



OFFICE OF THE SECRETARY

The Department's Awarding and Administering of Time-and- Materials and Labor-Hours Contracts Needs Improvement

FINAL REPORT NO. OIG-14-001-A
NOVEMBER 8, 2013

U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation

FOR PUBLIC RELEASE





November 8, 2013

MEMORANDUM FOR: Barry E. Berkowitz
Senior Procurement Executive
Director of Acquisition Management

A handwritten signature in blue ink, appearing to read "AKatsaros".

FROM: Andrew Katsaros
Assistant Inspector General for Audit

SUBJECT: *The Department's Awarding and Administering of Time-and-Materials
and Labor Hours Contracts Needs Improvement*
Final Report No. OIG-14-001-A

Attached is our final report on our audit of Department-wide time-and-materials and labor hours (T&M/LH) contracts from fiscal years (FYs) 2009–2011. Our objective was to determine whether the National Oceanic and Atmospheric Administration, Census Bureau, and National Institute of Standards and Technology properly awarded and administered these contract actions.

We determined that contracting and program officials did not properly award and administer T&M/LH contracts and task orders for work performed. These conditions occurred because contracting and program officials did not follow the Federal Acquisition Regulation (FAR) and Commerce Acquisition Manual (CAM) for awarding and administering T&M/LH contract actions.

Specifically, our findings examine contract award and oversight procedures, the accuracy and completeness of data reported and records maintained by the bureaus on the use of T&M/LH contracts, contract files and contract documentation, and the deobligation of inactive funds on completed T&M/LH contracts. Our findings include potential monetary benefits to the Department—in the form of unsupported costs and funds put to better use—totaling more than \$170 million.

The final report will be posted on OIG's website pursuant to section 8L of the Inspector General Act of 1978, as amended.

In accordance with Department Administrative Order 213-5, please provide us with your action plan within 60 days of the date of this memorandum. We appreciate the assistance and courtesies extended to us by the Department and its bureaus. If you have any questions about this report, please contact me at (202) 482-7859 or Mark Zabarsky, Audit Director, at (202) 482-3884.

Attachment



Report In Brief

NOVEMBER 8, 2013

Background

For fiscal years (FYs) 2009–2011, the Department awarded 1,383 time-and-materials (T&M) and labor-hour (LH) contracts, with a total obligated value of approximately \$1.3 billion. These contract types require contractors to provide their best effort, up to a maximum number of hours authorized. Each hour of work authorizes a contractor to charge the government an established labor rate, which includes profit. T&M/LH contracts are considered high risk because the government assumes the risk for cost overruns.

Because of this high risk, the Federal Acquisition Regulation (FAR) requires appropriate government monitoring of contractor performance for reasonable assurance of efficient methods and effective cost controls. Further, FAR directs that T&M/LH contracts may only be used when it is not possible at the time of award to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. For many years, FAR has required contracting officers to document justification for the use of each T&M/LH contract.

Why We Did This Review

Since 2009, the government has increasingly regulated contracts other than firm fixed price contracts. A Presidential Memorandum on Government Contracting, issued March 4, 2009, emphasized the importance of agencies becoming more fiscally responsible in their contract actions by governing the appropriate use and oversight of all contract types and cutting contract costs. In July 2009, the Office of Management and Budget (OMB) directed agencies to reduce the use of high-risk contracts, which include cost-reimbursement and T&M/LH contract types. In our Department-wide audit, we reviewed 43 contracts composed of 62 various T&M/LH contract actions to determine whether the National Oceanic and Atmospheric Administration (NOAA), the Census Bureau, and the National Institute of Standards and Technology (NIST) properly awarded and administered these contract actions.

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OIG-14-001-A

WHAT WE FOUND

We determined that contracting and program officials did not properly award and administer T&M/LH contracts and task orders for work performed. These conditions occurred because contracting and program officials did not follow FAR and the Commerce Acquisition Manual (CAM) for awarding and administering T&M/LH contract actions, specifically regarding:

Contract and task order award procedures. We found that (a) contracting officers' written determination and findings documents either were missing or did not include sufficient rationales for why lower risk contract types could not be used and (b) contracting officers did not justify changes in negotiated ceiling prices. We determined that contracting officers did not justify the use of these contract types for 49 of the 62 contract actions we examined. Also, contracting officers did not justify and document in the contract file the reasons for changes to the established ceiling prices for 11 contract actions.

Contract oversight procedures. We found that Departmental contracting and program officials did not sufficiently monitor contractor performance. Specifically, these officials did not: (a) develop quality assurance surveillance plans for 21 contract actions, (b) maintain adequate documentation of completed contractor performance reviews or quality assurance evaluations for 35 contract actions, or (c) adequately support payment of contractor invoices for 28 contract actions.

Further, we found that:

The Department's volume of T&M/LH contracts is unclear because bureaus' reported data and maintained records on T&M/LH contracts were inaccurate and incomplete. Twelve of the 62 contract actions (almost 20 percent) in our sample were incorrectly coded in Federal Procurement Data System–Next Generation (FPDS-NG), in which CAM requires contract reporting.

Contract files are missing or lack key contract documentation. One bureau was unable to locate the contract file for two contracts identified in our sample. We also found that contract files lacked documents such as determinations and findings and quality assurance surveillance plans (QASPs).

Funds on completed T&M/LH contracts are not always deobligated. On one contract we reviewed, about \$1.3 million in obligation remained outstanding after work was completed in September 2011. This example is indicative of the issue that we identified in *Monitoring of Obligation Balances Needs Strengthening* (OIG-13-026-A).

WHAT WE RECOMMEND

We recommend that the Director of Acquisition Management

1. Include a review of T&M/LH contracts, as part of the Department's annual acquisition management reviews, for proper determination and findings, documented changes in established ceiling prices, QASPs to document contractor performance, and verified contractor invoices with supporting documentation;
2. Monitor and evaluate the use and management of T&M/LH contracts through the acquisition review board and investment review board processes;
3. Improve the process for entering accurate and complete data into FPDS-NG; and
4. Improve controls to properly maintain and safeguard contract files.

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*COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934*

Introduction

For fiscal years (FYs) 2009–2011, the Department¹ awarded 1,383 time-and-materials (T&M) and labor-hour (LH) contracts, with a total obligated value of approximately \$1.3 billion (see table I). These contract types require contractors to provide their best efforts, up to the maximum number of hours authorized, to accomplish contract objectives. Each hour of work authorizes a contractor to charge the government an established labor rate, which includes profit.

