

**Review of NARA's Contract for Information Technology and
Telecommunications Support Services**

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Executive Summary

We reviewed the National Archives and Records Administration's (NARA's) \$56 million task order recently awarded to the Capstone Corporation¹ to acquire information technology (IT) and telecommunication support services for the agency. The effort was performed in connection with our "Assessment of NARA's Procurement and Contract Management Practices," the details of which are discussed in our Fiscal Year (FY) 2010 Annual Work Plan. Through this project, which will include several contracts awarded by the Acquisitions Services Division (NAA), we plan to: (a) review contractor billings; (b) review contracts and procurement processes for compliance with the Federal Acquisition Regulation (FAR); and (c) evaluate the monitoring of contractor performance by NARA officials. We will also perform pre-award surveys, contract closeouts, and other contract audit services requested by management.

According to the FAR, all participants in the Federal Acquisition System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the system. The result is a system which works better and costs less.

Fixed-price-type contracts generally expose the government to less risk than other contract vehicles. However, there has been a trend in the Federal Government to increasingly use cost-reimbursement type contracts. To reverse this trend, a White House Memorandum for the Heads of Executive Departments and Agencies, dated March 4, 2009, the subject of which is government contracting, states, "The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers. . . . Reversing these trends away from full and open competition and toward cost-reimbursement contracts could result in savings of billions of dollars each year for the American taxpayer."

While this memorandum was issued after NARA's initial procurement actions reviewed in this audit, the underlying procurement principles have remained constant, and the memorandum documents the historical issues involved with federal acquisitions during the relevant period. For example, the memorandum states that excessive reliance by executive agencies on high risk contracting authorities creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. The memorandum further acknowledged, "Reports by agency Inspectors General (IGs), the Government Accountability Office (GAO), and other independent reviewing bodies have shown that noncompetitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results."

¹ The contract period of performance, which consists of a base year and four options, is five years.

Our review of the new NARA Information Technology and Telecommunications Support Services (NITTSS) Task Order disclosed that:

- agency officials had the opportunity to select a contractual arrangement with less inherent risk to NARA for acquiring these services;
- NARA officials did not prepare a Determination and Findings (D&F) justifying their use of a Time-and-Materials (T&M) component to this acquisition, and their documented rationale for using other than a firm-fixed-price (FFP) order or performance-based order was inadequate;
- the Quality Assurance Surveillance Plan (QASP) for the Capstone Task Order did not adequately describe the methodology, frequency, documentation required, or reporting on requirements;
- contractor performance was not being evaluated on the basis of achieving the Service Level Agreements (SLAs) in the Task Order;
- the surveillance process was poorly documented and not well-organized for review;
- the contractor was not complying fully with the Task Order's Invoice Submission Requirements; and
- the contractor has failed to satisfy task order requirements related to the delivery of data items.

As a result, (a) most of the risk for task order performance resides with the government; (b) there is no documented evidence to support that sufficient research and analysis was performed prior to choosing a T&M type of task order to procure the information technology and telecommunications support services; (c) NARA lacks assurance that the contractor is performing contractual effort efficiently, and in accordance with task order specifications; (d) task order management officials cannot be assured contractor billings are accurate; and (e) the operation and maintenance of NARA's computer network could be adversely impacted as a result of the contractor not meeting its task order deliverable requirements.

The Federal Government as a whole is attempting to move away from high-risk vehicles like T&M procurements. Recently, and notably well after NARA's initial procurement actions, the Office of Management and Budget (OMB) directed agencies to reduce their use of such vehicles. In the first half of FY 2010 the percentage of dollars awarded in new T&M or labor hour contracts dropped by seven percent compared to the same time period in FY 2009. Seventeen of the larger agencies were able to cut their T&M, labor hour, or cost-reimbursement contracts by at least 10 percent.

Results of this audit were circulated via traditional practice in a draft report to appropriate management officials who opted to elevate their "concerns" and feedback to the Archivist of the United States. Some points raised by those officials have been addressed, however, other

comments presented were found to be unwarranted and unsustainable. Following are examples of management's comments along with a brief response.

a. According to the NARA officials, the Office of Inspector General (OIG) auditors failed to evaluate and consider FAR Part 8, Required Sources of Supplies and Services, in conducting their fieldwork. Per NARA officials, this oversight was critical as this section of the FAR formed the regulatory basis for the NITTSS procurement. In reality, the audit workpapers showed that this section of the FAR was indeed referenced and evaluated. It appears the true issue is how management interprets FAR Part 8's relationship to FAR Part 12.

b. It was presented that the reference to the White House memorandum, Government Contracting, dated March 4 2009, was erroneous or an oversight on the part of the auditors as the memorandum was issued after the NITTSS contract was awarded. This representation is incorrect on two levels. First, the auditors presented this information, with the date clearly indicated, for the benefit of the reader, and most importantly, the new Archivist. Second, this task order is an ongoing contractual action, and future procurement decisions will have to be made because there are four fiscal year options that can be exercised to extend the period of performance. The referenced White House memorandum should certainly be of consideration to the current NARA administration.

c. Management officials stated that, because the NITTSS task order is a T&M type arrangement and not a cost-reimbursement type contract, the risk factors we identified are not present. According to the FAR there are only two general types of contract actions, fixed-price and cost-reimbursement. The only thing fixed in a T&M contract is the price per labor hour. The total contract amount, i.e., the total labor hours to be expended by the contractor is not fixed. In the NITTSS task order the contractor is paid for each labor hour expended without regard to whether the labor produces the final product needed by the government. The more labor hours expended, the more profit earned by the contractor. Thus, the government bears a risk of paying for work without receiving a finished product, unlike a typical FFP contract.

We made six (6) recommendations that, when implemented by management, will assist the agency in correcting the reported deficiencies, and in ensuring government interests are protected for the contractor-provided information technology and telecommunications support services.

Background

NARA's strategy was to award the new NARA information technology and telecommunication support services (NITTSS) task order under GSA Schedule 70, Information Technology Professional Services, to a small business that could subcontract with any size firm, subject to the agency's approval. The Capstone Corporation, a small business, is the prime contractor performing the contractual effort in a teaming arrangement with General Dynamics Information Technology (GDIT), Incorporated; Siemens Corporation; and Tassa Corporation. According to Capstone's Task Order proposal, staffing will consist of 73 full-time employees in the base year of the Task Order, growing to 77 employees by the fifth year of the Task Order.

NARA's task order, NAMA-09-F-0015, is a hybrid arrangement consisting of both firm-fixed-price² (FFP) and time-and-materials³ (T&M) effort. The majority of the \$56.02 million Task Order effort is T&M (80 percent), with only management and oversight performed on a fixed-price (20 percent) basis. A T&M arrangement provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit, and (2) materials at cost, including, if appropriate, material handling costs. This arrangement is a "best effort" contracting approach, i.e., the contractor is paid based on the number of hours worked and is not required to produce a deliverable at a set price. This is analogous to hiring a house painter, telling him to do his best, and then simply paying him for however long he takes or how much he spends on paint, until he is either done or you are out of money. Thus T&M arrangements generally do not provide contractors with the strongest incentive to reduce costs to the government, because reducing costs to the government also serves to reduce their profit. This is one reason why this procurement type is disfavored, and why its use is subjected to special requirements such as detailed determinations and findings documenting why the government chooses this type of action.⁴

The task order requires the contractor to:

- provide Help Desk⁵ services for all users of the agency's computer network (known as NARANet);
- provide network operations, maintenance, and monitoring to ensure NARANet performance and availability requirements. Network services include shared drives, Intranet access, Internet access, local area networks, and the wide area network.

² A *firm-fixed-price* (FFP) contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

³ A *time-and-materials* (T&M) contract provides for acquiring supplies or services on the basis of (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) actual cost for materials.

⁴ More on the need for producing a D&F is discussed below.

⁵ A *Help Desk* is a service that provides information and assistance to the users of a computer network.

- manage NARA’s phone systems including Private Branch eXchange⁶, voice mail, analog lines, and other phone system components.
- initiate network protection measures according to National Institute of Standards and Technology (NIST), Federal Information Security Management Act (FISMA), Office of Management and Budget (OMB), United States Computer Emergency Readiness Team (US-CERT), and other federal security requirements; and industry ~~best~~ practices.”
- track, install, deploy, administer, manage and maintain, and operate all desktops, laptops, personal digital assistants, and associated peripheral devices, and provide multi-tiered support and management of associated hardware and software components.
- manage and support NARA’s servers.
- provide e-mail, file, and print services.
- provide support for Cuadra Star⁷, a product of Cuadra Associates.
- manage user accounts, passwords, and rights to applications and file systems.
- perform Release Management in accordance with a NARA-approved, contractor-provided Release Management Plan.
- manage and track the licenses and maintenance support renewals of hardware and software.
- perform asset management for all NARA information technology assets.
- conduct technology refresh initiatives such as performing requirements analysis, capacity planning, determining specifications, and performing market research.
- for all NARA locations where there is not an on-site help desk, provide, via Field Office System Administrators (FOSAs), operations and maintenance support that must be performed on-site.
- provide formal, comprehensive program and project management.

⁶ A *Private Branch eXchange* (PBX) is an in-house telephone switching system that interconnects telephone extensions to each other as well as to the outside.

⁷ *Cuadra Star* is software that supports the management of archival collections of all types, including archive, museum, photographic, and image collections.

The NITTSS task order was awarded based on the procedures in FAR Subpart 8.4—Federal Supply Schedules. The stated purpose of the Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), is to provide federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. NARA officials used the procedures in FAR Subsection 8.405-2 - Ordering procedures for services requiring a statement of work. FAR Subsection 8.405-2 requires that:

- A Statement of Work (SOW) be prepared that includes the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements.
- A Request for Quotation (RFQ) that includes the SOW and evaluation criteria (*e.g.*, experience and past performance), be provided to schedule contractors that offer services that will meet the agency's needs.
- The ordering activity evaluate all responses received using the evaluation criteria provided to the schedule contractors.
- The order be placed with the schedule contractor that represents the best value.
- The ordering activity document: the schedule contracts considered, noting the contractor from which the service was purchased; a description of the service purchased; the amount paid; the evaluation methodology used in selecting the contractor to receive the order; the rationale for any tradeoffs in making the selection; the price reasonableness determination; and the rationale for using other than a firm-fixed price order, or a performance-based order.

The NITTSS task order was for the acquisition of a commercial item under the definition in FAR Section 2.101. Acquisitions of commercial services have special requirements found in FAR Part 12. FAR Section 8.404 – Use of Federal Supply Schedules specifically excludes some FAR sections from orders placed against a Federal Supply Schedule using the procedures of FAR Section 8.405. However, FAR Part 12 is specifically not excluded. If a T&M contract vehicle is used to procure commercial services, FAR Section 12.207 demands that the Contracting Officer (CO) execute a determination and finding (D&F) that no other contract type authorized by FAR Subpart 12.2 is suitable, and contains several other more specific requirements.

NARA officials have stated they believe the D&F is not necessary or required. However, because only certain FAR Parts were excluded, then those not specifically excluded still apply. Conversely, even if FAR Subsection 8.405-2 excuses NARA from preparing a mandatory D&F, the risk factors involved with a T&M contract make the preparation of a well-detailed D&F essential to protecting government interests and documenting management actions in this type of acquisition activity. This is discussed in further detail later in the report.

Objectives, Scope, Methodology

Our objectives for reviewing this task order were to determine if (a) the procurement of the Office of Information Services (NH) NITTSS task order was accomplished in accordance with the FAR requirements, and (b) NH officials adequately monitor contractor efforts, to ensure the government gets good value for the funds expended on the task order.

To accomplish our objectives, we determined if: (a) NARA officials selected an appropriate type of arrangement for acquiring information technology and telecommunications support services for NARANet, one that would motivate the contractor to perform contractual effort effectively and efficiently; (b) subcontractor costs on the Capstone Task order are reasonable and appropriate; (c) NAA contracting officials complied with FAR requirements prior to the award of the Capstone Task Order for information technology and telecommunications support services; (d) NARA officials, including the Contracting Officer's Technical Representative (COTR) and performance monitors, are performing appropriate government surveillance of contractor performance, to assure that the contractor is using efficient methods and effective cost controls in the accomplishment of task order requirements; and (e) the Capstone Corporation is complying with the terms and conditions of its task order with NARA.

