

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Veterans Health Administration

*Review of
Alleged Improperly
Sole-Sourced
Ophthalmology Service
Contracts at the Phoenix
VA Health Care System*

February 1, 2017
15-01818-213

ACRONYMS

eCMS	Electronic Contract Management System
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Database System
FMS	Financial Management System
NCO	Network Contracting Office
OIG	Office of Inspector General
OSDBU	Office of Small and Disadvantaged Business Utilization
PC3	Patient-Centered Community Care
PVAHCS	Phoenix VA Health Care System
SAOW	Service Area Office West
VA	Department of Veterans Affairs
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

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Highlights: Review of VHA's Alleged Improperly Sole-Sourced Ophthalmology Service Contracts at the PVAHCS

Why We Did This Review

We reviewed the merits of a complainant's allegations made to the Office of Inspector General (OIG) in October 2014. The complainant alleged that the Phoenix VA Health Care System (PVAHCS) improperly sole-sourced ophthalmology service contracts to Barnet Dulaney Perkins Eye Center (BDP), and that the now former Chief of Staff and the Interim Associate Director had a conflict of interest with BDP.

What We Found

We did not substantiate the allegation that the PVAHCS improperly sole-sourced ophthalmology service contracts to BDP. We found that the PVAHCS and Network Contracting Office (NCO) 18 used full and open competition to award BDP three ophthalmology service contracts valued at just over \$30.4 million and effective February 1, 2006 and October 1, 2009, respectively. However, we also found that an NCO 18 contracting officer did not properly maintain contract documentation in eCMS for two of the three BDP contracts. Moreover, the PVAHCS issued just over \$12.4 million in unauthorized commitments and related improper payments to BDP after the contracts lapsed or expired.

- From February 2007 to August 2008, PVAHCS staff ordered services from BDP even though the contracting officer had not exercised the option year on the BDP contract. Thus, the PVAHCS made 88 improper payments totaling under \$4.6 million.

- From October 2008 to September 2009, PVAHCS staff ordered services from BDP after a two-month interim BDP contract expired. Thus, the PVAHCS made 31 improper payments totaling just over \$2.8 million.
- From October 2012 to September 2013, PVAHCS staff ordered services from BDP after the second option year of BDP's clinical ophthalmology service contract expired. Thus, the PVAHCS made 47 improper payments totaling approximately \$5.0 million.

We also did not substantiate the allegation that a conflict of interest existed between the PVAHCS's now former Chief of Staff and Interim Associate Director, and BDP. We found no evidence that they maintained business, financial, and/or personal relationships with BDP or BDP officials. However, they acknowledged that they had pressured the contracting officer to sole-source additional contracts to BDP because of concerns over possible delays in patient care and lapses in the continuity of care. Despite this pressure, the contracting officer did not sole-source contracts to BDP and, in March 2015, the PVAHCS began using VA's Patient-Centered Community Care contracts to procure ophthalmology services for veterans.

What We Recommended

We recommended that the Service Area Office West Director ensure the proper maintenance of contracting files. We also recommended that the PVAHCS Director ratify the unauthorized commitments and

develop a business case for the provision of ophthalmology services.

Management Comments

The Service Area Office West and the PVAHCS Directors agreed with the recommendations and provided responsive action plans. We will follow up on these actions.

A handwritten signature in blue ink that reads "Larry M. Reinkemeyer". The signature is written in a cursive style with a large initial "L".

LARRY M. REINKEMEYER
Assistant Inspector General
for Audits and Evaluations

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INTRODUCTION

Objective

We assessed the merits of a complainant's allegation that the Phoenix VA Health Care System (PVAHCS) sole-sourced contracts to Barnet Dulaney Perkins Eye Center (BDP). Furthermore, the complainant alleged that a conflict of interest existed between the PVAHCS's now former Chief of Staff and Interim Associate Director, and BDP.

Background

The PVAHCS began contracting with BDP in 2006 when its ophthalmology services sharing agreement with the Mayo Clinic expired. From February 2006 through March 2015, the PVAHCS contracted with BDP to provide veterans ophthalmology clinical services, such as eye exams at the PVAHCS and surgical services at BDP's own facilities in various locations in Arizona. During this period, BDP received three contracts¹ valued at just over \$30.4 million.

VA's Hierarchy of Care

In 2006, when BDP received the first PVAHCS contract, Office of Acquisition and Materiel Management Information Letter, IL 049-03-1, and VA Acquisition Regulation (VAAR) 808.002 prescribed VA's Hierarchy of Care. Under its Hierarchy of Care, VA medical facilities were to use health care resources in the following priority order to provide veterans needed care: (1) local VA staff, (2) nearby VA facilities, (3) other Federal facilities, (4) national contracts, (5) regional or local contracts, and (6) the open market. The introduction of the Patient-Centered Community Care (PC3) and the "Veterans Access, Choice, and Accountability Act of 2014" also provided veterans with the option of seeking care in the community when VA could not timely and feasibly provide needed services.