Table I. Summary of FY 2009–2011 T&M/LH Contract Awards and Obligation Amounts Processed by Census, NIST, and NOAA

Fiscal Year	Number of Census Contracts	Number of NIST Contracts	Number of NOAA Contracts	Total Contracts	Total Amount Obligated (\$)
2009	65	48	177	290	349,756,356
2010	114	64	260	438	500,221,804
2011	129	102	424	655	463,471,755
Totals	308	214	861	1,383	1,313,449,915

Source: Federal Procurement Data System-Next Generation

T&M/LH contracts are considered high risk because the contractor's profit is tied to the number of hours worked; therefore, the government assumes the risk for cost overruns. Because of the high risk associated with T&M/LH contracts, the Federal Acquisition Regulation (FAR) provides that appropriate government monitoring of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used. Further, because of the risks involved, FAR directs that T&M/LH contracts may only be used when it is not possible at the time of award to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. For many years, FAR has required contracting officers to prepare determination and findings documents that justify the use of each T&M/LH contract, including reasons why no other contract type would be suitable.

Since 2009, the government has increased its efforts to regulate the use and management of contracts other than firm fixed price contracts. A Presidential Memorandum on Government Contracting, issued March 4, 2009, emphasized the importance of agencies becoming more fiscally responsible in their contract actions by governing the appropriate use and oversight of all contract types and cutting contract costs. In July 2009, the Office of Management and Budget (OMB) directed agencies to reduce the use of high-risk contracts, which include cost-reimbursement and T&M/LH contract types.

¹ The Department total comprises contract actions and obligation amounts for only the Census Bureau, the National Institute of Standards and Technology (NIST), and the National Oceanic and Atmospheric Administration (NOAA) as the contracting agencies.

Objectives, Findings, and Recommendations

In this Department-wide audit, out of the 1,383 T&M/LH contracts, we reviewed a stratified random sample of 43 contracts composed of 62 various types of T&M/LH contract actions (e.g., contracts, task orders,² and blanket purchase agreements³) valued at a total negotiated ceiling price of more than \$58 million. Our objective was to determine whether NOAA, Census, and NIST properly awarded and administered these contract actions.

We determined that contracting and program officials did not properly award and administer T&M/LH contracts and task orders for work performed (see table 2). These conditions occurred because contracting and program officials did not follow FAR and the Commerce Acquisition Manual (CAM) for awarding and administering T&M/LH contract actions.

Table 2. Summary of Findings, by Bureau

Bureau	Total Number of Contract Actions Reviewed	Total Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
Census Bureau	11	\$15,724,293	5	2	0	9	6
NIST	23 ^a	6,068,957	23	5	3	4	4
NOAA	28 ^b	36,785,201	21	4	18	22	18
TOTALS	62	\$58,578,451	49	11	21	35	28

Source: OIG review of contract files

^a We reviewed a total of seven different NIST contracts. For five of these contracts, we reviewed 21 separate task orders.

^b We reviewed 25 unique NOAA contracts composed of 28 contract actions.

Specifically, regarding contract and task order award procedures (see finding I), we found that:

- Contracting officers' written determination and findings documents either were missing or did not include sufficient rationales for why lower risk contract types could not be used.
- Contracting officers did not justify changes in negotiated ceiling prices.

Regarding contract oversight procedures (see finding II), we found that:

- Contracting officers and program officials did not prepare Quality Assurance Surveillance Plans (QASPs), and they did not perform effective surveillance over contractor performance (from 1,383 T&M/LH contracts awarded FYs 2009–2011, we estimate that as of September 30, 2011, approximately \$169.5 million was paid to contractors without adequate surveillance documentation of contractor performance; see appendix C for unsupported costs we identified as monetary benefits to the Department).

² A *task order* is an order for services placed against an established contract or with government sources.

³ A *blanket purchase agreement* is a simplified method of filling anticipated, repetitive needs for supplies or services by establishing charge accounts with qualified sources of supply.

- Contracting and program officials did not ensure that T&M/LH contract actions were properly supported by individual timesheets before payment of invoices.

Further, we found that:

- The Department's volume of T&M/LH contracts is unclear because data reported and records maintained by the bureaus on the use of T&M/LH contracts were inaccurate and incomplete (see finding III.)
- Contract files are missing or lack key contract documentation (see finding IV).
- Funds on completed T&M/LH contracts are not always deobligated (see finding V).

While T&M/LH contracts are appropriate when specific circumstances justify the risks, we conclude that heightened management controls are needed, including thorough justifications specific to the individual procurements that provide insight to management about why T&M/LH contracts are being used. Without proper monitoring of T&M/LH contractor performance, the risk of wasted government dollars is increased.

Appendix A further details the objectives, scope, and methodology of our audit. Appendix B summarizes the findings associated with each bureau. Appendix C charts the potential monetary benefits we found from our review.

I. Contract and Task Order Award Procedures Need Improvement

Departmental contracting officers did not award T&M/LH contract actions in accordance with FAR and CAM requirements. We determined that contracting officers did not justify the use of these contract types for 49 of the 62 contract actions we selected for this audit. Also, contracting officers did not justify and document in the contract file the reasons for changes to the established ceiling prices for I I contract actions. As a result, the contracting officers may have incurred additional costs by not negotiating reasonable ceiling prices and unnecessarily using a riskier contract type.

A. *Justifying the Use of T&M/LH Contract Actions*

FAR⁴ requires contracting officers, when choosing to use a T&M/LH contract, to provide sufficient facts and circumstances in a written justification, known as a *determination and findings*,⁵ concluding that no other contract type is suitable for the

⁴ Though the law continues to change, even at the beginning of the period covered by the scope of this audit and continuing through the period of audit fieldwork, FAR sections FAR 8.405-2(e)(7), governing federal supply schedules (now (f)(7)), and 16.601(d)(1), governing time-and-materials contracts, both have required the government, before entering into a T&M/LH contract, to document why other preferable types of contracts were not suitable or not used.