We examined procurement-related guidance including:

- a. FAR; (i) Section 1.102: Statement on Guiding Principles; (ii) Subpart 1.7 – Determinations and Findings; (iii) Part 8: Required Sources of Supplies and Services; (iv) Subpart 12.2: Special Requirements for the Acquisition of Commercial Items; (v) Subpart 16.2: Fixed-Price Contracts; (vi) Subpart 16.6: Time-and Materials, Labor-Hour, and Letter Contracts; (vii) Subpart 37.1 – Service Contracts; and (viii) Section 46.401 - Government Contract Quality Assurance.
- b. President's Memorandum on Government Contracting, dated March 4, 2009.
- c. OMB Policy Letter no. 93-1 (Reissued), Management Oversight of Service Contracting, dated May 18, 1994.
- d. OMB memorandum no. M-09-25, Improving Government Acquisition, dated July 29, 2009.
- e. Office Of Federal Procurement Policy (OFPP), A Guide To Best Practices For Contract Administration, October 1994.
- f. NARA 501, NARA's Procurement Guide.

Our audit work, which began in June 2009 and was completed in October 2009, was performed at Archives II in College Park, Maryland. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards 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 believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

PROTECTING GOVERNMENT INTERESTS

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

According to FAR Section 1.102, Statement of Guiding Principles for the Federal Acquisition System, the Federal Acquisition System will (a) satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example, maximizing the use of commercial products and services; using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and promoting competition; (b) minimize administrative operating costs; (c) conduct business with integrity, fairness, and openness; and (d) fulfill public policy objectives.

The Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured. The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure taxpayer funds are spent wisely and are not subject to excessive risk.

To demonstrate the importance of the issues involved in contract type selection, a White House Memorandum for the Heads of Executive Departments and Agencies, dated March 4, 2009, (the White House Memorandum) was issued stating there shall be a preference for fixed-price type contracts, and cost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract. OMB Memorandum 09-25, Improving Government Acquisitions, dated July 29, 2009, was issued in response to, and implemented, the White House Memorandum. OMB M-09-25 clarified that time-and-materials and labor-hour contracts were covered by the White House Memorandum.

While the White House Memorandum and OMB M-09-25 were issued after NARA's initial contract action, the issues they identify certainly existed and were apparent in the contracting community while NARA was determining how to proceed on the initial procurement. For example, on March 6, 2007, Rep. Henry A. Waxman introduced H.R. 1362, "Accountability in Contracting Act." The purpose of the legislation was to change federal acquisition law to require agencies to limit the use of abuse-prone contracts, to increase transparency and accountability in federal contracting, and to protect the integrity of the acquisition workforce. The bill passed by a wide margin in the House of Representatives but was not voted on in the Senate.

Further, while NARA certainly cannot be held to the standards directed in the memorandums on the initial procurement, this acquisition has multiple option years upcoming.

OMB M-09-25 requires agencies to take the following actions: (1) review their existing contracts and acquisition practices and develop a plan to save 7 percent of baseline contract spending by the end of FY 2011; and (2) reduce by 10 percent the share of dollars obligated in FY 2010 under new contract actions that are: (1) awarded noncompetitively and/or receive only one bid in response to a solicitation or a request for quote, (2) cost-reimbursement contracts or (3) time-and-materials/labor hour (T&M/LH) contracts.

According to that memorandum, while T&M/LH contracts can be valuable tools in acquisitions, they pose special risks of overspending because they provide no direct incentive to the contractor for cost control. Reports from the GAO, IGs, and agency management indicate that these contracts are often used without an appropriate basis or sufficient management and oversight to limit taxpayer risk.

After issuing OMB M-09-25, OMB has reported good success in their efforts to reduce agencies' use of cost reimbursement and T&M vehicles. In the first half of FY 2010 the percentage of dollars awarded in new T&M or labor hour contracts dropped by seven percent compared to the same time period in FY 2009. Seventeen of the larger agencies were able to cut their T&M, labor hour, or cost-reimbursement contracts by at least 10 percent. According to OMB, "Agencies are achieving these reductions through the implementation of sound contracting practices such as peer reviews and contract review boards that bring seasoned contract and other experts together to help contracting and program offices identify and address high risk practices."⁸

Subsequent to the completion of our audit fieldwork, management officials stated that the OIG auditors cited criteria that those officials considered to be "irrelevant administration memoranda." The Director, Acquisitions Services Division (NAA) was "uncertain as to the intent of the OIG in referencing these memoranda, since both were issued post NITTSS Task Order issuance."

The memos in question are not presented as support or criteria for a procurement decision made prior to their issuance. As discussed above, our intent is two-fold. They highlight the issues which were present when NARA was making its initial decision, and they should be used in looking forward to evaluating the future of this procurement action. Most importantly, there are four fiscal year options that can be exercised to extend the period of performance. Before exercising each option to extend the NITTSS Task Order performance for another year, the contracting officer (CO) must ensure that the exercise of the option is the most advantageous method of fulfilling the government's need, price and other factors considered. We believe it to be extremely important for the contracting officer, before exercising the NITTSS Task Order options, to seriously consider the Obama Administration initiatives for improving government acquisitions.

⁸ See OPM Blog post, *Cutting Waste and Saving Money Through Contracting Reform*, July 7, 2010 at http://www.whitehouse.gov/omb/assets/blog/Update_on_Contracting_Reforms.pdf.

Management also contends a T&M contract is not in any way a cost-reimbursement type contract. We agree FAR Subpart 16.3, specifically laying out requirements for “Cost Reimbursement Contracts” does not apply here, as FAR Subpart 16.6 lays out more specific requirements for “Time-and-Materials, Labor-Hour, and Letter Contracts.” However, we do disagree with management’s contention that T&M contracts are not cost-reimbursement type contracts at all. According to FAR Subpart 16.1—Selecting Contract Types, Section 16.101, General (b), contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The only thing fixed in a T&M contract is the price per labor hour. While there has been some confusion about this in the contracting community, just because the labor hour rate is fixed, that does not in any way make a T&M contract a fixed price type action.⁹ In very basic terms, for every hour the contractor expends the government reimburses their costs, and gives them extra for profit. In the NITTSS task order the contractor is paid for each labor hour expended without regard to whether the labor produces the final product needed by the government. Thus, the government bears a risk they will pay for work without receiving a finished product, unlike a typical firm-fixed price contract. If there was any ambiguity in the current situation, OMB M-09-25, which contains implementing guidance for the White House Memorandum, clarified it by specifically including T&M contracts.

To further demonstrate, the General Services Board of Contract Appeals (GSBCA) in *CACI, INC-Federal v. General Services Administration*, GSBCA 15588, decided December 13, 2002, provides a good discussion of this issue. CACI received a T&M Task Order, under its GSA Schedule to provide information technology services to the U.S. Virgin Islands (USVI). The order required CACI to analyze and implement software developed elsewhere. CACI performed some work but the USVI did not pay the invoices stating CACI failed to deliver required services and failed to deliver a usable product. In its ruling, the GSBCA stated “In essence, the time-and-materials order falls within the broad genre of cost-reimbursement type contracts. This type of contract places relatively little cost or performance risk on the contractor.”

A More Advantageous Type of Contract Could Have Been Selected to Acquire IT Support Services

For the bulk of acquisition of information technology and telecommunications support services, NARA contracting officials awarded a type of task order providing little or no incentive for the contractor to control costs, because the contractor’s profits are tied to the time it takes to perform the work. In a contractual sense, the contractor is not motivated to perform efficiently. As a result, the contractual arrangement selected for this procurement is not the most advantageous way for NARA to acquire these services.

⁹ For additional details, see GAO Audit Report, GAO-09-579, *Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program*, June 2009.

A hybrid task order, consisting of both T&M and FFP line items, was awarded. The majority of the \$56.02 million Task Order effort (approximately 80 percent) is T&M effort.¹⁰ NARA officials, when ordering services under this GSA Schedule contract, had the option of requesting Capstone to submit a FFP to provide the entirety of services outlined in the SOW. In fact, the specific provision NARA used for this acquisition, FAR Subsection 8.405-2, specifically states “[t]he ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.” Further, Capstone’s GSA contract states a FFP order should be requested, unless the ordering activity makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence.

However, according to the NAA Director, a T&M type arrangement was selected based on the set of requirements provided to NAA.¹¹ NARA’s acquisition plan simply states:

T&M is the best solution for NARA because it is more conducive to accommodating changes in priorities. T&M is also a good solution for a contractor when the quantity of the services are subject to change or are not quantifiable prior to award, as is the case with much of the performance work statement.

Nowhere in the acquisition plan does NARA describe either the facts behind, or the methodology used to arrive at the conclusion that much of the performance work statement services ~~are~~ subject to change or are not quantifiable prior to award.” According to FAR Subpart 16.6, a T&M contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Whether or not FAR Subpart 16.6 applies as a requirement to acquisitions under the Federal Supply Schedules, this is sound policy to protect the taxpayer. Further, in an audit report concerning contract management¹², GAO states:

The cost growth on T&M contracts can be significant; we and agency inspectors general have reported numerous instances in which the costs grew to more than double the original value—in one case a contract increased to almost 19 times the original price. Although these contracts may be appropriate in certain circumstances, we reported in 2007 that contracting officers used this contract type for ease and flexibility in the face of unclear requirements or funding uncertainties and did not adequately determine, as required, that no other contract type was suitable.

The FAR warns that COs should avoid protracted use of a T&M contract after experience provides a basis for firmer pricing. The NITTSS Task Order is a procurement to acquire

¹⁰ The remaining effort (20 percent) represents the contractor’s management efforts, and NARA should be applauded for carving this out as a FFP effort.

¹¹ We noted that the agency’s general counsel reviewed the vendor selection process, but did not provide an opinion on the type of contract chosen for the procurement.

¹² GAO Audit Report no. GAO-09-579, Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards have not been Applied to GSA Schedules Program

information technology, telecommunications, and related support services. NARA has awarded at least two previous contracts, with a total of ten years of effort, to acquire these types of services. It appears reporting data from these contracts could have been able to establish a fixed-price arrangement for NARA's current information technology and telecommunications support services contract task order. In fact, the previous contract for information technology support services was a fixed-price-award-fee (FPAF) arrangement. According to the Acquisition Plan for the NITTSS order, this previous award fee was an administrative burden to NARA and caused contention between NARA and the contractor. However, with better administration and surveillance of contractor performance by NARA officials, these enumerated challenges could be overcome without resorting to a T&M procurement.¹³ In sum, NARA's documentation for choosing a T&M vehicle does not adequately discuss this, or show why NARA's ten years of experience would be an inadequate foundation to build a reasonable SOW on.

In order to get a general comparison of how the Federal Government was structuring these types of contracts, the OIG surveyed nine other government agencies that utilize IT support services. This was not a statistically-based or scientific sampling, but instead was a simple polling of nine other smaller federal agencies, otherwise known as designated federal entities. We asked them two questions: (1) Is your need for IT support services satisfied using in-house or contractor resources, and (2) If contracted out, what type of contract do you use to acquire these services. All nine agencies responded, showing: (a) five agencies use in-house resources to perform these services; (b) three agencies outsource these services under FFP arrangements; and (c) one agency uses a mix of in-house resources and contractor effort provided under a FFP arrangement.¹⁴

NARA management took great umbrage with this simple polling as it was not a statistical sampling, and agencies were not selected based on how they compared to NARA by size or what NARA management believes is the complexity of NARA's IT systems. In their own polling NARA identified two agencies it believed were more comparable, stating that Small Business Administration used FFP vehicles, and the National Science Foundation used T&M vehicles. Therefore, by either polling method it is apparent other agencies are able to use FFP vehicles for these services.

In our opinion, NARA has not demonstrated that they gave adequate consideration to acquiring these services through a FFP contract, or another fixed-price contract in conjunction with an award-fee incentive and performance or delivery incentives. Such vehicles could have been a better choice for acquiring the needed information technology and telecommunications support services. It appears that sufficient evidence may have existed to accurately estimate the extent and duration of the work, as well as the anticipated costs of the effort to be performed, with a reasonable degree of certainty. However, NARA's documentation provided to the OIG, including the acquisition plan for the NITTSS Task Order, does not adequately address this situation or explain statements used to justify the T&M selection.

¹⁴ Full results of our survey are identified in Attachment 4 of the report.

Recommendation 1

The Director, Acquisitions Services Division (NAA), keeping in mind the recent guidance in OMB Memorandum 09-25, Improving Government Acquisitions should, before exercising the option for the first option year of the Capstone Task Order, ensure that the contracting officer performs sufficient, documented research and analysis to determine if the T&M Task Order is the most advantageous way to continue procuring information technology and telecommunications support services for NARA. If exercising the option is not the most advantageous way to continue acquiring these services, award a new, different type of contract, e.g., firm-fixed-price that adequately protects the government's interests.