Procurement Oversight and Support

The Veterans Health Administration (VHA) Procurement and Logistics Office has divided the country into three regions, West, Central, and East, and established Service Area Offices in each region. Each Service Area Office oversees the Network Contracting Office (NCO) operating within its region. The Service Area Office West (SAOW) oversees and supports NCO 18, which provides procurement support to the PVAHCS.

¹ BDP contract, V644-P-3293, was effective on February 1, 2006. The other two BDP contracts, VA258-P-0292 and VA258-P-0266, were effective on October 1, 2009.

RESULTS AND RECOMMENDATIONS

Finding 1 Phoenix VA Health Care System Followed Federal Acquisition Regulation in the Award of Ophthalmology Service Contracts

In October 2014, the Office of Inspector General (OIG) received an anonymous allegation that the PVAHCS had been improperly sole-sourcing ophthalmology service contracts to BDP since 1998. The complainant alleged that the initial BDP contract was set up as an interim solution until the PVAHCS could hire ophthalmologists to provide these services.

Criteria

Federal Acquisition Regulation (FAR) 2.101 defines a sole-source acquisition as a contract for the purchase of supplies or services that is entered into by an agency after solicitation and negotiation with only one source. Moreover, the FAR prescribes the limited circumstances under which contracting officers can use other than full and open competition or sole-source contracts. For example, FAR 6.302-1(a) allows sole-source contract awards when only one responsible source and no other supplies or services can satisfy the agency's requirements.

Under 38 U.S.C. § 1703, VA medical facilities have the authority to establish contracts with non-VA facilities for hospital care or medical services when VA medical facilities are not capable of furnishing veterans needed care or services. VA stated, in VA Directive 1663² dated August 10, 2006, that VA medical facilities have to hire VA staff, when feasible, before they consider sending patients to nearby facilities. Furthermore, the Acting Principal Deputy Under Secretary for Health established the hierarchy for purchased care in May 2015, which required VA medical facilities to refer patients to the Veterans Choice Program (the PC3 contracts) if they could not provide veterans needed care or refer them to another VA medical facility. Under this hierarchy, VA medical facilities could only use other Non-VA Care options, such as local contracts, if the veterans were not eligible or the services were not covered by the Veterans Choice Program.

What We Did

We conducted a site visit at the PVAHCS to assess the merits of the allegation. We reviewed contract documents and payment information from the Financial Management System (FMS). We interviewed the complainant, surgical service administrative officers, a staff ophthalmologist, the

² VA Directive 1663 sets forth VA's policy on health care resources contracting-buying. It clearly states that VHA's policy is to hire health care clinical staff whenever feasible. Thus, VA medical facilities can only contract for needed services if hiring staff or sending patients to other VA medical facilities is not appropriate and viable.

PVAHCS's Interim Associate Director, staff at the human resources office, as well as the PVAHCS's former Chief of Staff, and NCO 18 staff.

**What
We Found**

We did not substantiate the allegation that the PVAHCS improperly sole-sourced ophthalmology contracts to BDP. However, we determined that PVAHCS staff issued just over \$12.4 million in unauthorized commitments and related improper payments to BDP. We found that two NCO 18 contracting officers awarded BDP three clinical and surgical ophthalmology service contracts—one contract, V644-P-3293, effective February 1, 2006, and two contracts, VA258-P-0292 and VA258-P-0266, effective October 1, 2009—valued at just over \$30.4 million. From February 1, 2006 through March 2015, the PVAHCS purchased at least \$25 million³ in ophthalmology services from BDP.

During our review, we concluded that two of the three BDP contract files in VA's Electronic Contract Monitoring System (eCMS) were substantially incomplete and lacked several contract documents required by the FAR. Because of this lack of documentation, we could not verify whether the contracts had been improperly sole-sourced to BDP. Consequently, we requested all BDP contracting documentation PVAHCS and NCO 18 staff had regarding these three contracts, to try to determine how the contracting officers had awarded them.⁴

The SAOW Director eventually provided contract documentation for all three contracts showing that the NCO 18 contracting officers had properly awarded the contracts using full and open competition. As a result, we concluded that the three BDP contracts were not improperly sole-sourced. However, PVAHCS staff improperly ordered ophthalmology services and made just over \$12.4 million in unauthorized commitments and related improper payments to BPD over the course of the PVAHCS's 9-year relationship with BPD. The unauthorized commitments and related improper payments occurred when PVAHCS staff continued to order services from BDP after BPD's contracts had expired or lapsed. The PVAHCS's issuance of these unauthorized commitments to BDP and the lack of recruitment of VA ophthalmologists may have made it appear that these contracts had been improperly sole-sourced.

³ We could not obtain complete FMS payment data for the services purchased from BPD during the period, February through December 2006.

⁴ We could not interview contracting officers who had knowledge of the details of the three BDP contracts because, according to PVAHCS staff, they were no longer employed by VA.