⁵ Determination and Findings is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The "determination" is a conclusion or decision supported by the "findings." The findings are a statement of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

acquisition. CAM⁶ requires that the justification must:

- Demonstrate the need for a T&M/LH contract and explain why it is not possible at the time of placing the contract or order to estimate accurately the extent or duration of work or anticipated costs with any reasonable degree of confidence
- Include a description of the market research conducted
- Describe actions planned to maximize the use of firm fixed price (or fixed-price with economic price adjustment) contracts on future acquisitions for the same requirement

However, contracting officials did not follow FAR and CAM criteria regarding justification for using T&M/LH contracts. First, we found that contracting officers either did not prepare a determination and findings document or it was missing from the contract file for 22 of the 49 contract actions. For example, on one T&M task order awarded against a blanket purchase agreement for IT infrastructure technical services support to the National Environmental Satellite, Data, and Information Service (NESDIS), the contracting officer did not provide evidence of the preparation of a determination and findings document. NOAA contracting officials awarded the contract on January 13, 2010, for a ceiling price amount of \$3.5 million. Contracting officials stated they could not locate the determination and finding document that justified the use of this type of contract for this procurement. The contract was awarded as a T&M contract. On another contract for accounting and financial support—valued at about \$3.2 million—NIST contracting officials could not find the determination and finding document in the contract file.

Written justifications were not prepared for the use of time-and-materials and labor-hour contracts.

Second, we found that contracting officers also did not prepare adequate determination and findings documents for the other 27 contract actions to justify a T&M/LH contract. Generally, the determinations and findings documents that were prepared simply quoted FAR criteria for when a T&M contract is appropriate. This was done without providing further explanation or supporting documentation for why those contract actions met the criteria. For example:

- On June 25, 2010, a contracting officer definitized a letter contract for a negotiated ceiling price of \$2.5 million for a base year and two 2-year option periods to provide contractor support for 2020 Census research support planning. On the same day, the contracting officer prepared and approved a determination and findings document. This document outlined in general terms why a T&M type contract must be used, stating that “a T&M/LH contract is suitable since it is not possible to anticipate costs with any reasonable confidence at time of contract award.” However, the contracting officer did not specify why it was not possible to anticipate or estimate costs. In this instance, while the

⁶ As of December 2010, the CAM has reinforced this requirement for documenting the rationale for using T&M/LH contracts.

contracting officer was able to definitize the letter contract within 180 days, as required by FAR,⁷ the Census Bureau entered into the contract without sufficiently justifying the urgency of the need.

- On one NIST LH task order to provide scientific and technical services to test structural support materials—totaling approximately \$174,300—the determination and finding document only contained information defining the requirement, funding limitations, and cost differences between a contract employee and a full-time equivalent. This document did not contain facts or rationale justifying why no other contract type was suitable.

Third, contracting officers did not always make an attempt to convert follow-on⁸ contracts to a different contract type, even when historical data existed. One way to decrease the risks inherent in T&M/LH contracts is to convert to a less risky contract type for follow-on efforts. In fact, FAR and CAM caution contracting officers to avoid the protracted use of T&M/LH contracts when preparing the requirements for a follow-on contract. Program officials should work with the contracting officer to determine whether any portion can be broken out and ordered on a fixed-price basis.

For example, we noted that NIST awarded three indefinite quantity contracts—associated with 18 task orders with ceiling prices ranging between \$12,435 and \$213,460—which were follow-on awards to earlier contract actions awarded to the same contractor for engineering and technical services. The determination and findings documents did not describe actions to maximize the use of firm fixed price contracts on future acquisitions for the same requirement, as required by CAM.⁹

The inadequacy of the documentation supporting the use of T&M/LH contracts does not necessarily indicate that the contract was inappropriate. However, contracting officers may have incurred unnecessary costs by using the riskiest contract type that provides no incentive to the contractor for cost control or labor efficiency. When preparing a determination and findings document, contracting officers must specifically explain why the work to be performed is appropriate for a T&M/LH contract. This will help ensure that the government does not incur excessive cost growth on these contracts when a less risky contract type would be more appropriate.

B. Justifying the Change in Negotiated Ceiling Prices

FAR¹⁰ states that contracting officers may only use a T&M/LH contract if the contract includes a ceiling price that the contractor exceeds at its own risk. FAR and CAM¹¹ require contracting officers to justify and document in the contract file the reasons for any subsequent change in the ceiling price.

⁷ FAR subsection 16.603-2(c).

⁸ A *follow-on* contract action requests the repeat supply of goods or services supplied under the original contract.

⁹ CAM 1316.1 § 5.3(a).

¹⁰ FAR subsection 16.601(d)(2).

¹¹ FAR subsection 12.207(b)(1)(ii)(C) and CAM 1316.1 § 5.3(d).

We found that contracting officers did not justify a total increase of approximately \$3.3 million in negotiated ceiling prices for 11 contracts' actions. As a result, the Department assumed additional cost risk and may have paid excessive costs and more than fair and reasonable prices. In general, the ceiling prices were increased because of revised scope work that extended the period of performance or added labor category positions. However, the contract files did not contain either adequate or, in some instances, any documentation explaining that it was in the best interest of the procuring agency to increase the ceiling price. For example:

- A NIST contracting officer issued a task order on September 17, 2009, for programming services to support the Revolving Loan Fund Management System. The task order had a ceiling price of \$409,845 for the base year and 1 option year. However, on September 20, 2010, the contracting officer issued a modification to increase the ceiling price by \$251,814, or 39 percent. The modification added 1,723 additional hours and extended the period of performance by 5 months. The contracting officer did not justify and document the need in the contract file for the increased ceiling price amount.
- On one contract action—valued at about \$3,191,494—for support services to enhance the mission of the Office of Satellite and Product Operations, a NOAA contracting officer issued a modification to increase the ceiling price to \$3,429,234. The modification revised the statement of work to include other direct costs for support services for meeting preparation and coordination, local and nonlocal travel, and training courses. The contracting officer did not prepare a justification explaining why the ceiling price increase was necessary. In addition, e-mail correspondence in the contract file revealed that our request to review this contract prompted contracting officials to correct funding issues. To illustrate, in a July 16, 2012, e-mail message, the contract specialist asked “a program office official to take immediate action to deobligate approximately \$86,000 and fix errors on call order 1 because the OIG will arrive in the morning to review the contract file.”

Contracting officers did not justify changes in ceiling prices.

II. Contractor Oversight Procedures Need Improvement

Departmental contracting and program officials did not sufficiently monitor contractor performance. Specifically, these officials did not:

- Develop quality assurance surveillance plans for 21 contract actions
- Maintain adequate documentation of completed contractor performance reviews or quality assurance evaluations for 35 contract actions
- Adequately support payment of contractor invoices for 28 contract actions

This inadequate monitoring could result in the Department accepting substandard performance by contractors, paying for services and items not received, and awarding contracts to vendors with a history of substandard performance. Adequately documenting contract monitoring is especially important, given the Department's high use of T&M/LH contracts that place cost and performance risks on the Department.