Management Response

Management officials concurred with the recommendation, commenting that, before exercising any option, they always fully considers whether exercising the option, and under what terms, is in the best interests of the government

No Determination and Findings Prepared for the Task Order

The contracting officer did not comply with the FAR requirement that a “Determination and Findings” (D&F) be prepared for the Capstone contract. That is, a D&F for the Capstone Task Order was not prepared in accordance with either (a) FAR Subpart 16.6—Time-and-Materials, Labor-Hour, and Letter Contracts, which is applicable to noncommercial T&M services, or, more germane to this acquisition, (b) FAR Part 12 – Acquisition of Commercial Items¹⁵, which requires more detailed analysis than is required when buying noncommercial services using T&M contracts. As a result, there was no documented proof that sufficient research and analysis was performed prior to choosing a T&M type of task order to procure the information technology and telecommunications support services.

According to the CO, a D&F was not required because *the justification appears in the Acquisition Plan when the effort is not fixed-price*. We disagree with the contracting officer's contention, because the Acquisition Plan contained no information justifying the use of a T&M contract.

The D&F 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 statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

¹⁵ *Commercial items* include items that are of a type customarily used by the general public or nongovernmental entities for purposes other than governmental purposes and have been sold, leased, or licensed to the general public or have been offered for sale, lease, or license to the general public.

FAR Subpart 16.6 generally addresses T&M contracts. Under this Subpart a T&M contract may be used only if (a) the CO prepares a D&F that no other contract type is suitable, and (b) the contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price. However, the NITSS procurement was for commercial services, which have a more stringent D&F requirement under FAR Section 12.207. A commercial services *D&F has to verify no other contract type authorized by FAR Subpart 12.2 is suitable, and:*

- include a description of the market research conducted
- Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;
- Establish that the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts (*e.g.*, by limiting the value or length of the time-and-material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and
- 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 requirements.

The CO stated she did not prepare a D&F as she believed it was not required. The CO defined that such *justification appears in the Acquisition Plan when the effort is not fixed-price. The entire Acquisition Plan section dealing with this issue states only:*

J. Fixed-price Versus Time-and-Materials

The decision was made to receive the majority of the services as time-and-materials. T&M is the best solution for NARA because it is more conducive to accommodating changes in priorities. T&M is also a good solution for a contractor when the quantity of the services are subject to change or are not quantifiable prior to award, as is the case with much of the performance work statement.

Fixed-price services will be obtained for management/oversight positions, and technical leads.

The price for all deliverables will be part of either the T&M or fixed price.

NARA officials stated that since this procurement was through a task order under the Federal Supply Schedules using the provisions of FAR Subsection 8.405-2, then no D&F was needed since FAR Subsection 8.405-2 includes the following language:

- e) *Minimum documentation.* The ordering activity shall document—
- (1) The schedule contracts considered, noting the contractor from which the service was purchased;
 - (2) A description of the service purchased;
 - (3) The amount paid;
 - (4) The evaluation methodology used in selecting the contractor to receive the order;
 - (5) The rationale for any tradeoffs in making the selection;
 - (6) The price reasonableness determination required by paragraph (d) of this subsection; and
 - (7) The rationale for using other than—
 - (i) A firm-fixed price order; or
 - (ii) A performance-based order.

According to NARA officials, as long as a rationale is given in the acquisition plan, no D&F need be documented. However, earlier in FAR Part 8, Section 8.404 – Use of Federal Supply Schedules, specifically excludes some FAR sections from applying to orders placed against a Federal Supply Schedule. Most notably, FAR Part 12 is specifically not excluded, and thus it is arguably applicable.

As such, there appears to be some ambiguity between the FAR Subsection 8.405-2 ~~“minimum”~~ requirement for a ~~“rationale for using other than a firm-fixed price order, or a performance-based order,”~~ and FAR Section 8.404 which specifically does not exclude FAR Part 12’s D&F requirement for T&M-based commercial acquisitions. Because only certain FAR Parts were excluded, then those not specifically excluded should still apply.

We note that NARA is not alone in their interpretation of the FAR. In an audit of T&M contracts for commercial services¹⁶, GAO found that the FAR Part 12 D&F requirement has not been applied to the GSA Schedules program. According to the GAO, GSA has concluded that the applicability of the FAR Part 12 D&F requirement to the schedule program —is uncertain but stated that existing regulations satisfy concerns about use of T&M under the schedules program.” In response the GAO noted that those regulations do not require the same level of detailed analysis as does a FAR Part 12 D&F, and there is no indication that the statutory requirements cannot apply to items or services under the schedules program. This GAO report was published in June 2009, well after NARA’s initial procurement decisions. It is referenced here only to provide context as to how others have interpreted the FAR when examining these provisions.

However, regardless of whether FAR Subsection 8.405-2 excuses NARA from preparing a mandatory D&F, the risk factors involved with a T&M contract remain. Therefore the preparation of a well detailed D&F is still essential to protecting government interests and documenting management actions in this type of acquisition activity.

Recommendation 2

The Director, Acquisitions Services Division (NAA) should, for future procurements involving a T&M contract, ensure that contracting personnel comply with the FAR requirement that a “Determination and Findings” be prepared. The D&F should: (a) include a description of the market research conducted; (b) establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty; (c) establish that the requirement has been structured to maximize the use of FFP contracts on future acquisitions for the same or similar requirements; and (d) describe actions planned to maximize the use of FFP or fixed-price with economic price adjustment contracts on future acquisitions for the same requirements.

Management Response

Management officials concurred with the recommendation, stating that they prepare D&Fs when required by the FAR or other regulations.

¹⁶ GAO Audit Report no. GAO-09-579, Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards have not been Applied to GSA Schedules Program; June 2009.

SURVEILLANCE OF CONTRACTOR PERFORMANCE

A T&M pricing arrangement requires costing and performance review by cognizant technical personnel to ensure the efforts are provided in a satisfactory and efficient manner. If the contractor expends all the hours available and the effort is not yet complete, the government must add additional hours to the contract to complete the effort, or simply go without a finished product or completed service. Therefore, the contractor incurs limited risk under this type of contract; thus, the majority of risk for contract performance resides with the government.

According to FAR, Subsection 16.601 (c) (1), a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, surveillance of contractor performance is especially important. The surveillance effort must be timely, comprehensive, systematic, and well-documented. Unless appropriate government surveillance of contractor performance is performed, NARA cannot be assured that the contractor is using efficient methods and effective cost controls in the accomplishment of the contract requirements.

NARA 501, NARA's Procurement Guide, defines a contracting officer's technical representative (COTR) as the government's representative nominated by the Division Director or Office Head of the technical office, appointed in writing by the Procuring Contracting Officer (PCO)¹⁷, and designated in the contract, to function as the technical representative to the PCO. Among his/her other duties, the COTR is responsible for (a) monitoring and overall technical management of contract performance; (b) monitoring contract performance, providing inspection, and acceptance of contractor performance, certifying that the goods and services are satisfactory and performed in accordance with the contract's terms and conditions; and (c) submitting a written report to the CO addressing all aspects of the contractor's performance, including cost effectiveness, quality, and timeliness of performance.

Surveillance of Contractor Performance was Inadequate

Our review disclosed that the COTR did not demonstrate an adequate, comprehensive, and well-documented monitoring of contractor performance was performed, i.e., we found: (a) the Quality Assurance Surveillance Plan (QASP) for the Capstone Task Order did not adequately describe the methodology, frequency, documentation required, or reporting requirements; (b) contractor performance was not being evaluated on the basis of achieving the Service Level Agreements (SLAs) in the task order; and (c) the surveillance process was poorly documented and not well-organized for review. As a result, NARA officials may be accepting substandard performance, or may be paying for services not received, i.e., the agency has not ensured that the contractor is complying with the terms of its task order, or that the agency is receiving the best value from these services.

The surveillance process was poorly documented and not well-organized for review. For example, (1) there was no documentation available to support that the technical monitors

¹⁷ A PCO is the government's official authorized by warrant to enter into the contract for the government.

performed any detailed tests and/or analyses of contractor performance; (2) no minutes were prepared for meetings held where the contractor's performance was discussed; and (3) the COTR did not maintain an official file containing contractual documentation and monitoring results, nor did the COTR submit written reports, addressing all aspects of the contractor's performance, including cost effectiveness, quality, and timeliness of performance, to the CO.

The COTR commented that she maintains detailed files, both in hard copy and electronic. According to her:

A discussion regarding these files was held via email between the OIG and the Contracting Officer's Representative (COR)¹⁸ on 14, 2009. A meeting was scheduled for the OIG auditor to review the COR files on October 15, 2009. During the meeting the OIG was provided with a large number of files that included:

1. COR correspondence - 3 folders
2. TM issues
3. Deliverables
4. Badge requests
5. ODC requests
6. Capstone out-processing forms
7. Travel requests - non-recurring
8. Invoice folders by month with all supporting documentation
 9. Quality Control folder with approved minutes, audit results, calendars and agendas
10. Copy of the RFQ
11. Copy of the contract"

We met with the COTR on October 15, 2009 and found that she did not maintain a file and/or folder dedicated to contractor monitoring activities or the results of those monitoring activities conducted by her and the contract Technical Monitors. Instead, the COTR explained that she had some documents on her desk and others in various folders, while other information related to monitoring activities was in e-mail messages. She refused to allow us access to those folders. Instead, she insisted that we tell her what we wanted to review, and she would provide it to us.

Surveillance, and documentation that it occurred, are required by the FAR. Moreover, documentation is necessary to help ensure accountability over the surveillance process. Surveillance begins with trained personnel being nominated for and assigned surveillance responsibilities, and then conducting surveillance actions throughout the performance period of the contract to ensure the government receives the services required by the contract. According to the GAO Internal Control Standards¹⁹, control activities occur at all levels and functions of the entity. They include a wide range of diverse activities such as approvals, authorizations,

¹⁸ At times, the Contracting Officer's Technical Representative (COTR) referred to herself as the Contracting Officer's Representative (COR).

¹⁹ For additional information, see GAO Publication, *Standards for Internal Control in the Federal Government*, no. GAO/AIMD-00-21.3.1, November 1999.

verifications, reconciliations, performance reviews, maintenance of security, and the creation and maintenance of related records which provide evidence of execution of these activities as well as appropriate documentation. Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. All documentation and records should be properly managed and maintained.

Additionally, the contractor's performance could not be adequately monitored using the Quality Assurance Surveillance Plan (QASP) included as an attachment to the information technology and telecommunications support services task order. The plan did not describe in sufficient detail the surveillance methodology or steps to be performed by NARA's technical monitors, i.e., (a) how they were to observe, test/sample, and evaluate the contractor's performance, (b) the frequency of surveillance, or (c) how they were to document contractor performance.

The QASP stated that NARA officials would perform —subjective” surveillance, including customer feedback, and written perceptions of the quality of the contractor's performance. In addition, the plan stated that the COTR and her designated quality monitor(s) would monitor how the contractor executes its Quality Control Plan (QCP) and would perform spot inspections of QC outcomes on an ad-hoc basis as deemed necessary.

According to FAR 46.401, Quality Assurance Surveillance Plans should be prepared in conjunction with the preparation of the SOW and should specify all work requiring surveillance; and the method of surveillance. An adequate surveillance plan provides the foundation for a comprehensive and systematic monitoring of contractor performance and a standard against which actual surveillance efforts can be measured. A plan is needed to ensure the government receives the quality of services called for under the task order, and pays only for the acceptable level of services received. Without an adequate surveillance plan, NARA officials, e.g., contracting officers' representatives and technical monitors, have no way of knowing what contractor activities they should be monitoring and how they should monitor them.

The COTR also told us that the Technical Monitors created surveillance plans for their respective areas of the task order. However, several times during our audit fieldwork, we asked her to provide a surveillance plan for the task order that provided guidance specifying all the work requiring surveillance and the method(s) of surveillance, i.e., (a) how the technical monitors were to *observe, test/sample, and evaluate the contractor's* performance, (b) the frequency of surveillance, and (c) how the technical monitors were to document contractor performance. Each time, the COTR replied that surveillance plans were being developed and that she would provide them to us in the near future. As of the completion of our fieldwork, no surveillance plans had been provided to us.

Further, contractor performance was not being evaluated on the basis of the contractor achieving the Service Level Agreements (SLAs) in the task order, i.e., surveillance methodology was not sufficient to ensure the agency is in fact getting the level-of-effort the contractor is billing. We found no methods established for instructing the technical monitors how to measure contractor performance in the areas of cost, schedule, or quality.

