Federal Housing Finance Agency
Office of Inspector General

Management Advisory: FHFA Failed to Enforce a Provision of an IT Services Contract, Resulting in More than $80,000 in Questioned Costs

Management Advisory • OIG-2020-001 • March 3, 2020

OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency
400 7th Street SW, Washington, DC 20219

March 3, 2020

TO: Mark A. Calabria, Director

FROM: Marla A. Freedman, Deputy Inspector General for Audits /s/

SUBJECT: Management Advisory: FHFA Failed to Enforce a Provision of an IT Services Contract, Resulting in More than $80,000 in Questioned Costs

We initiated an administrative inquiry into a claim alleging that an information technology (IT) contractor did not provide full staffing levels to FHFA under its contract.[1] Our inquiry into this issue covered the period December 1, 2017, through September 30, 2019 (review period).

We found that the contract calls for specific staffing levels and entitles FHFA to a reduction in the amount owed in the event the contractor fails to provide the contractually required staffing levels for more than three months (disincentive clause). We determined that during the review period, the IT contractor failed to provide the required staffing levels for more than three months but that FHFA did not seek (or obtain) a reduction in the amount owed under the disincentive clause. As a result, FHFA paid the contractor $80,985 more than it owed under the contract. Pursuant to the Inspector General Act of 1978, as amended, we consider the $80,985 owed FHFA as a questioned cost.[2]

Background

On October 16, 2017, FHFA entered into a $3.7 million contract with the IT contractor to provide FHFA with, among other things, certain IT services. The performance work statement (PWS) for the contract set forth six performance requirements, referred to as Quality Control Indicators (QCI).[3] In addition, the PWS requires the contractor to provide FHFA with a monthly

[1] Our inquiry into other issues raised by the same complainant is continuing.

[2] We will report the $80,985 owed FHFA as a questioned cost for this Management Advisory in the next FHFA Inspector General Semiannual Report to Congress. The Act defines a questioned cost as a cost that is questioned by a federal inspector general because of, among other things, an alleged violation of a provision of a contract governing the expenditure of funds. FHFA management determines whether the questioned cost is sustained.

[3] QCIs provide a basis upon which to monitor and assess whether (a) the contractor's performance is at an acceptable level of quality, (b) tasks and deliverables comply with task order requirements, and (c) services conform to or exceed the requirements of the contract.

status report summarizing progress, status, issues, and performance in relation to the contract. Each monthly status report also included reporting on the status of each QCI.

QCI 6, which set forth required staffing levels, was the only QCI relevant to the complainant's allegation that is the subject of this Management Advisory. The contract bases total possible FTE hours on a full staff roster of 12 positions delineated in the contract: 10 full-time help desk technicians, 1 full-time help desk manager, and 25% of the time of a senior project manager. The contract contained a disincentive clause in QCI 6 that directs the contractor's invoices to be reduced when required staffing levels are not met for a three-month period. This disincentive clause provides:

> Where the total possible staffing levels are not met for three consecutive months, the fixed price invoice **shall** be proportionally reduced by an amount equal to the hourly rate for the vacant position(s) multiplied by 8 hours for each business day the position remains vacant. **Deductions will begin** on the first workday following the third consecutive month of staffing below total possible FTE-hours and shall continue until full staffing is resumed (emphasis added).

Analysis

Our analysis of the IT contractor's staffing levels during the review period found that the contractor did not meet the required staffing levels from September 2018 through March 2019 and again from May 2019 through September 2019,[4] which triggered the disincentive clause in the contract for a total of seven months.[5] That disincentive clause directs that fixed price invoices **shall** be proportionally reduced by an amount equal to the services that were not provided. Had FHFA invoked its contractual remedy, using documents provided by the Agency we calculate that it would have been entitled to a cumulative invoice reduction of $80,985.[6] However, FHFA did not invoke this remedy.

Several employees with contracting responsibilities within FHFA acknowledged that the disincentive clause in the contract was triggered by the IT contractor's failure to meet the staffing levels defined in QCI 6 but offered a number of different explanations for FHFA's decision to refrain from invoking its contractual remedy. Those explanations cannot be squared

[4] To conduct our inquiry, we: interviewed FHFA contracting officials; reviewed the contract, the contractor's required monthly status reports, contractor staffing documents, and monthly invoices; and compared staffing levels provided by the contractor to contract requirements.

[5] As stated in the QCI, invoice reductions were to begin on the first working day following the third consecutive month the contractor did not meet total possible staffing levels. Our calculations showed that during the review period invoice reductions should have been made from December 2018 to April 2019 (5 months) and again for the months of August 2019 and September 2019 (2 months).

[6] At the time this report is published, this amount may be larger because the contractor did not meet the total possible staffing level through the end of our review period (September 2019), which, if continued, will result in additional disincentives until full staffing is reached.

with the plain language of the disincentive clause, which states that the invoice "shall be proportionately reduced" by the value of the services not provided. Reduction in the amount of the invoice is required by this clause, and FHFA contracting officials did not take any affirmative action to waive or modify this contractual requirement.

Recommendation

We recommend that FHFA:

1. Assess the $80,985 in costs that we questioned in this report, as well as any additional costs related to disincentives that may have been triggered after our review period. FHFA should take action to recover these costs, as appropriate, and enforce disincentive clauses going forward.

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FHFA Comments and OIG Response

We provided a draft of this management advisory to FHFA and received both technical comments, which we considered in finalizing the management advisory, and a written management response. In its management response, which is included in the Appendix to this management advisory, FHFA agreed with our recommendation. By April 30, 2020, FHFA will assess the costs questioned in this report and determine if recovery of these costs is appropriate. FHFA also noted that the contract discussed in this management advisory is scheduled to expire on May 31, 2020, and that FHFA plans to review the disincentive clause and make revisions as appropriate to be included in the successor IT services contract.

We believe FHFA's corrective action meets the intent of our recommendation.

Appendix: FHFA's Response to OIG's Advisory

Federal Housing Finance Agency

MEMORANDUM

TO: Marla Freedman, Deputy Inspector General for Audits

FROM: Mark Kinsey, Chief Financial Officer MK

SUBJECT: Draft *Management Alert: FHFA Failed to Enforce a Provision of an IT Services Contract, Resulting in More than $80,000 in Questioned Costs*

DATE: 2/25/2020

Thank you for the opportunity to respond to the draft *Management Alert: FHFA Failed to Enforce a Provision of an IT Services Contract, Resulting in More than $80,000 in Questioned Costs* (Report). The Office of Inspector General (OIG) conducted an administrative inquiry into a claim alleging that an information technology (IT) contractor did not provide full staffing levels to FHFA under its contract. In addition to our management response, we provided the OIG with technical comments on the draft Report. Our response to the OIG's recommendation is below.

Recommendation: *Assess the $80,985 in costs that we questioned in this report, as well as any additional costs related to disincentives that may have been triggered after our review period. FHFA should take action to recover these costs, as appropriate, and enforce disincentive clauses going forward.*

Management Response to the Recommendation: We agree with the Report's recommendation that we assess the questioned costs in this Report and determine if recovery of these costs is appropriate by April 30, 2020. We have also confirmed that no additional disincentives have been triggered under the relevant clause since the OIG's review period. The contract discussed in this Report is scheduled to expire on May 31, 2020. We will review the disincentive clause and make revisions, as appropriate, to be included in the successor IT services contract.

If you have any questions relating to our response, please do not hesitate to call me at (202) 649-3780.