A. Lack of Quality Assurance Surveillance Plans (QASPs) and Missing Surveillance Documentation

FAR¹² and CAM state that T&M/LH contracts do not provide a positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate government oversight, also known as *contract surveillance* or *quality assurance* of contractor performance, is required to provide reasonable assurance that (a) efficient methods and effective cost controls are used throughout the life of the contract and (b) the contractor is performing in accordance with the statement of work. One way to ensure quality assurance is to develop a QASP.¹³ FAR¹⁴ states that these plans should specify all work requiring surveillance, including the method of surveillance, and that quality assurance records should be maintained as part of the contract file. CAM¹⁵ also states that, for T&M/LH contracts, the contract file shall contain, at a minimum, the surveillance plan outlining how the government will monitor, control, and mitigate the impact of any adverse performance. Monitoring of contractor's performance is typically performed by a contracting officer's representative (COR).¹⁶

Surveillance plans and other documentation were not prepared or were missing.

We found that contracting and program officials did not follow FAR and CAM criteria when administering T&M/LH contract actions. First, they either did not prepare or they did not maintain copies of QASPs in the contract file for about a third of the contract actions reviewed. For example, a NOAA contracting officer awarded a contract for a tsunami IT modernization project at a ceiling price of \$500,000. Contracting officers told us that they could not provide the QASP, surveillance documentation, and timesheets because contract files for the base-year contract were missing because of a reorganization, personnel changes, and two office moves. Although NOAA maintained a file for the option year, surveillance documentation of the contractor's performance was still missing.

Second, although CORs were assigned to monitor the contractor's performance, in most cases we found discrepancies in the rigor of the monitoring. For example:

¹² FAR subsection 16.601.

¹³ QASPs should be prepared in conjunction with the preparation of the statement of work.

¹⁴ FAR subsections 46.401(a) and 4.803(b)(15).

¹⁵ CAM 1316.1 § 5.3.

¹⁶ A COR is an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

- NIST contracting officials awarded a contract action for accounting and financial support services at a negotiated ceiling price amount of \$312,560. Contracting officials stated that surveillance documentation was not prepared and timesheets were not maintained in the contract file.
- Census Bureau contracting officials awarded a contract action for data product development at a negotiated ceiling price of \$25,000. Although a QASP was prepared, the COR stated he did not document his surveillance results.
- NOAA contracting officials awarded a contract action for an increased ceiling price amount of \$1,170,961. The QASP and COR assignment letter were missing from the contract file, and NOAA officials also confirmed that surveillance documentation was not prepared. These officials stated they were taking steps to change the way business had been done in the past.

According to the contract actions we reviewed, bureaus paid contractors about \$33.1 million.¹⁷ However, the documentation associated with \$24.8 million (or 75 percent of dollars paid) lacked adequate support to determine whether payments made to the contractors were warranted. We estimate that, as of September 30, 2011, approximately \$169.5 million was paid to contractors without adequate surveillance documentation of contractor performance, which we therefore identified as unsupported costs.¹⁸

Without any documentation of contractor performance, there is no record of whether deliverables met acceptance criteria or quality standards. Contractors performing T&M/LH contracts are paid for the hours applied to the task, regardless of the outcome. Thus, without surveillance documentation, the Department does not have reasonable assurance that it is receiving appropriate value for dollars expended. Also, because the lengths of some contracts extend over multiple years, personnel turnover makes it difficult to make sure that surveillance steps will be taken through the life of the contract. Personnel changes also make it difficult to have uniform, historical documentation of the surveillance efforts available for review.

B. Inadequate Support of Invoice Payments

FAR¹⁹ states the government will pay the contractors when they submit vouchers approved by the contracting officer or the authorized representative. The contractors must substantiate vouchers, including any subcontractor hours reimbursed at the schedule's hourly rate, with evidence of actual payment and with (1) individual daily job timekeeping records, (2) records that verify that employees meet the qualifications for

¹⁷ The \$33.1 million represents the total amount paid to contractors as of March 2013.

¹⁸ Due to the lack of surveillance documentation, we extrapolated the results of our sample to the universe of 1,383 T&M/LH contracts awarded FYs 2009–2011. The estimate methodology was developed by using the lowest value with a 95 percent confidence interval.

¹⁹ FAR subsection 52.232-7.

the labor categories specified in the contract, or (3) other substantiation approved by the contracting officer.

We found that contractor invoices submitted for payment were often not supported by individual timesheets outlining the labor category, hourly rate, and daily hours charged for 28 contract actions. T&M/LH contract actions allow the contractor to charge a fixed profit for every labor hour worked.

Contractor invoices are not thoroughly reviewed prior to payment.

Therefore, it is imperative for contractor surveillance officials to review contractor invoices for accuracy and sufficient cost breakdowns. Examples of insufficiently supported contractor invoicing include the following:

- On four orders issued against a blanket purchase agreement for professional services, NOAA paid a contractor \$1.4 million. The blanket purchase agreement required the contractor to submit monthly invoices with employee labor and cost summaries, such as timesheets that include employee names, titles, labor categories, hourly rates, and hours worked. Although the invoices for these orders indicated how many individuals performed the work and the rates for each labor category, they did not include the total labor hours worked, employee names, or a breakdown of hours by employee. For example, on one invoice, the contractor requested payment in the amount of \$57,247.86 for call order 0001. The total amount invoiced included expenses for four labor categories and travel. However, the contractor did not provide employee names, a breakdown of hours worked by each employee, or travel receipts.
- On July 6, 2009, Census Bureau contracting officials awarded a contract for population estimates at a ceiling price of \$13,885. The contractor submitted invoices for payment but did not include documentation, such as timesheets, labor hours expended, or labor rates to support the charges on the invoices. Contracting officials made a decision to accept the contractor's invoices based on a percent of completion of the project, rather than actual labor hours expended. Census Bureau officials stated that the contractor did not require its employees to clock in or submit timesheets and that it set up an accounting system for employees to record their labor hours. In addition, the contracting officer technical representative retired, and contracting and program officials could not locate her files. Ultimately, the Census Bureau paid the contractor \$13,199.