Instead of having the technical monitors ensure that the contractor uses efficient methods and effective cost controls in the accomplishment of task order requirements, the COTR instructed the technical monitors to ensure that, in their assigned monitoring areas, the allotted hours were not exceeded. She informed the task order technical monitors that contractor employees were only being billed against the contract line item number (CLIN) that they were bid on in the contractor's proposal regardless of which CLIN or CLINs they actually worked on. She also stated that the CO and she had pre-determined the contractor "burn rate" and that the technical monitors need not verify who did the work, only that in their assigned monitoring areas the allotted hours were not exceeded. The COTR cited an example of a contractor employee that was billing full time to CuadraStar support, even though the employee was working less than 8 hours per month on that support.

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The COTR also stated:

[Technical Monitors] conduct weekly meetings with the corresponding Technical Lead from NITTSS. These meetings were established to discuss performance, project status and issues within a specified area. The Technical Monitors are also responsible for reviewing deliverables produced in their respective areas and providing comments as NARA's subject matter experts. The Technical Monitors provide monthly reports to the COR documenting performance and issues in their assigned areas of responsibility. In addition to the weekly Technical Monitor meetings there is a weekly Director's Meeting held every Wednesday. This meeting includes the COR, NHT Management, all Technical Monitors and NITTSS Management. In this meeting, the weekly report provided by the NITTSS, the weekly priority status from each Technical Monitor are all reviewed, and in depth discussions on Contract Performance and issues are conducted. In addition to the above meetings, there is a weekly meeting held with the COR and NITTSS Program Manager (PM). The parties to this meeting discusses at a higher level contract performance, burn rates, SLA's and any issues that have been escalated by Technical Monitors or NITTSS Technical Leads. As such, there are performance meetings up the management chain of both NARA and Team Capstone.

We agree that meetings with the contractor are certainly an important part of the contractor monitoring process. However, we attempted to obtain documentation that detailed the discussions that took place during these meetings, but were informed by the COTR that there was no documentation prepared, i.e., there were no meeting minutes nor were there any action items documented. While meetings may have been held to discuss contractor performance, we found no evidence to support that NARA officials were evaluating Capstone contractor performance on the basis of the contractor achieving the SLAs identified in the task order.

Recommendation 3

The Director, Technical Services Division (NHT), in conjunction with the Contracting Officer for the Capstone Task Order, should require the Contracting Officer's Technical Representative (COTR) for the agency's Task Order with the Capstone Corporation to:

a. Adequately document task order surveillance efforts. For example, (1) tests and/or analyses of contractor performance by the technical monitors should be documented; (2) minutes should be prepared for meetings held where the contractor's performance is discussed; (3) the COTR should maintain an official file containing contractual documentation and monitoring results, and (4) written reports, addressing all aspects of the contractor's performance, including cost effectiveness, quality, and timeliness of performance, should be provided to the CO.

b. Prepare a surveillance plan that supplements the requirements of the Quality Assurance Surveillance Plan (QASP) prepared for the task order. That surveillance plan should describe the (1) surveillance methodology or steps to be performed by the technical monitors, (2) frequency of surveillance, (3) metrics for measuring acceptable contractor performance, and (4) reporting requirements.

c. Monitor and evaluate the contractor's performance, to determine compliance with the Service Level Agreements (SLAs) requirements of the task order.

Management Response

Management officials concurred with the intent of the recommendation, but did not indicate that they planned to take corrective action.

According to them:

- The COR represents the CO in all task order-related matters. As such, NHT does not have the authority to direct the COR to perform task order-related duties.
- The CO of the Capstone task order deems the documentation provided to be adequate as is.
- The Quality Assurance Surveillance Plan (QASP), as supplemented by the individual monitoring plans managed by each technical monitor, is adequate. The CO will work with the COR to **formally** update the QASP to include the individual TM Plans, although they have been in practice.
- Monitoring of compliance with SLAs has been on-going and will continue, since performance began on the Capstone task order.

OIG Response to Management Comments

Based on management's comments, we revised the recommendation, to require that the Contracting Officer assist in directing the COTR to perform the recommended task order-directed duties.

We met with the COTR on October 15, 2009, and discovered that she did not maintain a file and/or folder dedicated to contractor monitoring activities or the results of those monitoring

activities conducted by her and the contract Technical Monitors. Instead, the COTR explained that she had some documents on her desk and others in various folders, while other information related to monitoring activities was in e-mail messages. She refused to allow us access to those folders. Instead, she insisted that we tell her what we wanted to review, and she would provide it to us.

Several times during our audit fieldwork, we asked the COTR to provide a surveillance plan for the task order that provided guidance specifying all the work requiring surveillance and the method(s) of surveillance, i.e, (a) how the technical monitors were to observe, test/sample, and evaluate the contractor's performance, (b) the frequency of surveillance, and (c) how the technical monitors were to document contractor performance. Each time, the COTR replied that surveillance plans were being developed and that she would provide them to us in the near future. However, as of the completion of our fieldwork, no surveillance plans had been provided to us.

In addition, we were provided with no documentation during the audit to support that contractor performance was evaluated on the basis of the contractor achieving the SLAs in the task order.

TASK ORDER REQUIREMENTS

Capstone Task Order provisions require that each invoice²⁰ include the following information and/or attached documentation: (a) name of the business concern (prime contractor) and invoice date; (b) GSA contract number and NARA task order number; (c) description, price, quantity, and dates of services delivered by CLIN and/or SubCLIN number(s); (d) payment terms; (e) Data Universal Numbering System (DUNS) number²¹; and (f) taxpayer's identification number.

In addition, during performance of a T&M contract, a contractor must substantiate its invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the CO. The COTR is responsible for examining the documentation supporting the contractor invoices (e.g., timecards, contractor sign-in sheets, overtime records, monthly status reports, etc.) to verify the accuracy of the billings. Without this information, the COTR could not determine if the billed costs were accurate, or if the contractor was performing its tasks in an efficient and effective manner. If contract costs are not monitored by the COTR, a contractor may receive payments that exceed the costs actually incurred to accomplish contract requirements, or may not perform in an efficient and effective manner.

The Data Requirement Item (DRI) identifies and directs the contractor to provide and deliver data. It identifies and describes the content, format, and delivery instructions for each deliverable task order data requirement. It also specifies approval and acceptance criteria for each data item. The requesting unit is responsible for coordinating with all functional organizations to identify data deliverables. Each data item identified and requested must have a DRI provided in the procurement request package by the requesting unit. NARA's task order with the Capstone Corporation contains a list of 40 data deliverables to be produced by the contractor as part of the work defined in the SOW.

Task Order Invoicing Requirements were Not being Met

The contractor was not complying fully with the task order's Invoice Submission Requirements. The terms of the task order require that, "Invoices that contain T&M work shall be accompanied by signed timesheets for all personnel billed, and shall indicate the CLIN and sub-CLIN(s) under which each person worked." Task order management officials, i.e., the CO and the COTR, did not direct the prime contractor to comply with this requirement. As a result, they failed to effectively fulfill their fiduciary responsibility to protect the interests of the government by ensuring that task order billings were accurate and supported by reliable, detailed records, and by improperly approving contractor invoices for payment without obtaining adequate supporting documentation.

Management officials took exception to our finding that the contract invoicing requirements were not being met because timesheets were not submitted, even though the contract contains

²⁰ An *invoice* is a detailed list of goods shipped or services rendered, with an account of all costs (itemized bill).

²¹ The *Data Universal Numbering System*, abbreviated as **DUNS**, is a system developed and regulated by Dun & Bradstreet (D&B) which assigns a unique numeric identifier to a single business entity.

this requirement. We based this finding on a review of the terms and provisions of the contract. Contracting officials included in the contract a requirement for invoices containing T&M work to be accompanied by signed timesheets for all personnel billed. The report merely states that the contractor was not complying with this requirement, and the CO and the COTR had taken no action to have the contractor comply. Reviewing signed employee timesheets assists the COTR in assessing the reasonableness and accuracy of direct labor costs billed to the government

When asked to provide copies of signed timesheets for all personnel billed on the contractor's invoice, the CO told us that she and the COTR went to the contractor's facility in February (prior to Task Order start) and met with them for about 2.5 hours about their Deltek²² System, timecard capabilities, and invoice capabilities. Therefore, according to her, they fully understood the relationship of the timecards to the invoice, and how the invoice represented actual electronic timecards. However, understanding how the contractor's billing system works does not relieve NARA officials of the responsibility for verifying the accuracy of the invoices, by reviewing actual timecards or inputs, that identify hours worked and the projects/tasks to which the employees charged their time.

According to management officials, the invoices submitted by Capstone comply with the commercial invoice clause that applies to the Task Order. Moreover, the CO and COTR state they took steps to ensure that invoices submitted by Capstone are accurate and supported. In particular, the CO and COTR visited Capstone's facility and reviewed how the timesheets were electronically input into Deltek and how Deltek data output provided detailed time and cost support for invoices. Capstone uses Deltek GCS Premier which was developed in conjunction with FAR and Cost Accounting Standards (CAS) and is designed to be fully compliant with Defense Contract Audit Agency (DCAA) requirements. The CO and COR were confident that the Deltek system data output provided the necessary details to support an invoice compliant with the requirements of FAR 52.212-4(g). However, the fact that the Capstone Corporation has an accounting system that was developed in conjunction with FAR and CAS, and is compliant with DCAA requirements, does not relieve NARA officials of verifying the inputs to that system to verify costs charged by the contractor and billed to the government on a T&M task order.

In addition, the contractor's proposal indicates that a large amount of the contract effort, i.e., over 40 percent, will be performed by subcontractors. Yet, there was no evidence to support that the CO and the COTR visited subcontractor facilities to review their accounting systems.

The CO also told us that she would modify the task order verbiage to be consistent with the commercial T&M invoice clause, which states that the government "may" request timesheets. In our opinion, it would not be in the government's best interest to make this modification to the task order. This requirement should be enforced, because reviewing signed employee time sheets, or otherwise reviewing the inputs an employee makes into an automated system, is a good way to identify the projects and tasks to which the employee charged his/her time and to verify the accuracy of the billed charges shown on the contractor's invoice.

²² Deltek develops software for use by companies that are project focused, such as government contractors, who must, under U.S. government procurement law, track costs by individual contract, and in some cases by task order or line item.

Management officials recognize that the Task Order, when initially awarded included a requirement to provide timesheets. They have explained the current situation:

However, after the CO reviewed the Deltek system, she informed Capstone that they did not need to submit the timesheets with the invoices and she would modify the Task Order to reflect the change later. The decision was not only within her authority as the CO, but required because the additional burden of providing timesheets was contrary to the invoice requirements of the FAR.

Yet at the time of our review, the Capstone Task Order contained the requirement for the contractor to submit signed, employee timesheets with its invoices. It appears this change was made informally and not through an official contract modification. We found nothing in the contract file to support such a change to the contract.

A *contract modification* is any documented alteration in the specification, delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision (change order), or by mutual action of the parties to the contract (contract amendment). It also includes administrative changes, notices of termination, field orders, and notices of exercise of a contract option and contract extensions. Unless expressly authorized by contract or regulations, a contract modification **must be written** if the contract to be modified is written.

According To *A Guide To Best Practices For Contract Administration*, Office Of Federal Procurement Policy (OFPP), October 1994, when reviewing vouchers under cost reimbursement contracts, the COTR should review the contractor's time cards, sign-in-sheets, and overtime records to help assess the reasonableness of direct labor costs. Thus in any event, deleting the requirement for signed, employee timesheets, without instituting another compensating control, eliminated a good way to identify the projects and tasks to which an employee charged his/her time and to verify the accuracy of the billed charges shown on the contractor's invoice.

The COTR was making Changes to Contractor “Draft” Invoices

Although not required by the terms of the task order, we noted that the contractor was submitting ~~draft~~ invoices to the COTR for review, prior to submitting the ~~final~~ invoice for payment. The task order requires that all invoices be submitted by calendar month, no later than the fifth (5th) business day of the second (2nd) month after work is completed. The task order makes no mention of the contractor having to submit draft invoices for review. When asked why the contractor was submitting draft invoices, the COTR responded that she requested the contractor to provide draft invoices, so that she would not have to reject the contractor's final invoices.

We noted that the COTR made changes to four of the five contractor's draft invoices we reviewed. We attempted to obtain documentation identifying the changes made, or an explanation of the need for the changes made, but, as of the completion of our review, the COTR

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had failed to respond to our requests. As a result, we were unable to ascertain the reasons for the changes made to the invoices, and whether those changes were appropriate. (For details of the changes made to the contractor's "draft" invoices, see Attachment 2.)

Data Items Not Delivered in a Timely Manner

The contractor has failed to satisfy task order requirements related to the delivery of data items. For example, we noted that two important deliverables – the Risk Management Plan and System Tuning Implementation Plan – have not been submitted by the contractor in accordance with the terms of the task order. We are concerned about the potential impact on NARA's computer network operation and maintenance as a result of the contractor not meeting its contractual requirements.