**Incomplete
Contract
Documentation**

Our review of the available eCMS and NCO 18 files for the three BDP contracts showed that the two contracts effective October 2009 were substantially incomplete with missing acquisition planning, solicitation, and award documentation.⁵

FAR 4.801 and VA Procurement Policy Memorandum, *Mandatory Usage of VA's Electronic Contract Management System* (June 15, 2007), require contract files to provide a complete history of the acquisition process. Thus, contract files should contain sufficient documentation to support the actions taken and provide the background and basis for the decisions made during each step of the acquisition process, including the basis for the acquisition and award. While FAR 4.802(f) allows agencies to retain contract files in any storage medium, VA has required the use of eCMS to promote uniformity in contracts, improve the consolidation of requirements, and provide a secure electronic archiving system since 2007. Therefore, NCO 18 should have had complete contract files for the two October 2009 BDP contracts that did not expire until March 2015.

We could not locate the following contract documentation for the October 2009 BDP ophthalmology contracts in the eCMS contract files nor the NCO records maintained outside of eCMS:

- List of sources solicited
- Set aside decision and extent of market research conducted
- Contracting officer's determination of contractor responsibility
- Copy of each offer including portions of unsuccessful offers
- Data and information related to the contracting officer's determination of fair and reasonable price
- Source selection documentation

The lapses in the FAR-required contract documentation occurred because the NCO 18 contracting officer, responsible for the two October 2009 BDP contracts, did not completely establish the contracts in eCMS. The SAOW needs to ensure that NCO 18 contracting officers maintain the contracting documentation required by VA Procurement Policy Memorandum, *Mandatory Usage of VA's Electronic Contract Management System*, and FAR 4.801.

⁵ We reviewed the available eCMS and NCO 18 documentation for the February 2006 BDP contract but did not evaluate its completeness because NCO 18 was not required under the FAR to retain the contract documentation at the time of our review. FAR 4.805 does not require contract files to be retained more than 6 years after the last payment.

**Contracts
Were Not
Sole-Sourced**

We could not interview PVAHCS or NCO 18 staff with knowledge of the BDP contracts because they were no longer employed at the facilities. Subsequently, we discussed the missing BDP contract documentation with the current NCO 18 contracting officer, as well as with the NCO Director and Deputy Director, in an effort to locate any contract documentation that could tell us how the NCO 18 contracting officers awarded the BDP contracts. NCO 18 eventually provided us with additional contract documentation for the three contracts—after they located the former NCO 18 contracting officers' BDP contract files on a computer hard drive.

Although they did not provide us with all of the contract documents we identified as missing during our review, they provided sufficient contract documentation to show that the NCO 18 contracting officers sought full and open competition and observed the FAR in the award of the three BDP contracts.

The additional contract documentation provided for the February 2006 BDP contract included:

- A review of the three separate bids
- A technical analysis review
- A responsibility determination
- Documentation of coordination with the Office of Small and Disadvantaged Business Utilization (OSDBU)

These documents showed that the contracting officer had awarded the February 2006 contract using full and open competition and had considered small business concerns. A technical review analysis of the prospective bids showed that the contracting officer exercised due diligence and attempted to identify the most advantageous contracting option for the Government. The contracting officer's award justification also included a responsibility determination indicating BDP was the most responsible bidder that offered the PVAHCS the best price compared to the other two prospective bidders. Moreover, the documentation showed that the contracting officer had coordinated with the OSDBU prior to the solicitation and contract award.

The additional contract documentation provided for the two BDP contracts effective October 2009 included:

- Documentation of coordination with the OSDBU
- The contracting officer's justification for splitting the contract awards into two separate contracts
- Contract Review Board Summary Sheet with Office of General Counsel approval

The additional documentation for the two October 2009 contracts showed that the contracting officer had coordinated the acquisition plan/strategy with VA's OSDBU and not precluded the participation of small businesses. The documentation also showed that the contracting officer split the contract in two at the time of the award to accommodate the separate administrative and monitoring requirements needed for the clinical and surgical services. The contracting officer's effort to coordinate with the OSDBU and the justification for the splitting of the contracts after the award showed that the contracting officer did not purposefully bundle the services at the time of the solicitation to limit competition to large businesses, such as BDP.

The documentation also showed that the Office of General Counsel agreed with the contracting officer's decision to award the contract and not reissue the solicitation even though BDP was the sole bidder on the October 2009 contract. Finally, the contract review board summary for these contracts showed that the Office of General Counsel and the contracting officer's supervisor reviewed the contract documents, including BDP's offer, the FedBizOpps notices, and the technical evaluation prior to the contract award. They concluded that the solicitation met FAR 6.1 full and open competition requirements even though BDP was the only offeror.

Based on the additional documentation the SAOW and NCO 18 provided, we did not substantiate the allegation that the PVAHCS and NCO 18 improperly sole-sourced contracts to BDP.