III. Misunderstandings and Errors Cast Doubt on the Reliability of Data Accuracy and Incomplete Reporting of T&M/LH Contracts

CAM²⁰ states that contracting officers are responsible for ensuring that all required reporting included in Federal Procurement Data System – Next Generation (FPDS-NG)

²⁰ CAM 1316.1 § 1.6.9.

accurately reflects the contract type used. Maintaining accurate data is an essential component of good oversight and helps lead to informed decisions. In our sample of T&M/LH contracts, we found that the data reported in FPDS-NG were not accurate.

Twelve of the 62 contract actions (almost 20 percent) in our sample were incorrectly coded in FPDS-NG. Six were coded as fixed price contracts when they were awarded as LH contracts (see table 3). Contracting officials at NIST stated that the six contract actions had mistakenly been entered into the FPDS-NG as firm fixed price contract actions.

Table 3. NIST Contracts Actions Incorrectly Coded In FPDS-NG

	Contract Action	Negotiated Contract Amount	Per FPDS-NG	Per Contract File Review
1	RA1341-09-CQ-0061 T11162	\$ 64,035	Fixed Price	Labor Hours
2	RA1341-09-CQ-0061 T11163	52,367	Fixed Price	Labor Hours
3	RA1341-09-CQ-0061 T11164	174,340	Fixed Price	Labor Hours
4	RA1341-09-CQ-0061 T11167	34,012	Fixed Price	Labor Hours
5	RA1341-09-CQ-0061 T10526	84,693	Fixed Price	Labor Hours
6	RA1341-09-CQ-0061 T11194	74,849	Fixed Price	Labor Hours
	6	\$484,296		

Source: OIG review of contract files

Conversely, our review of the contract files determined that six other contract actions should have been coded as firm fixed price rather than a T&M or LH contract (see table 4, below). For instance, Census Bureau contracting officials stated that two contract actions (for mobile broadband connection plans and computer and software support services) in our sample had mistakenly been entered as T&M contracts in FPDS-NG. In addition, NOAA contracting officials confirmed that four contract actions identified as T&M/LH in FPDS-NG should have been coded as firm fixed price.

FPDS-NG data is not fully reliable.

Table 4. Census Bureau and NOAA Contract Designations According to the Contract File Review and FPDS-NG

	Contract Action	Negotiated Contract Amount	Per FPDS-NG	Per Contract File Review
1	YAI3231INC0312	\$ 86,367	Time-and-Materials	Firm Fixed Price
2	YAI32309NC0858	45,000	Time-and-Materials	Firm Fixed Price
3	SSI33E10NC2974	64,733	Labor Hours	Firm Fixed Price
4	EAI33CI1SEI653	7,000	Time-and-Materials	Firm Fixed Price
5	RAI33009BU0053	0 ^a	Time-and-Materials	Firm Fixed Price
6	EAI33RI1INC0980	5,560	Time-and-Materials	Firm Fixed Price
	6	\$208,660		

Source: OIG review of contract files

^a The contract amount is not provided because this contract action is a firm fixed price blanket purchase agreement for cellular services to all bureaus within the Department of Commerce. Funds are obligated against the individual task orders.

Inaccuracies and deficiencies in maintaining a complete list of active T&M/LH contract actions occurred, in part, because contracting officials did not consistently ensure the accuracy of individual contract actions reported in FPDS-NG. This practice resulted in misreporting T&M/LH contract actions in FPDS-NG, which increases the risk of erroneous reporting to internal and external stakeholders such as Congress, OMB, and taxpayers. Having complete and accurate information allows contracting officials to monitor the use and execution of these types of contracts more effectively.

IV. Contract Files Are Missing or Lack Key Contract Documentation

NOAA was unable to locate the contract file for two contracts identified in our sample. FAR²¹ requires the head of each office performing contracting, contract administration, or paying functions to establish files containing the records of all contract actions. Missing files are an indication of questionable contract management and oversight practices.

We also found that contract files lacked documents, such as determinations and findings and QASPs. FAR²² requires that documentation in contract files be sufficient to constitute a complete history of the contract transactions to support informed decisions at each step in the acquisition process and provide information for reviews and investigations. In addition, the Government Accountability Office's *Standards for Internal Control in the Federal Government* states that agencies should have internal control activities, such as the creation and maintenance of records that provide evidence of execution of approvals and authorizations. The need for well-maintained and complete contract files is important, not only for day-to-day contract administration but also for when the Department experiences turnover with its contracting staff. Complete contract files help ensure proper transfer of responsibilities among staff and continuity of operations.

²¹ FAR subsection 4.801(a).

²² FAR subsection 4.801(b).

V. Funds on Completed T&M/LH Contracts Run the Risk of Not Being Deobligated

Obligations that are no longer needed or exceed estimated needs should be deobligated and made available to fund other projects. The timely deobligation of funds could result in savings to the Department and also be used to fund other priorities. On one contract we reviewed—a Census Bureau contract for technical expertise in data collection operations—about \$1.3 million in obligation remained outstanding after work was completed in September 2011. Despite the work's completion, unexpended balances were not released. The contractor even submitted a final invoice for payment, dated October 5, 2011. We notified the contracting officer about this issue on March 13, 2012, and the contracting officer acknowledged he had not deobligated the funds. Immediately after our notification, the contracting officer issued a modification to deobligate the \$1.3 million.

This example is indicative of the issue that we identified in *Monitoring of Obligation Balances Needs Strengthening* (OIG-13-026-A). In this prior audit report, we found that the Department needs stronger internal controls, policies, and procedures to ensure that the bureaus' obligations are adequately monitored and deobligated when appropriate. Because we have addressed this issue in that report, we are not making any recommendations here related to deobligating funds. However, this issue may suggest that other T&M/LH contracts can run the same risk of not deobligating inactive funds and would warrant better management of this issue by the bureaus.

Recommendations

We recommend that the Director of Acquisition Management

1. Include a review of T&M/LH contracts as part of the Department's annual acquisition management reviews to ensure that contracting personnel:
 - Properly prepare and maintain determination and findings
 - Document changes in established ceiling prices
 - Prepare and maintain QASPs to document contractor performance
 - Verify contractor invoices with supporting documentation
2. Monitor and evaluate the use and management of T&M/LH contracts through the acquisition review board and investment review board processes
3. Improve the process for entering accurate and complete data into FPDS-NG
4. Improve controls to properly maintain and safeguard contract files

Summary of Agency Response and OIG Comments

OIG received the Department's comments on the draft report, which we include as appendix B of this final report. In its response, the Department stated that some contract actions OIG listed under NIST had first been awarded by NOAA then later transferred to NIST for contract administration. Accordingly, the Department asked OIG to (a) identify those contract actions as awarded by NOAA and (b) include a note of the period of performance for contract administration by NIST. On July 26, 2013, we requested from NIST information about the contract administration performance periods; however, the agency did not respond to our request.

