modification to move the milestone “to an indefinite delivery/indefinite quantity (IDIQ) requirement that will be monitored until the end of TO4 FOC (March 2023)” and would ensure that a need to change “a milestone will be noted in the acceptance memorandum prior to payment, followed by a timely modification of the contract.”

The final report will be posted on OIG’s website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 and 8M).

In accordance with Department Administrative Order 213-5, please submit, within 60 calendar days, an action plan that responds to our recommendations.

We appreciate your cooperation and courtesies extended to us by your staff during our audit. If you have any questions or concerns about this report or our process, please contact me at (202) 482-6020 or Chris Rose, Supervisory Auditor, at (202) 482-5558.

cc: David Dasher, FirstNet Chief Procurement Officer  
Uzoma Onyeije, FirstNet Attorney-Advisor

## Appendix A. Objective, Scope, and Methodology

The objective of our audit was to determine whether FirstNet properly administered TO3, *Deployment, Operation, and Maintenance of the Nationwide Core*. To accomplish our objective, we did the following:

- Reviewed the Federal Acquisition Regulation and the *Department of Commerce Acquisition Manual* to identify rules and regulations pertaining to contract monitoring and payment approvals.
- Reviewed policies and guidance on internal control in the Government Accountability Office's *Standards for Internal Control in the Federal Government*<sup>8</sup> to assess management controls over contract administration.
- Obtained and reviewed the AT&T contract and modifications to identify contract performance measures, milestones, and payment information.
- Obtained and reviewed FirstNet's internal policies and procedures to determine whether FirstNet has proper procedures in place to administer the AT&T contract.
- Interviewed FirstNet personnel responsible for administering and monitoring the contract to understand their responsibilities for contract management.
- Visited a contractor site to observe some of the work pertaining to the contract.
- Reviewed invoices and payments to determine whether FirstNet properly approved them.<sup>9</sup>
- Consulted with internal Data Analytics staff to select testing samples and determine the best testing strategy.
- Selected two samples from the population of contract requirements directly related to the payments we reviewed in order to assess whether FirstNet properly monitored the contractor's progress and ensured it met contract requirements.
  - The first sample is a statistical sample of 69 out of 470 items that passed FirstNet verification in IOC1 and IOC2; finding no exceptions in the first 35 items and based on Data Analytics' recommendation, we stopped testing.
  - The second sample is a nonstatistical, random sample of 6 out of 38 items that FirstNet passed with conditions from IOC2; we used this method because we were assessing a small universe and the other sample yielded no exceptions.

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<sup>8</sup> GAO, September 2014, *Standards for Internal Control in the Federal Government*, GAO-14-704G.

<sup>9</sup> While FirstNet approved payments, it did not process them. FirstNet signed Interagency Agreements with other agencies to perform certain administrative functions, including processing payments.

- Reconciled TO3 milestones to the milestones noted in the Requirements Traceability Matrix, verification report,<sup>10</sup> and the acceptance memorandum.

Further, we gained an understanding of internal control processes significant within the context of the audit objective by interviewing FirstNet personnel responsible for providing technical feedback to management and reviewing documentation for evidence of internal control procedures. In satisfying our audit objective, we relied on both computer-processed data in the Commerce Business System (CBS)—the Department’s official record of transactions—and documentation that FirstNet provided. We assessed CBS data to be reliable based on the Department’s Office of Financial Management Systems maintaining the software for CBS and comparing CBS data to supporting documentation. We identified weaknesses in internal control related to acceptance of milestones. We found no incidents of fraud, waste, or abuse.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objective.

We conducted fieldwork from May through December 2018 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, dated April 26, 2013. We performed our work at FirstNet headquarters in Reston, Virginia; FirstNet’s regional office in Boulder, Colorado; a contractor site in Seattle, Washington; Department headquarters in Washington, DC; and the OIG regional office in Denver, Colorado.

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<sup>10</sup> FirstNet’s Network Management Office issues a *verification report* based on subject matter experts’ review of IOC requirements and recommends acceptance, acceptance with conditions, or rejection of requirements.

## Appendix B. Agency Response



**MEMORANDUM FOR:** Carol N. Rice, Assistant Inspector General for Audit and Evaluation

**FROM:** David Dasher, Chief Procurement Officer; for Jeffrey Bratcher, Chief Technology and Operations Officer, performing the Executive Functions of the Chief Executive Officer

**SUBJECT:** Draft OIG Report: *FirstNet Has Opportunities to Address Control Weaknesses*

**DATE:** June 6, 2019

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We appreciate the efforts of you and your staff at the Department of Commerce's Office of Inspector General (OIG) in reviewing the First Responder Network Authority's (FirstNet Authority) oversight of the contract awarded to implement the Nationwide Public Safety Broadband Network (NPSBN).