When we asked the COTR what actions she planned to take to remedy this situation and to ensure the contractor meets the terms of the task order, she responded that no final actions have been taken. Per the COTR:

The contractor has been working diligently on deliverables. Many of them require feedback from multiple parties and re-work. In many instances they have also required meetings to discuss the comments and differences of opinion between the contractors and the government. We have been trying to prioritize the deliverables by importance as we work with the contractors on them. Our goal is to ensure that we have a quality product delivered. The contractors have proposed many new industry standard best practices which in some cases the Government staff may not agree with. As the COTR I discuss the status of deliverables with the PM on a weekly basis. I also facilitate some of the discussions required between the technical monitors and the contractors regarding deliverable content and NARA's openness to new ideas/practices being proposed.

When made aware of this situation, NARA's Deputy Chief Information Officer (CIO) stated:

The schedule of deliverables in the contract was very aggressive. I don't think we fully realized the work load this schedule would put on our own staff in terms of reviewing and commenting on all of these documents in such a short time frame. Having said that, the contract is the contract and they need to either deliver the documents on time or formally ask for some relief on the schedule.

The Director, NAA, stated:

It appears that the Government has caused some, if not many, of the delays through our inability to review the Capstone deliveries in a timely manner. The COTR has not expressed to me that she was having problems that she couldn't manage.

Subsequently, the COTR was tasked with providing a (a) list of deliverables that were late because of Capstone's inability to meet the schedule; (b) list of deliverables that were delayed due to Government actions; and (c) recommended realistic delivery schedule that will provide sufficient time for the government officials to conduct a review of the deliverables. The COTR prepared a revised schedule of deliverables, and provided us with a copy of the schedule after our field work was completed.

In our opinion, two factors may have contributed to this condition: (1) the agency did not ensure that sufficient resources were available and/or assigned to effectively monitor the quality and performance of the contractor's effort, and (2) the COTR did not notify the CO when the contractor failed to deliver task order deliverables in a timely manner.

The technical administration of government contracts is an essential activity. It is absolutely essential that those entrusted with the duty to ensure that the government gets all that it has bargained for must be competent in the practices of contract administration and aware of and faithful to the contents and limits of their delegation of authority from the CO. The COTR functions as the "eyes and ears" of the CO, monitoring technical performance and reporting any potential or actual problems to the CO. It is imperative that the COTR stay in close communication with the CO, relaying any information that may affect contractual commitments and requirements.

Recommendation 4

The Director, Acquisitions Services Division (NAA), should direct the CO for the NITTSS Task Order to require contractor compliance with the contract's invoice submission requirements, including the (a) submission of signed timesheets or comparable data for time-and-materials (T&M) work, and (b) identification of contract line item numbers (CLINs) and sub-CLINs under which each employee worked.

Management Response

Management officials concurred with the intent of the recommendation, but did not indicate that they planned to take corrective action.

According to them, Capstone does comply with the commercial invoice clause that is included in the task order. The conflicting non-commercial language requirement for timesheets submission was removed from the task order as it was contrary to the requirements of the FAR, specifically FAR 12.302(b). The invoice supporting documentation contains breakouts by line item and sub-line item, including number of hours worked by individuals, their labor rate, and the associated cost.

OIG Response to Management Comments

The FAR site referenced in management's comment has no bearing on the issue discussed in our report. FAR 12.302(b), requires that the following paragraphs of the clause 52.212-4, Contract

Terms and Conditions—Commercial Items, not be tailored— (1) Assignments; (2) Disputes; (3) Payment (except as provided in Subpart 32.11); (4) Invoice; (5) Other compliances; and (6) Compliance with laws unique to Government contracts. However, the audit report’s finding and recommendation does not address or recommend ~~tailoring~~ of the FAR clause provisions. Instead, the report addresses supporting documentation for contractor invoices that could be used by government officials to help verify the accuracy and validity of the contractor costs charged in the invoice.

Management officials did not cite the more relevant FAR clause 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, contained in the task order. This clause requires the contractor to substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by— (i) Individual daily job timekeeping records; (ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or (iii) Other substantiation approved by the Contracting Officer.

Initially, contracting officials wisely included in the task order a requirement for invoices containing T&M work to be accompanied by signed timesheets for all personnel billed. This requirement complied with the requirements of FAR 52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts

Our report merely states that the contractor was not complying with this requirement, and the CO and the COTR had taken no action to have the contractor comply. Reviewing signed employee timesheets assists the COTR in assessing the reasonableness and accuracy of direct labor costs billed to the government

Although management commented that the requirement was removed from the task order, as of the conclusion of our review, the task order still contained the requirement for the contractor to submit signed, employee timesheets with its invoices. Apparently, the change was made informally and not through an official contract modification. We found nothing in the contract file to support such a change to the contract.

In any event, deleting the requirement for signed, employee timesheets, without instituting another compensating control, eliminated a good way to identify the projects and tasks to which an employee charged his/her time and to verify the accuracy of the billed charges shown on the contractor’s invoice.

Recommendation 5

The CO for the Capstone Corporation Task Order should direct the COTR for the Task Order to:

- a. do away with the requirement for the contractor to provide draft invoices for review, or
- b. document the results of her reviews of the draft invoices, share the results of her reviews with the CO, and retain that documentation in her contract folder.

Management Response

Management officials concurred with the intent of the recommendation, but did not indicate that they planned to take corrective action.

According to those officials, there is a benefit to helping a small business processes. Therefore, NARA sees no need to discontinue the draft invoice process if the COR wishes to continue extending assistance and the contractor wishes to continue to submit draft invoices to avoid delays in processing final invoices. The COR maintains the draft invoice documentation in her case file.

OIG Response to Management Comments

We noted that, according to Capstone Corporation's web site, the company "is a leading global services and solutions provider, supporting customers in over twenty six states and seven overseas locations. Our primary customer focus is within the federal government and the Department of Defense."

Although the Capstone Corporation is classified as a small business, it is not a new business. The GSA contract under which the task order was issued has been in effect for approximately 12 years, since September 3, 1998. In our opinion, the contractor should possess the ability, at this point in time, to submit an accurate invoice for payment without the COR's assistance.

FAR clause 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, found in the task order, contains detailed instructions for submitting invoices for payment. For each invoice, the contractor bills the government for the actual hours (that include overhead, general and administrative expenses, and profit) expended during the period covered by the invoice, and materials at cost. No reasonable explanation exists for why the COR must assist Capstone in billing for the actual expenses incurred in the performance of the task order.

Management also responded that the COR maintains draft invoice documentation in her case file. However, as previously discussed in the report, when we attempted to obtain documentation identifying the changes made, or an explanation of the need for the changes made, the COR failed to respond to our request. _____

2(6)

Recommendation 6

The contracting officer for the Capstone Corporation Task Order should direct the Contracting Officer's Technical Representative for the Task Order to inform him/her, in a timely manner, of any technical or contractual difficulties with contractor performance.

Management Response

Management officials concurred with the recommendation, stating that the COR has and continues to keep the CO informed in a timely manner of technical or contractual difficulties with task order performance.

OIG Response to Management Comments

Although management officials commented that the COR has kept the CO informed in a timely manner of technical or contractual difficulties with task order performance, our review disclosed that this is not occurring.

As reported above, the contractor failed to satisfy task order requirements related to the delivery of data items. However, the COR never informed the CO of this problem. Therefore, the CO needs to counsel the COR on the importance of keeping her informed of contractor performance.

OTHER MATTERS

Subcontract Costs Could Have Been Reduced

Our review also disclosed that NARA officials had the option of negotiating a reduced rate for subcontracted labor on the NITTSS Task Order. Currently, actual charges billed by the major subcontractor and paid by the prime contractor are less than the amounts billed by the prime contractor to NARA. This condition exists because the prime contractor, Capstone Corporation, is billing NARA for all direct labor, including subcontract labor, at its own higher labor rates instead of the lower rates billed by the subcontractors. While this practice is legal, commonplace and accepted in the acquisition community, NARA could have possibly structured the Task Order to pay less for subcontracted labor when the actual cost of subcontract labor is lower than the prime contractor's rate.

According to the prime contractor's contract proposal, General Dynamics Information Technology (GDIT), Incorporated, the major subcontractor, will expend approximately 40 percent of the labor dollar cost for the Task Order. As a result, assuming the percentage of GDIT labor cost billed on the first invoice remains the same throughout the entire Task Order period of performance, we estimate that over the life of the Task Order, if all options are exercised, NARA will pay the prime contractor an excess of approximately \$1.606 million. This is in excess of the amount the prime contractor is already paid for any management functions under the FFP part of this task order. Labor charges for other subcontractors were not included in our review because those subcontract costs were considered to be minimal.

Currently this task order is performed under a prime contractor/subcontractor relationship instead of a partnership or joint venture type of Contractor Teaming Arrangement (CTA). As a result, NARA will not realize the potential savings that would have been possible under a CTA.

According to GSA, a CTA is an arrangement between two or more GSA Schedule contractors to work together to meet agency requirements. The CTA document is a written agreement between team members detailing the responsibilities of each team member. The CTA allows the contractor to meet the government agency needs by providing a total solution that combines the supplies and/or services from the team members' separate GSA Schedule contracts. Under a CTA, the ordering activity is invoiced at each team member's unit prices or hourly rates as agreed in the task or delivery order.

Concerns about the type of setup NARA currently employs, which is a standard commercial business practice, have been expressed by the GAO, the Department of Defense (DOD), and the DCAA. In an audit of DOD contracting²³, GAO found that contracts specified various ways prime contractors can be reimbursed for subcontracted labor. Some required the prime contractor to be reimbursed for the actual costs it paid for the subcontracted labor, others set forth separate rates for subcontractors, some contained "blended" prime and subcontract rates, and some permitted the prime contractor to be reimbursed for subcontracted labor at the prime's own rates.

²³ Defense Contracting: Improved Insight and Control Needed over DOD's Time-and-Materials Contracts, dated June 2007 (GAO-07-273)

The last category in particular has caused some concern within DOD. For example, DCAA audit reports have questioned costs under this billing arrangement, claiming the differential to be additional profit to the prime contractor.

According to GAO, ~~The~~ issue of how the government should reimburse prime contractors for subcontracted labor has been a matter of debate. For example, as noted above, DCAA has questioned contractors' proposed costs or billings for subcontracted labor at amounts other than the actual costs when the standard T&M payments clause was included in the contract. In instances in which the contract specifically permitted the prime to bill for subcontracted labor at the prime contract rates, DCAA did not question those costs. In its official comments on proposed FAR cases pertaining to T&M contracts²⁴, DCAA stated that such a practice places the government at a greater risk of paying costs higher than what prime contractors actually pay without receiving any additional benefits.

Subcontract labor rates would be less important if the NITTSS Task Order were a fixed-price task order. Under a fixed-price arrangement, the contractor bears the risk of contract performance. On the other hand, under a T&M arrangement, the government bears the risk of contract performance, while the contractor bears little, if any, risk. T&M contracts only require a ~~best effort~~" by the contractor. If the contractor expends all the hours and the contractual effort has not been completed, the government must add additional funding to the contract, if desired, in order for the contractor to complete the effort. In addition, there may be insufficient motivation for prime contractors to ensure the subcontractors perform efficiently, when the prime receives additional profit on every labor hour expended by the subcontractors in the performance of this task order.

We again stress that the current task order set-up violates absolutely no regulations, and in fact is endorsed by FAR definitions and is commonplace throughout federal contracting. However, opportunities to further conserve scarce fiscal resources are present, and should at least be considered in the future.

²⁴ FAR Cases 2004-015 ~~Payments under Time-and-Materials and Labor-Hour Contracts~~" (70 Fed. Reg. 56,314 (Sept. 26, 2005)) and 2003-027 ~~Additional Contract Types~~" (70 Fed. Reg. 56,318 (Sept. 26, 2005)).

