

**STATEMENT OF
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OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF VETERANS AFFAIRS
BEFORE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON VA INTERNAL CONTRACTING OVERSIGHT
DEFICIENCIES**

JUNE 27, 2007

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on facts surrounding the Office of Inspector General's (OIG's) report on the *Audit of Alleged Mismanagement of Government Funds at the VA Boston Healthcare System*, which was issued on May 31, 2007. I am accompanied by Maureen Regan, Counselor to the Inspector General, and Nicholas Dahl, Director of the Bedford Audit Operations Division, who directed the team responsible for the audit. We performed the audit in response to an anonymous hotline call concerning contract irregularities and the misuse of Government funds. The issues we reported are specific to the VA Boston Healthcare System, which is one of eight facilities in Veterans Integrated Service Network (VISN) 1; however, I will highlight areas where I believe VHA management can improve controls to help prevent similar incidents from occurring elsewhere in VHA.

BACKGROUND

The complainant listed 24 contracts that allegedly had improper contract modifications associated with them. These 24 contracts were originally executed between fiscal years 2000 through 2003 and had a combined value of \$1.3 million. During fiscal years 2002 through 2006, the Boston Healthcare System executed 40 contract modifications against these contracts with a combined value of \$5.5 million. All 40 modifications involved non-recurring maintenance (NRM) work for the VA Boston Healthcare System.

CONTRACT MODIFICATIONS

A contract can be modified to add additional work only if the work is within the scope of the original contract documents. If the work is outside the original scope

of work, a new contract must be awarded using procedures prescribed in Federal Acquisition Regulations, including competitive procedures. Modifications that are outside scope are prohibited cardinal changes to the contract. It is the responsibility of the contracting officer to determine whether a modification is appropriate and for ensuring that all modifications are appropriate. Contracting officials also violated Federal Acquisition Regulations by issuing modifications to contracts that had expired.

APPROPRIATIONS LAW

Appropriations are available to pay for expenses incurred during the years the appropriations are available. If an agency does not obligate funds prior to the expiration of the appropriation, the funds are not available to pay for new obligations. The only exception is if the expenditure meets the “bona fide needs” test set forth in Title 31, U.S.C. Section 1502. Under this test, expired funds can be obligated to pay expenses incurred properly during the life of the appropriation or to complete contracts properly made during this time period.

VALIDATION OF COMPLAINT

We determined that 37 of the 40 contract modifications were outside the scope of the original contracts and that payment with expired appropriations violated Federal appropriations laws. The Chief of the Purchasing and Contracting Section executed 26 of the 37 contract modifications and 4 other contracting officers executed the remaining 11 modifications. The total value of the 37 modifications was \$5.4 million, all paid from expired funds. We concluded that the VA Boston Healthcare System’s Chiefs of the Purchasing and Contracting Section and Fiscal Service, along with Engineering Service personnel, collaborated to circumvent internal controls.

The collaboration began when the Chief of Fiscal Service reportedly informed the Chief of Engineering Service that funds were available from prior year appropriations. Engineering Service maintained a list of NRM work needing completion and provided the names of vendors who had performed work during the appropriation years of the expired funds and the relevant purchase order numbers to the Chief of the Purchasing and Contracting Section. Contracting officers used that information to execute 37 contract modifications that were outside the scope of the original contracts.

For example, the VA Boston Healthcare System executed an original contract in fiscal year 2002 to repair roadways for \$16,000 at the West Roxbury campus of the VA Boston Healthcare System. The first modification, executed in fiscal year 2003, provided \$102,367 to repair parking lot lights. Another modification,

executed in fiscal year 2004, provided \$487,000 to replace emergency electrical panels. A third and final modification, executed in fiscal year 2004, provided \$408,500 to replace an emergency generator. The three modifications had a total value of \$997,867, all paid with expired funds.

Personnel within all three services did not follow established procedures and circumvented controls. The Chief of the Purchasing and Contracting Section, and four other contracting officers, exceeded their authority by executing contract modifications against expired contracts and were outside the scope of the original contracts. The contracting officers also did not obtain the required legal concurrence from VA Regional Counsel to execute modifications exceeding \$100,000. In addition, the Chief of Fiscal Service allowed the obligations and did not obtain approval from the VA Expired Funds Manager to use \$5.4 million in expired funds. Finally, Engineering Service personnel did not input non-recurring maintenance project submissions into the VISN Support Service Center Capital Asset Database, which is used to track NRM projects. The effect of these omissions was to reduce the chance that anyone at the VISN or VHA would question and oversee these projects.