**Unauthorized
Commitments
and Improper
Payments**

During the course of the PVAHCS's relationship with BDP, FMS data showed that PVAHCS staff did not follow FAR 1.602-3(a) and VAAR 801.601(c) and made a total of just over \$12.4 million in unauthorized commitments and related improper payments to BDP.

Under FAR 1.602-3(a) and VAAR 801.601(c), only officials with delegated contracting authority and purchase cardholders have the authority to commit the Government to the purchase of supplies, equipment, or services. When staff who lack the proper purchasing authority commit the Government to purchases, the purchases are considered unauthorized commitments. Both FAR 1.602-3(b) and VAAR 801.602-3 require the ratification of unauthorized commitments when an authorized official is required to review, and where appropriate, approve, the unauthorized commitments.

Unauthorized commitments also lead to improper payments. Office of Management and Budget (OMB) Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*, defines an improper payment as any payment that should not have been made under statutory, contractual, administrative, or other legally applicable requirements.

Our review of the available BDP contract files and FMS payment histories disclosed that PVAHCS staff made unauthorized commitments and related improper payments when they continued to order ophthalmology services after the BDP contracts had expired or lapsed; specifically:

- From February 2007 to August 2008, PVAHCS staff ordered services from BDP after the contracting officer did not exercise the option year on the BDP contract. Thus, the PVAHCS made 88 improper payments totaling under \$4.6 million.
- From October 2008 to September 2009, PVAHCS staff ordered services from BDP after a two-month interim BDP contract expired. Thus, the PVAHCS made 31 improper payments totaling just over \$2.8 million.
- From October 2012 to September 2013, PVAHCS staff ordered services from BDP after the second option year of the BDP's clinical ophthalmology service contract expired. Thus, the PVAHCS made 47 improper payments totaling approximately \$5.0 million.

We could not find any information or contract documentation explaining why the two contracting officers had allowed BDP's ophthalmology service contracts to expire and lapse. However, as a result, the PVAHCS now needs to adhere to FAR 1.602-3 and VAAR 801.602-3, and to work with NCO 18, to ratify just over \$12.4 million in unauthorized commitments even if PVAHCS staff ordered these services to provide patients needed services.

**Lack of Effort
To Hire VA
Ophthalmologists**

We determined that the PVAHCS also did not attempt to recruit ophthalmologists either in the period prior to or after the award of the first BDP contract in 2006. The complainant alleged that the initial BDP contract was set up as an interim solution until the PVAHCS could hire ophthalmologists to provide these services.

Under VA Directive 1663, the PVAHCS should have developed a business case to assess whether the recruitment and hiring of VA ophthalmologists was more effective than contracting for the services. However, we found no indications that the PVAHCS developed a business case when it made the decision to contract for ophthalmology services. In addition, the PVAHCS human resources office could not offer evidence that the PVAHCS had attempted to recruit ophthalmologists either in the period prior to or after the award of the first BDP contract in 2006. The PVAHCS human resources office was only able to provide documentation showing that the PVAHCS had attempted to hire a part-time optometrist, one lead health technician, and two health technicians for the Ophthalmology Service during the period, April 2012 to March 2015.

We were unable to ask PVAHCS management officials and staff about the reasons the PVAHCS did not attempt to recruit ophthalmologists during the 9-year period the BDP contracts were in place because the PVAHCS no

longer employed these individuals. Based on the available information, we concluded that the PVAHCS had not made significant efforts to recruit and hire the staff needed to provide the clinical and surgical ophthalmology services that it had contracted to BDP.

When we discussed this issue with the former Chief of Staff,⁶ he replied that he believed the PVAHCS did not attempt to recruit ophthalmologists because it could not offer competitive salaries with the private sector. Moreover, he stated that his current focus was on addressing the PVAHCS's access-to-care problems rather than the PVAHCS's need for more ophthalmologists. Although the PVAHCS must focus on its patients' immediate access and health care needs, it also needs to develop a business case for the provision of ophthalmology services that evaluates options, such as the hiring of VA ophthalmologists and/or the use of PC3 and the Veterans Access, Choice, and Accountability Act.

Recommendations

1. We recommended the Procurement and Logistics Office, Service Area Office West Director ensure Network Contracting Office 18 contracting officers maintain required contracting documentation in the Electronic Contract Management System, as required by VA Procurement Policy Memorandum, *Mandatory Usage of VA's Electronic Contract Management System*.
2. We recommended the Phoenix VA Health Care System Director ensure the just over \$12.4 million in unauthorized commitments are ratified in accordance with VA Directive 7401.7, *Unauthorized Commitments and Ratification*.
3. We recommended the Phoenix VA Health Care System Director develop a business case to evaluate the hiring of VA ophthalmologists and the use of Non-VA Care options, such as the Patient-Centered Care Program and as defined in the Veterans Access, Choice, and Accountability Act.