Based on the Department's review of the draft and subsequent discussions, we have made some suggested changes in the report. The Department concurs with the findings and recommendations in the report.

Appendix A: Objectives, Scope, and Methodology

The objective of our audit was to determine whether the Census Bureau, the National Institute of Standards and Technology (NIST), and the National Oceanic and Atmospheric Administration (NOAA) properly awarded and administered time-and-materials (T&M) and labor-hour (LH) contract actions.

To accomplish our objective, we

- Evaluated Departmental practices against relevant policies and guidance, including Office of Management and Budget directives, the Federal Acquisition Regulation (FAR), and Departmental acquisition guidance
- Identified the total number of contract actions, contracts, and net obligations reported as T&M/LH for fiscal years (FYs) 2009–11 using the Federal Procurement Data System-Next Generation (FPDS-NG) (net obligations for T&M/LH contracts during this period were \$1.3 billion, encompassing 1,383 contracts)
- Developed a random statistical sample by stratifying contracts by contracting agency
 - The Department gives 5 agencies (NOAA, NIST, the Census Bureau, Office of the Secretary, and the U.S. Patent and Trademark Office) contracting authority to serve all 13 Department agencies. Contracts were selected for testing at NOAA, NIST, and the Census Bureau on a proportionate basis, based on random number generation.
 - We did not select the Office of the Secretary for this audit because of its small dollar value. We will review the U.S. Patent and Trademark Office, which is exempt from the Federal Acquisition Regulation, in a separate audit.
- Reviewed 43 contracts composed of 62 contract actions
- Tested the reliability of FPDS-NG data by comparing information from the contract file with information gained in interviewing contracting officials (although the report notes problems with data quality in FPDS-NG, we found the data sufficient for generalizing issues found in the contracts we reviewed)
- Reviewed acquisition documentation, such as determination and findings documents, statements of work, price negotiation memorandums, quality assurance surveillance plans, contractor invoices and timesheets, voucher payment documentation, and training and certification requirements for contracting personnel and contracting officer representatives (CORs)

- Reviewed contract files to determine whether payments were properly supported by timesheets and travel documentation and verified by the assigned COR before contracting officials approved payments
- Estimated the mean percent of contracts that failed our tests and the mean dollar value of contracts that failed each test (we developed a range of estimates based on a 95-percent confidence level and reported the lowest estimates predicted by the range).

We developed our estimation methodology (see table A-1, below) by using the *lowest* value for estimates predicted by the 95-percent confidence interval. The margin of error for contracts that were missing surveillance documentation is 12.9 percent. The mean value for a contract missing surveillance documentation was \$771,803, with a margin of error of \$570,458.35. The lower bound estimate of the mean value of contracts missing surveillance documentation is \$201,344.65. To estimate the minimum value of affected contracts, we multiplied the lower bound estimate of the number of affected contracts (60.89%) by the number of contracts (1,383) in our universe to estimate the minimum number of contracts affected (842 contracts). We then multiplied this figure (842) by the lower bound estimate of the mean value of contracts that failed (\$201,344.65) to estimate that the minimum value of affected contracts is \$169.5 million.

Table A-1. Estimation Methodology

Issue	Estimated Minimum Percentage of Contracts Affected	Estimated Minimum Number of Contracts Affected	Estimated Minimum Value of Contracts Affected
Missing surveillance documentation	60.89%	842	\$169.5 million

Source: OIG

Further, we obtained an understanding of the internal controls used to award and administer T&M/LH contracts by interviewing the acquisition personnel at the Census Bureau, NIST, and NOAA and assessing their adherence to the requirements in the Commerce Acquisition Manual (CAM). While we identified and reported on internal control deficiencies, no incidents of fraud, illegal acts, violations, or abuse were detected within our audit. We identified weaknesses in the controls related to the processes and procedures used to award and administer T&M/LH contracts. We relied on computer-processed data to perform this audit.

We conducted the audit fieldwork between March 2012 and March 2013. We did our fieldwork at the Census Bureau Acquisition Division in Suitland, Maryland; the NIST Acquisition Management Division in Gaithersburg, Maryland; and the NOAA Acquisitions and Grants Office in Silver Spring, Maryland. We conducted this audit in accordance with generally accepted government auditing standards. We complied with those standards that 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 performed our work under the authority of the Inspector General Act of 1978, as amended, and Department Organizational Order 10-13, August 31, 2006.

Appendix B: Summary of Findings by Bureau and Contract Action

Table B-I. Summary of Findings Associated with the Census Bureau's Contract Actions

Contract No.	Contract Type	Specific Product or Service	Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
1	YA132306 - NC0612	Labor Hours	Automated Export System Programming Support	\$ 2,999,668	X		X	X
2	YA132309 - CN0040	Labor Hours	Central Indicator Data Repository Support Services	224,998				
3	YA132310 - CN0034	Time and Materials	Business Research and Development Innovation Survey Advisory and Assistance Support Services	825,000			X	
4	YA132310 - SE0155	Labor Hours	A Research Initiative to Investigate the Privacy Aspects of Administrative Records Programs	30,000			X	
5	YA132309 - SE0511	Labor Hours	Federal State Cooperative Program for Population Estimates Agency's Participation in the 2010 Count Review Program	13,885			X	X
6	YA132310 - CN0015	Time and Materials	2020 Census Research Program	2,500,000	X		X	X
7	YA132309 - SE0452	Time and Materials	Data Product Development - Income Historical Topcode Revisions	25,000			X	X
8	YA132309 - SE0504	Time and Materials	IT Data Conversion Services	61,895				X
9	YA132309 - CQ0009	Labor Hours	Standard Economic Processing System II Redesign Support Services	2,470,997	X	X	X	X
10	YA132311 - NC0163	Time and Materials	Research and Development for the Longitudinal Employer Household Dynamics Program	818,014	X	X	X	
11	YA132310 - NC0488	Time and Materials	Technical Expertise in Data Collection Operations in Support of the Field Data Collection and Automation Contract	5,754,836	X		X	
Totals			\$15,724,293	5	2	0	9	6