ATTACHMENT 1

CAPSTONE LABOR CHARGES VS. GENERAL DYNAMICS LABOR CHARGES

LABOR CATEGORY	HOURS	CAPSTONE RATE	AMOUNT	GENERAL DYNAMICS RATE	AMOUNT	DIFFERENCE
Serv Desk Specialist I	182	\$44.44	\$8,088.08	—	—	—
Serv Desk Specialist II	1,062	51.85	55,064.47	—	—	—
Intra/Internet Specialist	168	69.85	11,734.80	—	—	—
Principal Information Engineer	184	84.66	15,577.44	—	—	—
Sr. Info Assurance Eng.	184	92.76	17,067.84	—	—	—
Sr. Sys Administrator	849	88.01	74,720.49	—	—	—
System Administrator	546.5	69.22	37,828.73	—	—	—
Sr Project Analyst	184	85.77	15,781.68	—	—	—
FOSA I	364	58.72	21,374.08	—	—	—
FOSA II	689	71.10	48,987.90	—	—	—
TOTALS	4,412.5		\$306,225.51		\$281,984.18	\$24,241.33

b(4)

ATTACHMENT 2

REVIEW OF THE CAPSTONE TASK ORDER
INVOICE REVIEW – DRAFT VS FINAL

		DRAFT		FINAL		DIFFERENCE	
CLIN	DESCRIPTION	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT
INVOICE NO. 1 – APRIL 1 THROUGH APRIL 30, 2009							
2A	Princ Telecom Engr	9.3	\$1,023.05	9.3	\$952.84	0	\$70.21
2A	Sr System Admin	120	10,561.20	0	0	120	10,561.20
2E	Sr System Admin	1,257	110,628.57	1,377	121,189.77	120	10,561.20
2M	Sr Info Engr	123	7,222.56	123	8,745.30	0	1,522.74
3	ODCs		16,118.53		13,097.41		3,021.12
TOTALS			\$916,033.25		\$914,464.66		\$1,568.59
INVOICE NO. 2 – MAY 1 THROUGH MAY 31, 2009							
3	ODCs		9,026.15		8,676.51		349.64
TOTALS			\$831,055.00		\$830,705.36		\$349.64

		DRAFT		FINAL		DIFFERENCE	
CLIN	DESCRIPTION	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT
INVOICE NO. 3 – JUNE 1 THROUGH JUNE 30, 2009							
3	ODCs		\$33,723.65		\$26,517.16		\$7,206.49
TOTALS			\$957,963.02		\$950,756.53		\$7,206.49
INVOICE NO. 4 – JULY 1 THROUGH JULY 31, 2009							
3	ODCs		\$16,880.35		\$0		\$16,880.35
TOTALS			\$878,270.25		\$861,389.90		\$16,880.35
INVOICE NO. 5 – AUGUST 1 THROUGH AUGUST 31, 2009							
3	ODCs		\$0		\$0		\$0
TOTALS			\$845,756.18		\$845,756.18		\$0

ATTACHMENT 3

SAMPLE
QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

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Attachment I contains a table that identifies performance-based measures which will be used to monitor Contractor performance. The XXX will periodically evaluate the Contractor’s performance by appointing a representative(s) to monitor performance to ensure services are received. The XXX representative will evaluate the Contractor’s daily performance through personal dealings and direct inspections of work products and demonstrated knowledge of applicable regulations. The XXX may conduct random facility inspections and increase the number of quality control inspections if deemed appropriate because of repeated failures discovered during quality control inspections or because of repeated customer complaints. Likewise, the XXX may decrease the number of quality control inspections if performance dictates. The XXX representative shall make final determination of the validity of customer complaint(s).

If any of the services do not conform to contract requirements, the XXX may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the XXX may:

- (a) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- (b) Reduce the contract price to reflect the reduced value of the services performed. Performance scoring will be in accordance with the acceptable quality level identified in the performance measurements table.

QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

1.0 INTRODUCTION

This Quality Assurance Surveillance Plan (QASP) is pursuant to the requirements listed in the performance-based Performance Work Statement (PWS) for XXXXXX. This performance-based plan sets forth the procedures and guidelines the XXX will use in evaluating the technical performance of the XXXXXX contractor.

1.1 PURPOSE

1.1.1. The purpose of the QASP is to describe the systematic methods used to measure performance and to identify the reports required and the resources to be employed. The QASP provides a means for evaluating whether the contractor is meeting the performance standards identified in the PWS.

1.1.2. This QASP is designed to define roles and responsibilities, identify the performance objectives, define the methodologies used to monitor and evaluate the contractor's performance, describe quality assurance reporting, and describe the analysis of quality assurance monitoring results.

1.2 PERFORMANCE MANAGEMENT APPROACH

1.2.1. The performance-based PWS structures the acquisition around “*what*” service is required as opposed to “*how*” the contractor should perform the work. This QASP will define the performance management approach taken by the XXX to monitor, manage, and take appropriate action on the contractor's performance against expected outcomes or performance objectives communicated in the PWS. Performance management rests upon developing a capability to review and analyze information generated through performance metrics. The ability to make decisions based on the analysis of performance data is the cornerstone of performance management. The data generated in a performance management approach provides information that indicates whether or not expected outcomes for required services are being achieved adequately by the contractor.

1.2.2. Performance management also represents a significant shift from the more traditional Quality Assurance (QA) concepts in several ways. Performance management focuses on assessing whether or not outcomes are being achieved and migrates away from scrutiny on compliance with the processes and practices used to achieve the outcome. The only exceptions to process reviews are those required by law (Federal, State, and local) and compelling business situations such as safety and health. An outcome focus provides the contractor flexibility to continuously improve and innovate over the course of the contract as long as the critical outcomes expected are being achieved at the desired levels of performance.

1.3 PERFORMANCE MANAGEMENT STRATEGY

1.3.1 The contractor's internal quality control system will set forth the staffing and procedures for self inspecting the quality, timeliness, responsiveness, customer satisfaction, and other performance requirements in the PWS. The contractor will utilize its internal quality control system to assess and report their performance to the designated Government representative.

1.3.2 The Government representative will monitor performance and review performance reports furnished by the contractor to determine how the contractor is performing against communicated performance objectives. The Government will make decisions based on performance measurement metric data and notify the contractor of those decisions. The contractor will be responsible for making required changes in processes and practices to ensure performance is managed effectively.

2.0 ROLES AND RESPONSIBILITIES

2.1. The Contracting Officer (CO) is responsible for monitoring contract compliance, contract administration and cost control; and resolving any differences between the observations documented by the Contracting Officer's Technical Representative (COR) and the contractor's performance.

2.2 The CO will designate one full-time COR as the Government authority for performance management. The number of additional representatives serving as Technical Inspectors depends upon the complexity of the services measured as well as the contractor's performance.

2.3 The COR is responsible for monitoring, assessing, and communicating the technical performance of the contractor and assisting the contractor. The COR will have the responsibility for completing QA monitoring forms (refer to Attachments II and III) used to document the inspection and evaluation of the contractor's work performance. Government surveillance may occur under the Inspection of Services clause for any service relating to the contract.

3.0 IDENTIFICATION OF SERVICES TO BE PERFORMED

The contractor shall provide XXXXXX Fund Administration service support in accordance with the PWS. The performance standards are established in the paragraph of the PWS that covers the specific category of work. The acceptable level of performance is set in the acceptable quality level related to that paragraph.

4.0 METHODOLOGIES TO MONITOR PERFORMANCE

4.1 In an effort to minimize the contract administration burden, simplified methods of surveillance techniques shall be used by the Government to evaluate contractor performance. The primary methods of surveillance are reports and customer input/feedback. The Government will use appointed representatives, as well as reports and input from users/customers as sources of comments on the contractor's performance.

4.2 The contractor is expected to establish and maintain professional communication between its employees and customers. The primary objective of professional communication between employees and customers is customer satisfaction. Customer

satisfaction is the most significant external indicator of the success and effectiveness of all services provided and can be measured through customer complaints. Performance management drives the contractor to be customer focused through initially addressing customer complaints and investigating the issues and/or problems.

NOTE: The customer always has the option to communicate complaints to the COR as opposed to the contractor. The COR will accept the customer complaints and will investigate using the Quality Assurance Monitoring Form – Customer Complaint Investigation identified in Attachment III.

4.3 The acceptable quality levels (AQL) located in Attachment 1, Required Performance Metrics Table, for contractor performance, are structured to allow the contractor to manage how the work is performed while providing negative incentives for performance shortfalls. For two (2) of the activities, the desired performance level is established at one hundred percent (100%). The other levels of performance is established at percentages somewhat less than 100%. All are keyed to the relative importance of the task to the overall mission performance.

5.0 QUALITY ASSURANCE REPORTING

5.1 The performance management feedback loop begins with the communication of expected outcomes. Performance standards are expressed in the PWS and measured by the required performance metrics in Attachment I.

5.2 The Government's QA monitoring, accomplished by the COR (and others as designated) will be reported using the monitoring forms in Attachments II and III. The forms, when completed, will document the COR's understanding of the contractor's performance under the contract to ensure that the PWS requirements are being met.

5.2.1 The COR will retain a copy of all completed QA monitoring forms.

6.0 ANALYSIS OF QUALITY ASSURANCE MONITORING RESULTS

6.1 The Government shall use the observation methods cited to determine whether the AQLs have been met. The Government's evaluation is then translated into the specific negative incentives that cause adjustments to the contractor's monthly payments.

6.2 At the end of each month, the COR will prepare a written report for the CO summarizing the overall results of the quality assurance monitoring of the contractor's performance. This written report consists of the contractor's submitted monthly progress report and the completed Quality Assurance Monitoring Forms (Attachment II) will become part of the QA documentation.

6.3 The CO may require the contractor's project manager, or a designated alternate, to meet with the CO and other Government personnel as deemed necessary to discuss performance evaluation. The COR will define a frequency of in-depth reviews with the contractor, however if the need arises, the contractor will meet with the CO as often as required or per the contractor's request. The agenda of the reviews may discuss:

- Monthly performance measured by the metrics and trends
- Issues and concerns of both parties

- Projected outlook for upcoming months and progress against expected trend
- Recommendations made by the COR based on contractor information
- Issues arising from independent reviews and inspections

6.4 In addition to QA monitoring, the COR will use the information contained in the contractor's monthly report to assess the contractor's level of performance for each objective measured in this QASP (detailed in Attachment I). The COR must coordinate and communicate with the contractor to resolve issues and concerns of marginal or unacceptable performance. The contractor will discuss with the CO/COR satisfaction ratings receiving a "less than acceptable" rating. For such cases, the contractor should highlight its perspective on factors driving customer satisfaction and present plans to adjust service levels accordingly to bring the satisfaction rating up to an acceptable level.

6.5 The CO/COR and contractor should jointly formulate tactical and long-term courses of action. Decisions regarding changes to metrics, thresholds, or service levels should be clearly documented. Changes to service levels, procedures, and metrics will be incorporated as a contract modification at the convenience of the CO.

7.0. FAILURE TO PERFORM

7.1 The contractor may receive deductions or even termination based on failure to perform. The following criteria apply for determining appropriate action:

1. **Notifications.** Consistent with FAR Part 49, the CO shall notify the service provider of failure to meet standards through QA monitoring forms, cure notices, or show cause notices and shall inform the service provider project manager or designated alternate of such notices.
2. **Deductions.** The Government has the right to withhold a percentage of payment of the monthly cost for performing particular services based on failure to meet performance standards. The percentage of such withholding is identified in the Required Performance Metrics (RPM) Table of Attachment I.
3. **Termination.** If the CO determines that the contractor has failed to perform to the extent that a termination for default is justified, the CO shall issue a notice of termination, consistent with FAR Part 49.