Management Comments

The SAOW and PVAHCS directors concurred with our recommendations and provided action plans to address these recommendations by September 30, 2016. The SAOW established a weekly monitoring report to ensure contracting officers are maintaining documents in eCMS. Furthermore, the PVAHCS initiated actions to work with NCO 18 to ratify the identified unauthorized commitments in accordance with VA policy. The PVAHCS also considered a business case to hire VA ophthalmologists but decided to continue using the Veterans' Choice Program.

⁶ The former Chief of Staff came into the position in February 2012.

OIG Response

We considered the SAOW and PVAHCS directors' action plans acceptable. We have closed Recommendations 1 and 3 based on the SAOW's implementation of the weekly monitoring report and PVAHCS's decision to continue using the Veterans' Choice Program after considering a business case to hire VA ophthalmologists. The PVAHCS has initiated the ratification of the unauthorized commitments and submitted documentation to NCO 18. However, at the time of publication, the ratification was still in process and the PVAHCS estimated that the ratification would not be completed until February 28, 2017. We will continue to monitor the implementation of Recommendation 2 and close this recommendation when the ratification of the unauthorized commitments is completed. Appendixes B and C provide the full text of the SAOW and PVAHCS directors' comments.

Finding 2 A Conflict of Interest Did Not Impair the Health Care System's Procurement of Ophthalmology Services

The complainant alleged that a conflict of interest between the PVAHCS's former Chief of Staff and Interim Associate Director, and BDP caused the PVAHCS to oppose the use of VA's national PC3 contracts to purchase ophthalmology services, and to pressure contracting staff to issue sole-source contracts to BDP.

Criteria

Under FAR standards of conduct 3.101-1, Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. FAR 3.101-2 specifically prohibits Government employees from soliciting or accepting directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who:

- has or is seeking to obtain Government business with the employee's agency, conducting activities that are regulated by the employee's agency, or
- has interests that may be substantially affected by the performance or nonperformance of the employee's official duties

What We Did

During our site visit, we interviewed current contracting staff, the Veterans Integrated Service Network (VISN) 18 Non-VA Care coordinator, the former Chief of Staff and the Interim Associate Director, as well as selected PVAHCS and BDP staff. We assessed the alleged conflict of interest between the PVAHCS's former Chief of Staff and Interim Associate Director, and BDP, and the pressure placed on contracting staff to sole-source additional contracts to BDP after the existing BDP contracts expired in March 2015. In addition, we reviewed a Dun & Bradstreet business history report for BDP and a listing of doctors employed by BDP to try to identify potential business, financial, and/or personal relationships between the PVAHCS's former Chief of Staff and Interim Associate Director, and BDP.

What We Found

We did not find any evidence of a business, financial, and/or personal relationship between the PVAHCS's former Chief of Staff and Interim Associate Director, and BDP. However, we confirmed that the former Chief of Staff and the Interim Associate Director initially had not wanted to follow VA's Hierarchy of Care, which at that time required the procurement of Non-VA Care through PC3.

Our review of a current Dun & Bradstreet BDP report and of a BDP physician listing disclosed that neither the former Chief of Staff nor the

Interim Associate Director were officers or employees of BDP. Interviews with a BDP official and BDP staff confirmed that neither the former Chief of Staff nor the Interim Associate Director were officials or employees of the company.

In addition, we determined that the former Chief of Staff and the Interim Associate Director had no relationship with BDP before they assumed their current positions at the PVAHCS. Before becoming Chief of Staff in early 2012, the Chief had served as the PVAHCS's Chief of Inpatient Services and had no reason to interact with BDP or the Ophthalmology Service. Likewise, the PVAHCS's Interim Associate Director, who was on temporary detail from the Fargo North Dakota VA Healthcare System, and who has since returned to Fargo, stated that he had no contact with BDP until his detail began in February 2015. Both the former Chief of Staff and the Interim Associate Director stated that they did not have a conflict of interest with BDP. They also stated that they did not have a personal relationship with anyone at BDP and that neither of them had anything personal to gain from the award of the contracts to BDP.

The PVAHCS Ophthalmology Service and the Surgical Service staff we interviewed, and who worked with BDP, indicated that they were unaware of any business, financial, and/or personal relationships or conflicts of interest between BDP and the PVAHCS's former Chief of Staff and Interim Associate Director.

*Appearance of
an Improper
Relationship*

The former Chief of Staff and the Interim Associate Director did initially pressure the contracting staff to award sole-source contracts to BDP even though they had no apparent business, financial, and/or personal relationship with BDP. According to the complainant, contracting staff contacted the PVAHCS in December 2013 to obtain a procurement package so they could begin planning the procurement of the ophthalmology services before the BDP contracts expired in September 2014. The procurement package typically contains a statement of work identifying the Government's needs and allows the contracting staff to seek out potential bidders who can provide the needed services. According to the former Chief of Staff, the PVAHCS could not provide a procurement package because it was addressing larger access-to-care issues and no one was available to provide the contract requirements while the Chief of Surgical Services position was vacant.

