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.

OFFICE OF THE SECRETARY

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

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.