ATTACHMENT I

REQUIRED PERFORMANCE METRICS (RPM) TABLE

Required Service	Performance Standards	Acceptable Quality Levels	Method Of Surveillance	Incentive (Negative) (Impact on Contractor Payments)
Monthly, Quarterly and Annual Reports on Fund Status and Operations	Reports submitted no later than the due dates	100%	Reports, customer, regulatory &/or industry complaints, inspections, and/or evaluations	Invoice deduction of \$500 for each report delivered late
Audit Plans and Audit Reports of Providers	Audit Plans are submitted in accordance with prescribed timelines.	100%	Reports, customer, regulatory &/or industry complaints, inspections, and/or evaluations	Invoice deduction of \$500 for each audit plan submitted late
Audits of Administrator	Audits are conducted in accordance with prescribed timelines.	100%	Reports, customer, inspections, and/or evaluations	Invoice deduction of \$500 for each audit conducted late
Ratemaking and Contribution Factor Responsibilities	Proposed compensation rates, Fund size, and contribution factor are calculated and proposed in accordance with prescribed timeliness, and accurately reflect underlying data.	100%	Reports, customer, inspections, and/or evaluations	Invoice deduction of \$500 for each late deliverable
Timeliness and accuracy of payments	Payments of monies are executed pursuant to prescribed requirements, are supported by the data submitted by the providers, are the correct amounts, and are consistent with the Improper Payments Information Act	98%	Audits, reports, service providers	Invoice deduction of \$500 for not meeting Acceptable Quality Level or delivery date
Timeliness and accuracy in collections	Collection of monies shall be executed pursuant to prescribed requirements, are supported by the data, and are in the correct amount	98%	Audits, reports, service providers	Invoice deduction of \$500 for not meeting Acceptable Quality Level or delivery date
Collecting and Reviewing cost and demand data from Providers	Timely and complete collection of data pursuant to prescribed requirements	98%	Audits, reports, service providers	Invoice deduction of \$500 for not meeting Acceptable Quality Level or delivery date

ATTACHMENT II
QUALITY ASSURANCE MONITORING FORM

SERVICE or STANDARD:

SURVEY PERIOD: _____

SURVEILLANCE METHOD (Check): Reports
 100% Inspection
 Periodic Inspection
 Customer Input/Feedback

LEVEL OF SURVEILLANCE SELECTED (Check):
 Monthly
 Quarterly
 As needed

ANALYSIS OF RESULTS:

OBSERVED SERVICE PROVIDER PERFORMANCE MEASUREMENT RATE =
_____ %

SERVICE PROVIDER'S PERFORMANCE (Check): Meets Standards
 Does Not Meet Standards

NARRATIVE OF PERFORMANCE DURING SURVEY PERIOD:

PREPARED BY: _____ **DATE:** _____

ATTACHMENT III

*QUALITY ASSURANCE MONITORING FORM –
CUSTOMER COMPLAINT INVESTIGATION*

SERVICE or STANDARD:

SURVEY PERIOD: _____

DATE/TIME COMPLAINT RECEIVED: _____ AM / PM

SOURCE OF COMPLAINT: _____ (NAME)
_____ (ORGANIZATION)
_____ (PHONE NUMBER)
_____ (EMAIL ADDRESS)

NATURE OF COMPLAINT:

RESULTS OF COMPLAINT INVESTIGATION:

DATE/TIME SERVICE PROVIDER INFORMED OF COMPLAINT: _____
_____ AM / PM

CORRECTIVE ACTION TAKEN BY SERVICE PROVIDER:

RECEIVED AND VALIDATED BY: _____

PREPARED BY: _____ **DATE:** _____

ATTACHMENT 4

**SURVEY OF
INFORMATION TECHNOLOGY SUPPORT SERVICES PERFORMED AT OTHER
GOVERNMENT AGENCIES**

AGENCY	IT SERVICES PERFORMED IN-HOUSE OR OUTSOURCED	CONTRACT TYPE IF OUTSOURCED
Fed Maritime Commission (FMC)	In-house	
Fed Election Commission (FEC)	In-house	
Government Printing Office (GPO)	In-house	
Library of Congress (LOC)	Some In-house and some Outsourced	Firm-Fixed-Price (FFP)
National Labor Relations Board (NLRB)	Outsourced	Firm-Fixed-Price (FFP)
Federal Reserve Board (Fed)	In-house	
Securities and Exchange Commission (SEC)	Outsourced	Firm-Fixed-Price (FFP)
Farm Credit Administration (FCA)	In-house	
Architect of the Capitol (AOC)	Outsourced	Firm-Fixed-Price (FFP)

Appendix A – Acronyms and Abbreviations

CAS	Cost Accounting Standards
CIO	Chief Information Officer
CLIN	Contract Line Item Number
CO	Contracting Officer
COTR	Contracting Officer's Technical Representative
CTA	Contractor Teaming Arrangement
DCAA	Defense Contract Audit Agency
D&F	Determination and Findings
DOD	Department of Defense
DUNS	Data Universal Numbering System
FAR	Federal Acquisition Regulation
FFP	Firm-Fixed-Price
FISMA	Federal Information Security Management Act
FOSA	Field Office System Administrator
FPAF	Fixed-Price-Award-Fee
FY	Fiscal Year
GAO	Government Accountability Office
GDIT	General Dynamics Information Technology
GSA	General Services Administration
GSBCA	General Services Board of Contract Appeals
IG	Inspector General
IT	Information Technology
NAA	Acquisitions Services Division
NARA	National Archives and Records Administration
NARANet	NARA's Computer network (known as
NH	Office of Information Services
NIST	National Institute of Standards and Technology
NITTSS	NARA Information Technology and Telecommunications Support Services
OFPP	Office of Federal Procurement Policy
OIG	Office of Inspector General
OMB	Office of Management and Budget
PCO	Procuring Contracting Officer
QASP	Quality Assurance Surveillance Plan
QCP	Quality Control Plan
RFQ	Request for Quotation
SLA	Service Level Agreement
SOW	Statement of Work
T&M	Time-and-Materials
US-CERT	United States Computer Emergency Readiness Team

B - Report Distribution List

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Appendix C - Management's Response to the Report



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

Date: August 6, 2010

To: Paul Brachfeld,
Inspector General

From: David S. Ferriero
Archivist of the United States

Subject: Response to Revised Draft Audit Report 10-05, Review of NARA's Contract for Information Technology and Telecommunications Services

Thank you for the opportunity to comment on this revised draft of Audit Report 10-05, Review of NARA's Contract for Information Technology and Telecommunication Support Services. We appreciate the time involved in addressing our concerns in the initial draft and offer the following additional comments.

We generally concur with the recommendations in the revised draft, particularly since we regularly perform most of the recommended actions. Despite this general concurrence, we do not agree with the overall conclusions and believe that the auditor either failed to consider or rejected a number of pertinent factors in reaching these conclusions.

In particular, the auditor did not analyze the award of this task order and the type of award chosen in the full historical context of this requirement. In addition, the auditor continues to rely on guidance issued after the relevant decisions were made regarding this task order. NARA agrees that for future procurements, as well as for option years in the contract under discussion, the OMB guidance relied upon by the auditor is important and must be considered. However, it is unclear what benefit is gained by continuing to apply standards to NARA that were not in effect at the time it decided to award this as a hybrid time and materials (T&M)/Firm Fixed Price (FFP) task order.

We would also like to note that a critical conclusion of this report was not included in the executive summary, but relegated to page 27 of the report:

“We again stress that the current task order set-up violates absolutely no regulations, and in fact is endorsed by FAR definitions and is commonplace throughout federal contracting. However, opportunities to further conserve scarce fiscal resources are present, and should at least be considered in the future.”

A. A more advantageous type of contract could have been selected to acquire IT support services.

The OIG contends that NARA should have awarded a FFP task order instead of the hybrid T&M/FFP task order that was awarded. We disagree with this conclusion.

The precursor to the task order with Capstone was the Information Technology Support Services (ITSS) task order with SRA. The SRA task order was awarded on October 1, 2003, with a base year and 4 option periods. The SRA task order was a hybrid; 85% of the work under the contract was firm fixed price with award fee (FFPAF)¹ and 15% was performed on a T&M² basis.³

Our experience under the SRA task order was that a number of modifications were required to add work due to unforeseen circumstances and requirements, and thus an increase in the price of the contract. Negotiating prices in the middle of a contract puts us at a disadvantage by essentially putting us in a sole source situation without much leverage to negotiate better prices. Indeed, the OIG performed an audit of the SRA contract⁴ and raised a number of concerns about the various modifications that increased the price.

For example, the impact that the Case Management and Reporting System (CMRS) at the National Personnel Records Center (NPRC) in St. Louis would have on the NARA network and the work performed by SRA under the task order was not fully understood at the time the task order was awarded to SRA. The use of CMRS brought a number of changes that impacted SRA's work load and its complexity, including an increase in help desk calls and requiring engineering/system administration support to resolve issues. This was a circumstance that could not be predicted or accounted for in the firm fixed price task order originally awarded, and thus a modification was required. CMRS is just one of many examples that evidence the dynamic and changing landscape in which we need our IT vendors to operate, making use of a FFP task order more risky.

When preparing for the re-compete of the requirement, we were highly cognizant of our experience under the SRA task order and on the OIG's criticism of that transaction. Accordingly, we carefully reviewed NARA's requirements and analyzed how best to structure the task order, and determined that it would be best to award a task order against a General Services Administration (GSA) Federal Supply Schedule (FSS) with a focus on awarding to a

¹ A firm fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. The Award Fee earned, if any, is paid in addition to the fixed price based on above satisfactory performance on the contract. Federal Acquisition Regulation (FAR) §§16.202-11 and 16.404.

² A time and materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) actual cost for materials. FAR 16.601.

³ Throughout the OIG Report, the OIG refers to the prior task order as FFP. While the majority of the work was performed on a FFPAF basis, approximately 15% of the task order was on a T&M basis.

⁴ OIG Audit Report 06-02, *Review of Modifications Made to the Performance-Based Task Order for Information Technology Support Services*, dated October 12, 2005.

small business.⁵ We ultimately issued a solicitation and awarded a task order that was a hybrid – 80% of the work is performed on a T&M basis and 20% is performed on a FFP basis.

We agree that T&M procurement vehicles pose performance and cost risks, and must be closely monitored. However, FFP vehicles can also pose performance and cost risks when used inappropriately. An FFP vehicle should only be used on the basis of reasonably definite functional or detailed specifications. Furthermore, an FFP vehicle should only be used when the contracting officer (CO) can establish fair and reasonable prices at the outset, such as when performance uncertainties can be identified and reasonable estimates of their cost impact can be made.

One of the primary advantages of a well run T&M task order is that an agency can actually obtain life-cycle savings through effective monitoring, thereby resulting in project completion below the anticipated ceiling. In fact, NARA's experience under the current task order compared to the prior task order bears this out. For example, in the first year of the SRA task order, the price increased over \$1M. The price for Option Year 4 of the SRA task order was \$12,155,369. On the other hand, for the first year of the current task order, Capstone burned 2,717 hours less than anticipated and budgeted for, coming in approximately \$637,000 under budget.⁶ Under a FFP task order, the price would have included those 2,717 hours, and thus we would have paid for them regardless of whether they were actually worked. As such, we recognized a cost savings of about \$800,000 from Option Year 4 under the largely FFPAF task order with SRA. This experience is being repeated in the second year of the task order with Capstone; as of July 26, 2010, several months into the first option year, Capstone has billed for 22,126 hours, 250 hours less than our initial ceiling for this period.⁷

As discussed above and throughout this response, NARA fully considered the various contract types before determining that a T&M contract with FFP portions was the best option for this requirement.⁸ The history of problems with the previous FFPAF portion of the preceding task order was a contributing factor to the CO's decision to increase the T&M portion of the current task order. During the lifecycle of the SRA task order, we executed numerous modifications to address work not contemplated in the RFP. This was largely due to NARA's rapidly expanding mission and responsibilities as they relate to storage and management of electronic records as well as the integrity and confidentiality of various types of Government information. These new responsibilities resulted in the creation of new offices, new positions, new locations, and new requirements for SRA.

⁵ In fact, that first factor we evaluated and the factor given the most weight, was the percentage of work to be performed by a small business.

⁶ Furthermore, NARA has been able to perform several major upgrades and other work within the base year that would not have been done or would have resulted in modifications and additional costs under a FFP contract.

⁷ Not only has this task order been a success in terms of cost, Customer Satisfaction Surveys for the first year under the task order reflect a satisfaction rate of 93%, with the exception of one month (May 2009), which had a rating of 85%. This is where the rubber meets the road; regardless of the cost experience and some late reports, neither NARA nor the OIG should lose sight of the overall purpose of the task order, *i.e.*, to ensure that the Agency IT systems are up and running, which they are.

⁸ The Acquisition Plan, which included the rationale for selecting a hybrid-type contract that included T&M, was reviewed and approved by the Contracting Officer, the Director of Acquisitions, the Competition Advocate, and the Office of General Counsel.

When the pre-solicitation, and then pre-award, meetings for the recomplete of this requirement occurred, it was evident that there was no real certainty about the future of NARA's IT landscape. As such, a complete FFP vehicle was not appropriate. We determined, and documented in the Acquisition Plan, dated June 26, 2008, that with close monitoring, we could successfully meet NARA's needs with a hybrid T&M/FFP task order that better defined the FFP effort and T&M effort.

The issues, unforeseen changing requirements, and the difficulty in defining the requirements that made using a majority FFPAF vehicle inappropriate, and would similarly affect a FFP vehicle, were provided in NAA's response to the draft OIG Audit Report 06-02. NARA's dynamic IT environment, unmanageable in a FFP-type contractual setting, naturally evolved into performance as a T&M vehicle.

As additional support for its conclusion that we could have entered into a more advantageous type of contract, the OIG relies on its informal survey of the type of contracts used for IT Support Services at nine other agencies. As the OIG recognizes, we are concerned that when choosing other agencies to support its position, the OIG did not select agencies that are similar to NARA in size or scope. Moreover, simply noting that an agency uses a FFP contract for these services does not tell the whole story. Rather, it is important to also understand each agency's experience using a particular procurement vehicle. For example, if one of the agencies relied upon by the OIG used an FFP contract but ultimately had to modify the contract and increase the price a number of times because of changing circumstances, it could be that an FFP was not the most beneficial to the Government. The bottom line is that simply stating that some other agencies use FFP contracts for these types of services does not equate to an FFP vehicle being the best choice for NARA.⁹

We concur with Recommendation 1. We concur because before exercising any option, we always fully consider whether exercising the option, and under what terms, is in the best interests of the Government.¹⁰

B. No determinations and findings prepared for the Task Order.

The OIG concludes that NARA did not comply with FAR requirements because a "Determinations and Findings" (D&F) was not prepared for the Capstone task order. However, a D&F was not required for this task order.