The FirstNet Authority takes its responsibility to oversee the contract with AT&T to develop, maintain, and operate the NPSBN very seriously. As a performance-based contract, AT&T is required to deliver a service; and the FirstNet Authority has the responsibility to ensure that service is delivered consistent with the needs of public safety and the provisions of the contract between the parties. To do this, the FirstNet Authority has developed detailed business processes for contract oversight. As noted by OIG, these processes are designed to review: the contractor's progress, including monthly contractor meetings and reporting; contractor schedule tracking; and validation and verification of technical requirements by subject matter experts. Developing a multifaceted approach to contract oversight has allowed FirstNet Authority to obtain critical data to assist it in its mission.

As part of the FirstNet Authority's ongoing review of AT&T's contractual compliance, there are a number of milestones established via the contract. To ensure that each of these milestones is achieved, the FirstNet Authority Contracting Officer's Representatives (CORs) have established processes and procedures to ensure consistency during validation and verification of the deliverables and artifacts submitted. For 17 of the 18 Task Order 3 (TO3) Initial Operational Capability (IOC) -2 milestones, this process was followed without deviation. In one case, however, the Contracting Officer determined that an established milestone needed to move from being a TO3 IOC-2 (March 2018) requirement to an indefinite delivery/indefinite quantity (IDIQ) requirement that will be monitored until the end of TO4 Final Operational Capability (FOC) (March 2023).

The milestone in question entitled “Complete Non-Band 14 Public Safety User Migration Phase 2” is related to the migration of AT&T’s existing public safety subscribers to the FirstNet Core. A principle purpose of this milestone was to ensure that AT&T’s existing public safety users had access to public safety services, which included priority and preemption, as Band 14 was deployed. When the FirstNet Authority verified and validated the milestone, it realized that fulfillment of this milestone was impractical. Specifically, at that time, transition of existing AT&T public safety customers from AT&T’s commercial service to the FirstNet Core would have required public safety users to purchase new devices. In addition, as Band 14 is deployed, in fulfillment of a FirstNet objective and mitigating the underlying concern reflected in the milestone, AT&T is providing priority and preemption to public safety users on all of AT&T’s LTE bands – not just Band 14.

In light of these factors, the FirstNet Authority made the affirmative determination to move the milestone to a monitoring requirement. The decision to move the milestone from being a TO3 IOC-2 requirement to an IDIQ monitoring requirement was not noted in the acceptance memorandum and a contract modification was not immediately issued. Due to the complexity of the NPSBN contract, the FirstNet Authority decided to implement omnibus modifications rather than individual changes to the contract.<sup>1</sup>

Because the FirstNet Authority did not document the change with the milestone in the verification report or immediately execute a contract modification, the OIG provided the FirstNet Authority with two recommendations. Specifically, the OIG recommended that the FirstNet Authority should:

- Modify the contract to move the TO3 IOC-2 milestone, which was not completed, to a future IOC period.
- Ensure that, in the future, prior to approving an IOC requirement for payment, FirstNet accepts all milestones, notes any exception and required follow-up in the acceptance memorandum prior to payment, and timely modifies the contract.

The FirstNet Authority agrees with both of these recommendations. The FirstNet Authority is currently drafting the appropriate contract modification. That modification will move the milestone from being a TO3 IOC-2 (March 2018) requirement to an indefinite delivery/indefinite quantity (IDIQ) requirement that will be monitored until the end of TO4 FOC (March 2023). This change will ensure that there is continual monitoring during the relevant contract period. As it relates to OIG’s second recommendation, the FirstNet Authority will ensure that any need to alter a milestone will be noted in the acceptance memorandum prior to payment, followed by a timely modification of the contract. The FirstNet Authority will prepare an action plan to address both recommendations once the final report is issued.

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<sup>1</sup> In the interim, the FirstNet Authority continues to monitor the public safety user migration requirement in both weekly TO3 meetings and monthly Performance Management Report meetings with AT&T. In addition, the FirstNet Authority CORs receive monthly deliverables that provide data to demonstrate that AT&T is increasingly migrating public safety users.