With the existing BDP contracts set to expire in September 2014, the contracting officer issued BDP two contract extensions for 6 months valued at just over \$2.7 million, citing the option to extend services under FAR 52.217-8 and give the PVAHCS more time to put together a procurement package. The contract extension moved the current contracts' expiration date to March 31, 2015. From September 2014 to February 2015, the PVAHCS Director, the former Chief of Staff, the Interim Associate Director, the VISN management and contracting staff and the Non-VA Care

coordinator held a series of discussions regarding the use of PC3 and other methods to procure ophthalmology services.

During this period, the former Chief of Staff and Interim Associate Director, on three separate occasions, asked contracting staff how they could avoid using PC3 and continue to procure ophthalmology services from BDP. Each time, the contracting staff said they reminded the former Chief of Staff and Interim Associate Director that the PVAHCS was required to use PC3. However, the former Chief of Staff and Interim Associate Director still wanted the contracting staff to award BDP additional local contracts following the expiration of the current contracts in March 2015. The former Chief of Staff's and Interim Associate Director's persistent inquiries about contracting with BDP caused the contracting staff to feel pressured to sole-source additional local contracts to BDP and created the impression that an improper relationship existed between these PVAHCS officials and BDP.

Why This Occurred

The former Chief of Staff and Interim Associate Director acknowledged they had attempted to persuade the contracting staff to award BDP sole-source contracts. However, they stated that they did so because they believed it was in the PVAHCS's and veterans' best interests to award BDP sole-source contracts and for BDP to continue providing the PVAHCS with ophthalmology services.

During his interview, the former Chief of Staff stated that he had tried to convince the contracting staff to award the contracts to BDP because he:

- Wanted to prevent possible delays in the provision of ophthalmology services, given the other delays in care that the PVAHCS was experiencing
- Believed BDP offered patients continuity of care since it had provided these services at the PVAHCS and its offsite facilities for the past 9 years
- Thought that the use of PC3 would increase the administrative burden on the PVAHCS's Non-VA Care program
- Understood, based on an internal cost comparison, that the use of PC3 was more costly for the PVAHCS than the current clinical and surgical contracts

Similarly, the Interim Associate Director acknowledged asking the contracting staff to award future sole-source contracts to BDP because he was concerned about possible delays in the delivery of ophthalmology services and the lack of continuity of care.

What Resulted

The contracting staff withstood the pressure exerted by the former Chief of Staff and Interim Associate Director and did not award sole-source local contracts to BDP. Subsequently, the PVAHCS's Ophthalmology Service

began transitioning to the use of PC3 in March 2015, before the contract extensions expired. From March 2, 2015 through November 29, 2015, the PVAHCS issued just over 8,200 ophthalmology authorizations through the PC3 contracts. Faced with significant pressures to address access-to-care issues throughout the PVAHCS, the former Chief of Staff and Interim Associate Director appeared to have the PVAHCS's and veterans' best interests in mind when they tried to persuade the contracting staff to award sole-source contracts to BDP. Nevertheless, their purposeful actions were inappropriate under FAR 3.101 standards of conduct and weakened the integrity of the acquisition process when they encouraged NCO 18 contracting staff to violate Federal (FAR 6.302-1) and VA acquisition regulations (VAAR Subpart 806.3) related to sole-source contracting.

After discussing these events with the former Chief of Staff and the Interim Associate Director, they acknowledged that they understood how their actions could have caused facility staff to doubt their impartiality and to believe that an improper relationship existed between them and BDP. Furthermore, the former Chief of Staff recognized that his actions could have led to FAR violations and that this was inappropriate even if he believed it was in the patients' best interests.

Recommendation

4. We recommended the Phoenix VA Health Care System Director ensure staff are aware of Federal Acquisition Regulation sections 6.301 and 3.101-1 related to sole-source contracting and standards of conduct.

Management Comments

The PVAHCS Director agreed with our recommendation, which she addressed on July 14, 2016. She provided PVAHCS leadership and service chiefs training on VA and Federal acquisition regulations related to sole-source contracting and standards of conduct.

OIG Response

The PVAHCS Director has taken action to address our recommendation and we have closed Recommendation 4 based on training provided to the PVAHCS's leadership and service chiefs. Appendix C provides the full text of the PVAHCS Director's comments.

Appendix A Scope and Methodology

Scope

We conducted our review from March 2015 through February 2016. The complainant alleged that the relationship between the PVAHCS and BDP dated back to 1998. However, during the review, we identified three BDP clinical and surgical ophthalmology service contracts valued at just over \$30.4 million (excluding the \$12.4 million in unauthorized commitments identified in FMS) covering the period February 1, 2006 to March 31, 2015.