This task order was awarded using FAR Part 8. FAR Part 8 does not require a D&F for the award of a T&M task order. FAR 8.504-2(e) *Minimum Documentation* states the documentation requirements for Task Orders with Statements of Work placed against a GSA FSS. Specifically, FAR 8.405-2(e)(7) provides: "[T]he ordering activity shall document---(7) The rationale for using other than --- (i) a firm-fixed price order...." As such, FAR 8.405-2(e)

⁹ Of the nine agencies surveyed, 5 performed these IT services in-house, 3 used Firm Fixed Price contracts, and 1 used a hybrid of in-house resources and an FFP contract.

¹⁰ The first option year was exercised on March 31, 2010. The second option year, if exercised, will begin on April 1, 2011.

does not dictate that a D&F or other specific documentation be prepared to support the decision to award a T&M task order, only that the rationale be documented. NARA documented its rationale in the Acquisition Plan, and thus, fully complied with the FAR.

The OIG asserts that we should have followed the D&F requirements contained in FAR Parts 12 and 16 when awarding this task order under FAR Part 8. In support, the OIG relies solely on FAR 8.404, which excludes certain FAR Parts from applicability to awards made under FAR Part 8. Because FAR Parts 12 and 16 are not specifically excluded, the OIG concludes that a D&F under FAR Part 12 was required in this procurement.

The OIG reaches this conclusion despite its own acknowledgment that even GSA, who administers the GSA FSS, believed that a FAR Part 12 D&F was not required for T&M task orders awarded using FAR Part 8.¹¹ FAR 8.405-2(e) states very clearly what documentation was required for the procurement at issue. At most, this issue raised by the OIG demonstrates that there may be some ambiguity about whether other documentation is required. This ambiguity is recognized in GAO Report No. GAO-09-579, *Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules*, June 2009, and in the OMB Memorandum regarding Increasing Competition and Structuring Contracts for the Best Results at page 8, note 5, dated October 27, 2009. Both of these documents (dated after the date of the Capstone award) indicate that the FAR does not require a D&F for FAR Part 8 awards, but also that maybe it should. As of September 2009, GSA now also requires that a D&F be prepared for T&M task orders under the GSA FSS and a FAR case has been opened to expressly apply the D&F requirements to GSA FSS awards.

We concur with Recommendation 2. We concur because NARA already prepares D&Fs when required by the FAR or other regulations.

C. Subcontract costs could have been reduced.

In the OIG Report, the OIG raises the issue of subcontract costs as an “other matter,” without providing any specific recommendation other than stating that NARA maybe could have negotiated lower rates. As the OIG acknowledges, NARA has not violated any statute, rule or regulation in the way this task order addresses subcontractor costs. In addition, the OIG admits that the Agency is acting consistently with the FAR and the Federal contracting community. Nonetheless, the OIG determined it was necessary to raise this non-issue.

Since the OIG acknowledges that we fully complied with the FAR, it is not necessary to justify NARA’s actions in this regard. However, it is worth noting that Capstone offered a discount to its GSA FSS rates as part of its quote to NARA, a point that the OIG report failed to mention. Moreover, NARA’s actual experience under this task order is that it has realized

¹¹ The OIG’s conclusion on this issue is similar to its faulty conclusion later in the Report that NARA should have negotiated lower subcontract rates. The OIG appears to be more concerned with finding that we did something “wrong,” than actually providing constructive assistance and guidance. For example, the OIG could have simply stated that the better practice is to use a formal D&F, instead of incorrectly concluding that NARA violated the FAR.

significant cost savings during the base year from Option Year 4 under the SRA task order. As such, the OIG's indication that 'its concerns about subcontractor rates are particularly acute because this is a T&M task order' appears to be misplaced.

D. Surveillance of contractor performance was inadequate.

In the Report, the OIG concluded that, "the COR did not demonstrate [sic] an adequate, comprehensive, and well-documented monitoring of contractor performance was performed...."¹² We disagree.

At the outset it is important to note that, despite the alleged deficiencies in the monitoring of this task order, the Agency has saved about \$647,000 from what was expected at task order award, and Customer Satisfaction Surveys reflect a satisfaction rate of 93%. These facts belie the OIG's assertion that "NARA officials may be accepting substandard performance, or may be paying for services not received, i.e., the agency has not ensured that the contractor is complying with the terms of its contract, or that the agency is receiving the best value from these services."

Surveillance of the Capstone task order is provided by the Contracting Officer Representative (COR) with the assistance of ten (10) Technical Monitors (TM). Each TM is responsible for certain sections of the task order and has created surveillance plans for his or her respective area of the task order. The TMs also review deliverables in their respective areas and provide comments as NARA's subject matter experts. Finally, the TMs provide monthly reports to the COR documenting performance and any issues in their assigned areas of responsibility.

In addition to the work that the TMs perform monitoring the task order, there are numerous meetings each month between various NARA officials and Capstone employees. For example, the TMs meet weekly with their counterparts for Capstone. In addition, there is the weekly Director's Meeting that includes the COR, NHT management, the TMs and Capstone management. The COR and the Capstone Program Manager also meet weekly. And finally, there is the Quality Council (QC) meeting each month.

To support its conclusion that the surveillance process was poorly documented and not well-organized for review, the Report claims that there "was no documentation available to support that the technical monitors performed any detailed tests and/or analyses of contractor performance."¹³ To the contrary,, TM documentation supporting the TM surveillance of contractor performance does exist and was provided to the OIG on October 15, 2009. In addition, the OIG was provided copies of the Capstone monthly reports that discuss performance and Service Level Agreements (SLA) statistics. Capstone monthly reports for the months of April through August 2009 were provided in an email to the OIG on October 6, 2009. On Friday, October 16, 2009 and Friday, October 23, 2009 copies of the Technical Monitors Surveillance Plans and monthly reports were provided to the OIG. These emails contained over 3 months worth of TM data. The OIG office was also provided copies of the QC audit schedule and detailed findings in an email on October 23, 2009. Finally, the OIG

¹² OIG "Draft" Report No. 10-05, p. 16.

¹³ See OIG "Draft" Report No. 10-05, p. 16.

requested and received information directly from TMs. The data provided by the TMs directly included detailed reports, meeting minutes and deliverable reviews.

The Report also claims that “no minutes were prepared for meetings held where the contractor’s performance was discussed.”¹⁴ However, minutes are recorded from various recurring meetings discussing contractor performance, including the weekly Director’s meeting and QC meetings. Meeting minutes were provided to the auditor from the monthly QC meeting via email on October 23, 2009. Deborah Anderson, a TM, provided meeting minutes from multiple areas to the auditor via email on October 28, 2009.

Finally, the Report claims that “COR did not maintain an official file containing contractual documentation and monitoring results, nor did she submit written reports, addressing all aspects of the contractor’s performance, including cost effectiveness, quality, and timeliness of performance, to the CO.”¹⁵ This is simply not true.

The COR maintains detailed files, both hard copy and electronic. A discussion regarding these files was held via email between the auditor and the COR on October 14, 2009. A meeting was scheduled for the auditor to review the COR files on October 15, 2009. During the meeting the auditor was provided with a large number of files that included:

1. COR correspondence – 3 folders
2. TM issues
3. Deliverables
4. Badge requests
5. ODC requests
6. Capstone out-processing forms
7. Travel requests – non-recurring
8. Invoice folders by month with all supporting documentation
9. Quality Control folder with approved minutes, audit results, calendars and agendas
10. Copy of the RFQ
11. Copy of the contract

Additional evidence of performance monitoring documentation was, in fact, made available to the auditor during the visit on October 15, 2009. In reality, the Report is simply criticizing the way the COR organized her files. However, the files maintained by the COR are for her use in performing her responsibilities as the COR. Therefore, they should be organized in a way that is useful for her, not geared towards how the OIG thinks they should be organized. Again, the OIG’s conclusions in this regard place form over function.

We concur with the intent of Recommendation 3. The COR represents the CO in all task order related matters. As such, NHT does not have the authority to direct the COR to perform task order related duties. Furthermore, the CO of the Capstone task order deems the documentation described above to be adequate as is. The Quality Assurance Surveillance Plan (QASP), as supplemented by the individual monitoring plans managed by each technical

¹⁴ See OIG “Draft” Report No. 10-05, p. 16.

¹⁵ See OIG “Draft” Report No. 10-05, p. 16.

monitor, is adequate. The CO will work with the COR to **formally** update the QASP to include the individual TM Plans, although they have been in practice. Finally, monitoring of compliance with SLAs has been on-going, and will continue, since performance began on the Capstone task order.

E. Task order invoicing requirements were not being met.

The OIG concludes that the task order invoicing requirements were not met because the CO and COR on the task order did not require Capstone to submit each employee's time sheets with its invoices. Originally, the task order required Capstone to submit timesheets with its invoices. However, later the CO determined that this was not necessary and not consistent with the Commercial Item invoicing provisions in the FAR.

The OIG's contention that the COR and the CO failed to fulfill their fiduciary responsibility to protect the interests of the Government is without merit. The invoice documentation provides reliable, detailed records sufficient to support the COR decision to approve the invoices. The OIG's invoice review indicated no other areas of concern except timesheets. The OIG believes that fully understanding the relationship of the timecards to the invoice, and how the invoice represented actual electronic timecards output, is not sufficient. We disagree. The employees are electronically inputting their timesheets into Deltek and the system output provides detailed representation of the hours charged by employees.

Prior to making a decision on time sheets, the CO and the COR visited Capstone's facility to review how the timesheets were electronically input into their electronic timekeeping system Deltek and how the data output provided detailed time and cost support for invoices. Capstone uses Deltek GCS Premier, which was developed in conjunction with FAR and Cost Accounting Standards (CAS) and is designed to be fully compliant with DCAA requirements. The CO and COR were confident that the Deltek system data output provided the necessary details to support an invoice compliant with the requirements of FAR 52.212-4(g). The CO then informed Capstone that they did not need to submit the timesheets with the invoice and she would modify the contract to reflect change later.¹⁶ This decision was not only within her authority as the CO but required since the additional burden of providing timesheets was contrary to the invoice requirements of the FAR.¹⁷

Importantly, the COR also reviews a random sampling of timesheets related to each invoice, and receives additional information and clarification when she has a question about a timesheet. In addition, the COR is provided a detailed summary for any employees that have worked over 40 hours per week to ensure that the overtime was necessary and appropriate. This summary includes the problem or project name that the work was for.

The bottom line is that both the CO and COR acted consistently with the FAR and have met their obligations to ensure that NARA is being invoiced properly.

¹⁶ This change was effectuated in Modification 2, September 25, 2009.

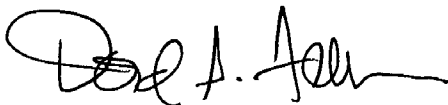
¹⁷ The invoice clause at FAR 52.212-4(g) is statutorily precluded from tailoring as provided by FAR 12.302(b).

The Report also questioned why the vendor initially submitted draft invoices when the task order did not require them. NARA and Capstone both agreed that it would be helpful to submit a few draft invoices to ensure that the vendor was providing the necessary supporting documentation. Although this is normally not done, since Capstone is a small business the CO and the COR made time to work with Capstone to assist them in understanding what NARA needed by way of invoices. This extra effort by the CO and COR to help a small business succeed is something that should be commended not criticized.

We concur with the intent of recommendation 4. Capstone does comply with the commercial invoice clause that is included in the task order. The conflicting non-commercial language requirement for timesheets submission was removed from the task order as it was contrary to the requirements of the FAR, specifically FAR 12.302(b). The invoice supporting documentation contains breakouts by line-item and sub-line-item, including number of hours worked by individuals, their labor rate, and the associated cost.

We concur with the intent of recommendation 5. There is a benefit to helping a small business improve their business processes. Therefore, NARA sees no need to discontinue the draft invoice process if the COR wishes to continue extending assistance and the contractor wishes to continue to submit draft invoices to avoid delays in processing final invoices. The COR maintains this draft invoice documentation in her case file.

We concur with recommendation 6. We concur because the COR has and continues to keep the CO informed in a timely manner of technical or contractual difficulties with task order performance.



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