Source: OIG review of contract files

Table B-2. Summary of Findings Associated with NIST's Contract Actions

Contract No.	Contract Type	Specific Product or Service	Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
1	DG132508 - CN0155	Time-and-Materials	IT Customer Support	\$ 3,351,393	X	X	X	X
2	DG132508 - NC0836	Labor Hours	Accounting and Financial Support Services	312,561	X		X	X
3	RA134109 - CQ0005 - T0044	Labor Hours	Quantum Information and Measurements Project	52,604	X			
4	RA134109 - CQ0005 - T0045	Labor Hours	Sensors Project and Quantum Sensors Program	27,298	X			
5	RA134109 - CQ0005 - T0046	Labor Hours	Sensors Project and Quantum Sensors Program	27,298	X			
6	RA134109 - CQ0005 - T0047	Labor Hours	Advanced Magnetic and Quantum Materials Project	50,960	X			
7	RA134109 - CQ0005 - T0048	Labor Hours	Advanced Magnetic and Quantum Materials Project	41,425	X			
8	RA134109 - CQ0005 - T0049	Labor Hours	Superconducting Quantum Interference Devices	94,589	X			
9	RA134109 - CQ0063 - T0011	Labor Hours	WWVH Radio Station	134,065	X			
10	RA134109 - CQ0063 - T0013	Labor Hours	WWVH Radio Station	213,460	X			
11	RA134109 - CQ0063 - T0014	Labor Hours	Compact Magnetic Sensors	89,394	X			
12	RA134109 - CQ0063 - T0015	Labor Hours	Compact Alkali Atom Atomic Clock	137,003	X	X		
13	RA134109 - CQ0063 - T0016	Labor Hours	NIST Time Scale Operational Support	134,010	X			
14	RA134109 - CQ0066 TO 11162	Labor Hours	Engineering Support for Structural Materials	64,035	X			

Contract No.		Contract Type	Specific Product or Service	Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
15	RA134109 - CQ0066 TO 11163	Labor Hours	Acoustic Emission Calibration using Reference Block	53,867	X	X			
16	RA134109 - CQ0066 TO 11164	Labor Hours	Senior Engineering Support for Structural Materials	175,340	X				
17	RA134109 - CQ0066 TO 11167	Labor Hours	Electron Microscopy and Electron Backscatter Diffraction Characterization of Thin Films and Nanostructures	48,096	X	X			
18	RA134109 - CQ0066 TO 10526	Labor Hours	Hydrogen Pipeline Safety Project	84,693	X				
19	RA134109 - CQ0066 TO 11194	Labor Hours	Charpy Impact Verification Project Support	74,849	X				
20	RA134109 - CQ0066 TO 11283	Labor Hours	Senior Administration Assistance Support	12,435	X				
21	RA134110 - CQ0022 - T0001	Labor Hours	Quantum Dot Optically Gated Field Effect Transistors	83,451	X				
22	RA134110 - CQ0022 - T0004	Labor Hours	Quantum Optical Metrology	144,466	X			X	X
23	SBI 32509 - CQ0003 - 69403	Labor Hours	Revolving Loan Fund Management System	661,660	X	X	X	X	X
Totals				\$6,068,957	23	5	3	4	4

Source: OIG review of contract files

Table B-3. Summary of Findings Associated with NOAA’s Contract Actions

Contract No.	Contract Type	Specific Product or Service	Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
1	EAI33C06 - NC2135	Time and Materials	Mandate for the Mid-Atlantic Bottlenose Dolphin Mortality and Stock Identification	\$ 405,841	X		X	X
2	ABI33F06 - BU0054 - CO018	Labor Hours	Hardware and Software Configuration, Testing, and Installation	500,000	X		X	X
3	EAI33E09 - NC1317	Time and Materials	Global Climate Observing System	4,597,572	X		X	X
4	RAI33M11 - NC0956	Labor Hours	Strategy Execution and Evaluation Budgeting Process for FY 2012 - 2018	77,700	X		X	
5	EAI33C10 - NC0587	Time and Materials	Harmful Algal Blooms/ Marine Biotoxins and Marine Forensic Science Research	218,514	X		X	
6	EAI33C10 - NC0589	Time and Materials	Harmful Algal Blooms/ Marine Biotoxins and Marine Forensic Science Research	312,561	X		X	
7	ABI33C11 - NC0406	Time and Materials	Business Support for the Office of Response and Restoration	5,923,831			X	X
8	EAI33009 - NC0370	Labor Hours	End-to-End Resource Management Project	590,682			X	X
9	DGI35008 - NC1270	Labor Hours	Translation of the Commercial Service brand into print and other multi-media applications	172,288	X		X	X
10	EAI33F06 - SE4981	Time and Materials	Marine Resources Education Program	97,741			X	X
11	EAI33C07 - NC1129	Time and Materials	Applied Ecology and Restoration Research	280,804	X		X	X
12	DGI33W11 - NC0120	Labor Hours	Tsunami Information Technology Modernization Project	500,000	X		X	X
13	FHI33M09 - SE1611	Time and Materials	Emergency Repair on NOAA Ship Oregon II	9,000	X		X	X
14	DGI33E10 - SE0731	Time and Materials	Information Technology Infrastructure Support for NESDIS Headquarters	3,495,988	X			
15	EAI33F10 - NC2815	Time and Materials	Scientific and Technical Support Services for the Northeast Fisheries Science Center	586,180			X	X
16	RAI33R09 - NC1013	Labor Hours	Information Technology Services for the Earth System Research Laboratory	1,170,962	X		X	