Methodology

To evaluate the allegations, we reviewed applicable FAR and VAAR, VA policy, contract documents, a Dun & Bradstreet business history report for BDP and FMS payment information. We interviewed the complainant, surgical service administrative officers, a staff ophthalmologist, NCO 18 contracting staff, the former Chief of Staff and the Interim Associate Director. However, we could not interview management officials and staff regarding the PVAHCS specific efforts to recruit ophthalmology staff in 2006 because these staff were no longer employed at the PVAHCS. Subsequently, we reviewed the available recruitment documentation in the PVAHCS's human resources office to assess efforts to recruit and hire VA ophthalmology service staff and compared listings of BDP and VA staff to identify potential business, financial, and/or personal relationships between the PVAHCS's former Chief of Staff and Interim Associate Director, and BDP.

Data Reliability

To achieve the review objectives, we relied on computer-processed payment data from FMS. We assessed the reliability of the systems' data by tracking payment transactions to invoice records. Additional data reliability tests included steps to identify any missing data in key fields, gaps in the data, and data outside our period of performance. We did not identify discrepancies in the data but found significant gaps in the payment data for the period February through December 2006. Despite the incomplete data, we found the FMS data reliable enough for the purposes of this review.

We also attempted to locate required contracting documentation in eCMS but found that the contract files for the BDP ophthalmology service contracts were incomplete. Thus, we requested any additional contract documentation the NCO contracting officials, PVAHCS managers, and BDP staff could provide. The SAOW provided us with a few documents found on a computer hard drive.

Because of the incomplete BDP contract documentation, we recommended that the Director of SAOW ensure NCO 18 contracting officers maintain required contracting documentation in eCMS. However, we considered the limited contract information, when viewed within the context of the review objectives and other available evidence, sufficient to reach the opinions, conclusions, and recommendations made in this report.

**Government
Standards**

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

Appendix B Management Comments—Director of Contracting for Network Contracting Office 18

Department of Veterans Affairs Memorandum

Date: August 15, 2016

From: Director, Network Contracting Office 18

Subj: Draft Report, *Review of Alleged Improperly Sole-Sourced Service Contracts at Phoenix VA Health Care System* (Project Number 2015-01818-R7-0092)

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

Through: Director, Service Area Office West

Enclosed is the management response to the draft report for the Review of Alleged Improperly Sole-Sourced Ophthalmology Service Contracts at Phoenix VA Health Care System (PVHCS)

1. The NCO 18 Director and SAOW Director concurs with the recommendation that P&LO, SAOW Director ensure NCO 18 contracting officers maintain required contracting documentation in the eCMS system as required by VA Procurement Policy Memorandum, Mandatory Usage of VA's Electronic Contract Management System.
 - 1.1. A corrective action plan (CAP) has already been initiated and closed for weekly reviews of awarded contract actions to ensure that mandatory documents have been uploaded into the eCMS official contract record. Although the CAP action is closed the monitoring of compliance for uploading mandatory documentation in the contract files remains an ongoing activity. The NCO 18 Director requires all Branch Chiefs to ensure that these reports are addressed weekly and that personnel named on the reports are held individually accountable for uploading mandatory documentation. Further emphasis is also being placed on post award audits being done by the SAOW PA for the various product lines with particular emphasis to ensure that modifications done by those products are also being reviewed.
2. If you wish to discuss the management response, please contact Ms. Sabrina Smith, SAOW-NCO-18, Director of Contracting (480) 466-7907.

(original signed by:)

SABRINA J. SMITH
Director of Contracting, NCO 18

(with concurrence from:)

DELIA A. ADAMS, MBA, CPCM
Director, SAO West
Head of Contracting Activity

Attachment

**VETERANS HEALTH ADMINISTRATION (VHA)
Action Plan**

Review of Alleged Improperly Sole Sourced Ophthalmology Service Contracts at Phoenix VA Health Care System

Date of Draft Report: August 4, 2016

Recommendations/ Actions	Status	Completion Date
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Recommendation 1. We recommended the Procurement and Logistics Office, Service Area Office West Director ensure NCO 18 contracting officers maintain required contracting documentation in the Electronic Contract Management System, as required by VA Procurement Policy Memorandum, Mandatory Usage of VA's Electronic Contract Management System.

VHA Comments: Concur.

The VHA has developed an SOP within the VHA Procurement Manual, first published on September 26, 2012, that provides explicit instructions to 1102 staff that the eCMS contract file is the official contract file of record and all mandatory documents are to be uploaded and retained in the official electronic file. Since the reach of this audit dated back to 1999, well before eCMS was available and hard files were still in use, and because the destruction dates per FAR 4.805 apply equally to both paper and electronic files of a retention period of 6 years and 3 months after final payment; the prior files falling into this destruction status date cannot be retrieved or corrected. However, the NCO18 Director has implemented a strong monitoring plan which was implemented at the start of FY16; it includes a process of the analysts within SAOW running monitoring reports of the electronic database containing the contract official files. This weekly monitoring report of the contract eCMS briefcase identifies files and the individuals whose desktops these files reside where mandatory essential documents have not been uploaded. This program is being monitored closely by management levels, the QA, and branch chiefs to ensure corrective actions are identified and corrected immediately when problems are identified. Individuals repeatedly showing up on these listings will have this annotated in their performance reviews with corrective actions for individual repeat offenders.