In addition, the VA Boston Healthcare System did not comply with other Federal Acquisition Regulations in awarding the contracts. For example, in several cases, they did not develop statements of work (SOW) that adequately described the work to be performed or the services to be rendered. The SOW is in itself a control mechanism that provides an objective measure for the completion of work. By executing modifications to existing contracts, the VA Boston Healthcare System also avoided competition requirements and had no assurance that the prices paid were fair and reasonable.

CONTROL WEAKNESSES

Our review identified policies and procedures were in place to prohibit the improper use of expired funds. However, no controls were in place to ensure compliance or detect noncompliance with prescribed policies and procedures. VA Boston Healthcare System employees' ability to circumvent these procedures puts the effectiveness of these policies and procedures into question.

Although the procedures required the approval of the VISN Chief Financial Officer before obligating expired funds, the Chief of Fiscal Service was able to use expired funds without receiving the required approval and without the VISN or VHA knowing about the obligations of the expired funds. System controls could prevent personnel below the VISN level from obligating expired funds. A more cost effective control would be reports designed to flag obligations of prior year funds.

In addition, the VA Boston Healthcare System was able to execute improper contract modifications without the awareness of VISN or VHA officials. VA acquisition regulations require contracting officers to request legal reviews from the VA Regional Counsel prior to executing modifications greater than \$100,000. When submitting a request for legal review, contracting officers are required to submit a statement as to whether the modification is within the scope of the original contract. VA Boston Healthcare System ignored this procedure and executed 17 modifications over \$100,000, valued at \$4.4 million, without requesting the legal reviews. No controls are in place to identify contracts or modifications that have not had the required legal or technical reviews.

Contracting officers are responsible for safeguarding the interest of the Government in contractual agreements. Contract modifications should not be executed to expedite the contracting process or in response to pressure from requesting services. It was ultimately the responsibility of the Chief of the Purchasing and Contracting Section to make the correct determination that modifications were outside the scope of the original contracts and that Fiscal Service could not obligate additional funding to pay for these modifications. We saw no procedures in place at the time that would have alerted the VISN or VHA to the improper modifications. The results of our review suggest that oversight over contracting officials' activities should be increased to improve the accountability of their actions.

We reported the issues identified at the VA Boston Healthcare System to the auditors who are responsible for the annual consolidated financial statement audit. Standards require that auditors design a financial statement audit to provide reasonable assurance of detecting material misstatements, whether caused by error, fraud, or illegal acts. Although the violations of law cited in the Boston report did not result in material misstatements, the auditors must consider the risk of similar acts occurring elsewhere that could be a material weakness. Our auditors have considered the Boston report in designing their audit procedures for this year. The audit is still underway, with the report due in November.

RECOMMENDATIONS

We made seven recommendations to the VISN 1 Director. Four of the recommendations concerned the improvement of controls over the execution of contract modifications, the use of expired funds, the NRM reporting and approval process, and compliance with the Federal Acquisition Regulations. We also recommended that the VISN 1 Director take administrative actions against the Chiefs of the Purchasing and Contracting Section and Fiscal Service; initiate an administrative investigation; and take actions, if warranted, against other VA Boston Healthcare System employees involved with the issues identified during

our audit. Finally, we recommended the necessary accounting adjustments to correctly record the funding of the improper contract modifications.

In addition, we recommended the Deputy Assistant Secretary for Acquisition and Materiel Management determine whether the warrant authority for the Chief of the Purchasing and Contracting Section should be revoked. The Deputy Assistant Secretary subsequently revoked the Chief of the Purchasing and Contracting Section's warrant authority.

VISN ACTION PLAN

In response to our recommendations, the VISN developed and issued standard operating procedures and policy guidance to help improve management controls over the execution of contract modifications, use of expired funds, and the approval of NRM projects. With guidance from VHA accounting officials, VA Boston Healthcare System accounting staff made the necessary accounting adjustments to correctly record the funding of the improper contract modifications.

The VISN 1 Director appointed an Administrative Board of Investigation to conduct an assessment of the facts surrounding the improper contract modifications and use of expired funds. The VISN 1 Director instructed the Board to inquire into all aspects related to the issues, and to obtain testimony under oath or affirmation without a pledge of confidentiality. A final report is due by July 15, 2007.

CLOSING

The OIG will continue to work with VA to improve the oversight of contracting and fiscal activities to prevent similar occurrences in the future.

Mr. Chairman, thank you again for the opportunity to testify. I would be pleased to answer any questions that you or other Members of the Subcommittee may have.