Contract No.		Contract Type	Specific Product or Service	Negotiated Ceiling Price	Contract Type Not Justified	Increase in Negotiated Ceiling Price Not Justified	Lack of Quality Assurance Plans	Missing Surveillance Documentation	Invoice Payments Not Adequately Supported
17	EAI33C09 - NCI479	Time and Materials	Research on the Effects of Coastal Habitat Change and Restoration on Living Marine Resources	454,374	X	X	X	X	X
18	AB133C11 - CN0138	Time and Materials	Data Conversion Services	350,000			X		X
19	DG133E10 - BU0085 – Call 0001	Time and Materials	Support Services to enhance the mission of the Office of Satellite and Product Operations	3,429,234	X	X	X		
20	EAI33F10 - NC2428	Time and Materials	Data Management and Editing Support to Assess the Status of Marine Mammal Populations	115,054	X			X	
21	EAI33F07 - NC0660	Time and Materials	Enhance the Enforcement Capabilities of Office for Law Enforcement Programs	8,693,046	X	X	X		
22	RA133M11 - BR0011 Call Order 0001	Labor Hours	Strategic Planning Effort Utilizing Professional Services and Support	402,249	X			X	X
23	RA133M11 - BR0011 Call Order 0002	Labor Hours	Redesign Integrated Prioritization, Allocation and Scheduling Process for Ships and Aircraft	67,960	X			X	X
24	RA133M11 - BR0011 Call Order 0003	Labor Hours	Business Process Redesign	398,187	X			X	X
25	RA133M11 - BR0011 Call Order 0004	Labor Hours	Business Process Reengineering	718,835	X			X	X
26	EAI33F09 - NC2368	Time and Materials	First Mate Requirement on the NOAA Research Vessel	178,551		X	X		
27	EAI33C07 - NCI785	Time and Materials	Consultant Services for the Ocean Systems Test and Evaluation Program	277,887			X		
28	DG133W09 - NC0668	Labor Hours	Systems Engineering Support for the Weather Radio Improvement Program	2,760,160	X		X	X	X
Totals				\$36,785,201	21	4	18	22	18

Source: OIG review of contract files

Appendix C: Potential Monetary Benefits

	Unsupported Costs	Funds Put to Better Use
Finding II	\$169.5 million	
Finding V		\$1.3 million

Appendix D: Agency Response



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

OCT 29 2013

MEMORANDUM FOR: Andrew Katsaros
Assistant Inspector General for Audit and Evaluation
Office of Inspector General

FROM: Ellen Herbst 
Chief Financial Officer and
Assistant Secretary for Administration

SUBJECT: Response to the draft report, *The Department's Awarding and Administering of Time-and-Materials and Labor-Hours Contracts Needs Improvement*

Thank you for the opportunity to review and comment on the draft Office of Inspector General (OIG) report addressing actions needed to improve the Department's use and management of Time-and-Materials and Labor-Hours (T&M/LH) contracts. The Department concurs with the overall findings and recommendations identified in the draft report. However, the Office of Acquisition Management has coordinated with the National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, United States Census Bureau and Office of General Counsel (OGC) to provide comments and additional information for your consideration prior to finalizing the report. A consolidated summary of comments on the draft report are attached for your reference.

If you have any questions regarding this response, please feel free to contact Virna Winters, Director of Acquisition Policy and Oversight Division at (202) 482-3483 or winters@doc.gov.

**Department of Commerce
Office of Acquisition Management
Response to the Draft Audit Report**

"The Department's Awarding and Administering of Time-and-Materials Contracts Needs Improvement"

The Office of Acquisition Management (OAM) appreciates the opportunity to provide comments on the Office of Inspector General (OIG) draft report dated August 22, 2013 assessing the proper award and administration of time-and-materials and labor-hours (T&M/LH) contracts within National Oceanic and Atmospheric Administration (NOAA), National Institute of Standards and Technology (NIST) and the United States Census Bureau (Census). OAM recognizes the importance of proper management and oversight of T&M/LH contracts and has taken concrete steps to improve the effective and efficient use of these contract types to include development of policy to mitigate risk when utilizing high-risk contracts and implementation of sound practices for effective oversight and data quality of contract actions.

The Department concurs with the overall findings and recommendations identified in the draft report; however we offer recommended changes for your consideration. Outlined below is a summary of comments the Department believes will further enhance the accuracy and clarity of the final report. Detail responses provided by the Department's contracting offices are attached for your reference.

I. General Comments

Applicability

As Commerce Acquisition Manual (CAM) 1316.1 is one of the primary authorities used in this report, the OIG should clarify applicability of the CAM requirements relative to contract actions executed prior to April 2010 since contract actions examined during the OIG audit review covered periods prior to the issuance of this policy. In addition, the first bullet under section II on page 6 implies that Quality Assurance Surveillance plans are *required* rather than suggested by the Federal Acquisition Regulation (FAR). We recommend correcting this implication throughout the document.

The introduction provides a summary of T&M/LH contract awards and obligations for Census, NIST and NOAA depicted in Table I on page 1. Some contract actions listed under NIST were awarded by NOAA then later transferred to NIST for contract administration. The OIG should identify those contract actions as awarded by NOAA and include a note of the period of performance for contract administration by NIST.

Unsupported Costs

The draft report provides estimated costs paid to contractors over the period of 2009 – 2011, yet it is unclear as to how these estimates were derived as the potential monetary benefits depicted in Appendix C does not provide a detail explanation of the methodology used to calculate the total estimated costs shown on pages 2 and 8. We suggest adding further details explaining how the estimated costs were calculated.

References

The introduction provided on page 1 of the draft report in paragraph 2 describes T&M/LH contracts. We suggest quoting the description of T&M/LH contracts found in FAR 16.601 rather

than paraphrasing its contents. Also on page 2, the footnotes paraphrase the definition of task order and blanket purchase agreement. We recommend replacing these descriptions with those from the FAR. In addition, the definitions provided in Appendix D should be revised to be entirely consistent with the FAR.

Terms

The draft report uses the term "estimated ceiling price" throughout. This seems inaccurate in light of the fact that T&M/LH contracts have ceilings or not-to-exceed amounts rather than estimates and therefore this should be revised. Also on page 3 under the third bullet, it is unclear what is meant by an "inactive fund"? This term appears again under section V on page. We recommend providing a description for this term. Additionally, on page 12 in section V, it is unclear what is meant by obligations that are "no longer needed" or "exceed estimated needs. We recommend providing clarification of OIG's intent.

II. Findings

Justifying the Use of T&M/LH Contract Actions

The draft report states in section I (A) on page 3 that Contracting Officers did not justify the use of contract types as required in CAM 1316.1 and Federal Acquisition Regulation. However, there was a discrepancy identified by NOAA with the number of contract actions identified in the draft report that lacked Determination and Findings (D&F) documentation.

Justifying the Change in Negotiated Ceiling Prices

The draft report states in section I (B) on page 5 that Contracting Officers did not properly justify increases in negotiated ceiling prices. Upon further review of the contract files identified, NOAA found that one of the contract files contained adequate documentation to justify the change in the negotiated ceiling price.

Lack of Quality Assurance Surveillance Plans (QASPs) and Missing Surveillance Documentation

The draft report states in section II (A) on page 7 that contracting and program officials did not follow FAR and CAM requirements relating to surveillance documentation. Upon further review of the contract actions identified in the draft report as missing a QASP when required, NOAA stated that one contract file actually contained a surveillance plan.

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