The Mandatory Documents Review in eCMS is done weekly by the SAOW staff and corrections are made based on the reviews. The Network Contracting Director and Branch Chiefs are held accountable for the results of these reports.

Mandatory Documents Report	Status: Complete	Target Completion Date: April 30, 2016
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For accessibility, the format of the original documents in this appendix has been modified to fit in this document.

Appendix C Management Comments—Director of the Phoenix VA Health Care System

Department of Veterans Affairs Memorandum

Date: August 12, 2016

From: Director, Phoenix VA Health Care System (644/00)

Subj: Response to Draft Report, *Review of Alleged Improperly Sole-Sourced Service Contracts at Phoenix VA Health Care System* (Project Number 2015-01818-R7-0092)

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

Through: Network Director, VISN 22 (10N22)

1. On August 8, 2016 through August, 12 2016 The Los Angeles Audits and Evaluations Office, Office of Inspector General, NCO 18 and PVAHCS discussed and agreed upon ratification amounts and time intervals of necessary ratification regarding the Review of Alleged Improperly Sole-Sourced Ophthalmology Contracts at Phoenix VA Health Care System (Project Number 2015-01818-R7-0092)
2. PVAHCS is responding to at this time the requested clarified information and designated action plan based on completion of recommended ratification submission.
3. If you have any questions regarding this matter, please contact Jill Friend, Interim Chief of Quality, Safety and Improvement Service, at (602) 277-5551, extension 6362.

(original signed by:)

DEBORAH AMDUR, MSW

(with concurrence from:)

MARIE L WELDON
Network Director, VISN 22

Attachment

Attachment

Recommendation 2. We recommended the Phoenix VA Health Care System director ensure the just over \$12.4 million in unauthorized commitments are ratified in accordance with VA Directive 7401.7, Unauthorized Commitments and Ratification.

VHA Comments: Concur.

The facility has an established process for reviewing any unauthorized commitments for ratification in accordance with VA Policy. Validation of the ratification amount of \$8,748,590 based on the interval of time for this contract has been agreed upon by OIG, NCO18, and PVAHCS to recover available documentation and submission for ratification to NCO18. There were two time periods identified by the OIG with unauthorized commitments totaling about \$3,655,850, however there is a lack of documentation from this period to perform ratification as records are only required to be maintained for a period of 6 years and 3 months according to FAR 4.805. This contract ended in 2008 which was 7 years prior to the OIG investigation into this matter. The COR for this contract is no longer a federal employee due to retirement from service and cannot be consulted on this matter.

Mandatory Documents Report	Status: In progress	Target Completion Date: September 30, 2016
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Recommendation 3. We recommended the Phoenix VA Health Care System director develop a business case to evaluate the hiring of VA ophthalmologists and the use of Non-VA Care options, such as the Patient-Centered Care Program and as defined in the Veterans Access, Choice, and Accountability Act.

VHA Comments: Concur.

Since the previous eye care contract with BDP expired on March 31, 2015, the Phoenix VA Health Care System has met the optometry needs of the Veterans we serve through the Choice Program with TriWest. A business case proposal to bring eye care services back in-house and hire VA ophthalmologists and optometrists was originally presented and subsequently approved by the PVAHCS Governing Council during a meeting on October 13, 2015. This proposal has been on hold pending funding availability, which has given the facility an opportunity to evaluate the effective use of the Choice Program for optometry services.

The plan for the provision of optometry services was reviewed again during the Governing Council meeting held on March 8, 2016, and the decision was made to continue utilizing current Ophthalmology and Optometry services provided through the Choice network and to not implement the plan previously approved in October 2015 to establish those services in-house.

The Phoenix VA Health Care System believes that Veterans are receiving timely and appropriate eye care services in the community via the Choice program. Ninety-seven percent of patients referred to Choice are being seen within 30 days. The Low Vision Clinic and emergency eye services have been retained on site.

Mandatory Documents Report	Status: Complete	Target Completion Date: March 8, 2016
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Recommendation 4. We recommended the Phoenix VA Health Care System director ensure staff are aware of Federal Acquisition Regulation section 6.301 and 3.101 1 related to sole-source contracting and standards of conduct.

VHA Comments: Concur.

PVAHCS executive and senior service chief leadership received Federal Acquisition Regulation sole-source contracting and standards of conduct training during the July 14, 2016, Director's Staff Meeting. Please see the embedded agenda, sign-in sheets, and training outline below.

Status: Mandatory Documents Report	Target Completion Date: Complete	July 14, 2016
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For accessibility, the format of the original documents in this appendix has been modified to fit in this document.

Appendix D **OIG Contact and Staff Acknowledgments**

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Janet Mah, Director Milan Gokaldas Corina Riba

Appendix E Report Distribution

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