

TESTIMONY
Before
The United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Government Management, Organization, and Procurement

Hearing on

9/11 Health Effects: Why Did HHS Cancel Contracts for Responder Health Care?

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Presented by

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Honorable Chairman Towns and other members of the Subcommittee, I greatly appreciate the opportunity to appear before you at this hearing.

I am James Melius, an occupational health physician and epidemiologist, who currently works as Administrator for the New York State Laborers' Health and Safety Trust Fund, a labor-management organization focusing on health and safety issues for union construction laborers in New York State. During my career, I have spent many years working for the federal and state government on occupational and environmental health issues. This included 15 years working first for the National Institute for Occupational Safety and Health (NIOSH) and then for the New York State Department of Health. While working for both of those agencies, I had experience developing, preparing, and reviewing government contracts and grants. These included contracts for occupational medical services. For the past 11 years, I have worked on occupational safety and health issues for labor organizations.

I have been involved in health issues for World Trade Center responders since shortly after September 11th. Over 3,000 of our construction union members were involved in response and clean-up activities at the site. When the initial concerns were raised about potential health problems among responders at the site, I became involved in ensuring that our members participated in the various medical and mental health services that were being offered. For the past four years, I have served as the chair of the Steering Committee for the World Trade Center Medical Monitoring and Treatment Program. This committee includes representatives of responder groups and the involved medical centers (including the NYC Fire Department) who meet monthly to oversee the program and to ensure that the program is providing the necessary services to the many people in need of medical follow-up and treatment. I also serve as co-chair of the Labor Advisory Committee for the WTC Registry operated by the New York City Department of Health. Through my work with the International Association of Fire Fighters, I have also had the opportunity to meet with fire fighters from other areas in New York State and from around the country who worked at the WTC site in the immediate aftermath of September

11 and are now concerned about their health. These activities provide me with a good overview of the benefits of the current programs and the difficulties encountered by responders seeking to address their medical problems and other needs.

On October 23 of last year, the Centers for Disease Control and Prevention (CDC) on behalf of the NIOSH released a solicitation for a contract to provide various administrative and medical services related to the medical monitoring and treatment program for the WTC responders. An open meeting with prospective bidders was held in New York City on November 7, and applications were due on December 19. On December 13, CDC abruptly cancelled the solicitation giving a variety of reasons for this decision. The cancellation of this solicitation has potentially serious consequences for the ability of the federal government to provide the medical services needed by the thousands of responders and other groups who worked at the WTC site in the aftermath of September 11. I would like to briefly review the contents of this solicitation and the potential consequences of the cancellation for the many responders and other workers whose health has been endangered by their work at the WTC.

CDC Solicitation

The solicitation for proposals issued by CDC/NIOSH was directed at outside firms to establish a Business Processing Center that would administer reimbursements to the medical institutions and providers who were involved in the medical monitoring and treatment of people enrolled in the WTC Medical Monitoring and Steering Program. This claims processing and reimbursement would encompass all of the current medical providers in the program with the exception of the New York City Fire Department. The outside entity would also assist NIOSH in locating medical providers for people enrolled in the program who lived outside of the New York City area (so-called National Responders). The firm receiving this contract would also provide pharmaceutical benefits for people being treated for WTC-related conditions in this program (again with the possible exception of people being treated by the NYC Fire Department). Finally, the

firm receiving this contract would provide other member services for the people enrolled in the program including enrollment of new participants and dispute resolution.

Reported Reasons for Cancellation

In response to questions regarding the sudden cancellation, CDC has provided several different reasons. These include confusion over the solicitation and the lack of adequate funding to cover the contract. Although no firms had the opportunity to submit proposals for this solicitation (it was cancelled before the deadline), a number of firms who provide health insurance services and other services covered in the program attended the meeting on November 7. At least one firm was planning to submit a bid, and more may have intended to do so. Thus, there was definitely interest in the proposal based on the potential bidder's meeting on November 7. As a result of questions raised at the meeting and other requests for information, CDC/NIOSH issued three amendments to the original solicitation clarifying different aspects of the original announcement. These amendments are not unusual in awarding contracts, and none of the outside parties identified any major problems with the solicitation.

CDC also claimed that there was uncertainty about whether the government should be the primary payer for these health services or whether health insurance or workers' compensation should be utilized as the primary payer. As far as I know, this issue was not discussed at the pre-bid meeting or raised as a question by the outside vendors. Under the current program, the federal government is the primary payer except when the patient's medical treatment is covered by an approved workers' compensation claim. In that case, the WTC program institution bills the workers' compensation insurer. At the current time, this covers only a small percentage of the participants in the program. The personal health insurance provider (if they have one) for the WTC program participant is not billed for the care for WTC-related conditions. This approach is common to all federally funded and state workers' compensation programs. This arrangement had been in place since the federal funding for treatment of WTC-related conditions had been

initiated and was known to DHHS officials. It is difficult to see why this should be a rationale to suddenly cancel the solicitation.

CDC also claimed that the available funding was not adequate to cover the solicitation. Although this could have been correct at the time the contract was cancelled, full funding for the anticipated levels called for in the solicitation was approved by Congress and signed by the President shortly after the contract was cancelled and would have been in place by the time the contract would have been awarded. Given the length of time that it takes for a contract to be processed (usually several months) and the need for these services to be available for an ongoing medical care program, it is not unusual for a federal agency to prepare a contract solicitation in anticipation of an appropriations especially given that the fiscal year had already started. CDC/NIOSH had already identified substantial funding that would be available for the contract, and the full implementation date for all aspects of the contract was not specified in the contract. Thus, the rationale of inadequate funding as the reason for cancelling the contract appears to be quite questionable.

Consequences of Cancelling the Solicitation

The cancellation of this solicitation could have several consequences for the participants in the program. The group most immediately impacted will be the national responders. Currently, there are slightly over 2000 responders enrolled in the national program. These include emergency responders and other workers from all 50 states and Puerto Rico who came to NYC to assist after 9/11. Many were volunteers while others were there as part of their official duties or work assignments. Nearly nine hundred have received initial exams in the program, and close to 200 have received a follow-up monitoring exam. Over 350 of these people have been referred for treatment for WTC-related conditions. In addition to those enrolled, there are nearly 2000 federal workers who responded to the WTC who are now being referred to the program, and there are many other responders who have not yet enrolled in the program. There are also many participants in the current program who live in the NYC area but have retired or will be

retiring over the next several years. Many of them will leave the area and require services closer to their new homes.

For many reasons, the program for national responders has been difficult to establish. This issue has been reviewed by GAO and discussed at a previous hearing of this subcommittee (where I also testified). Currently, most of the examinations provided in this program are being conducted by a national firm that contracts with local medical providers for these types of exams. This firm does not provide medical treatment services. The only treatment services available to the national responders is through Red Cross funding to the Association of Occupational and Environmental Health Clinics (AOEC) who in turn arranges for local treatment services. This Red Cross funding is being discontinued and is only expected to last a few more months. Once that program ends or runs out of money, there will be no arrangements for providing treatment for national responders with WTC-related conditions. In fact, with the cancellation of this solicitation, the AOEC will need to notify the participants in the treatment program that there will no longer be funding available for their treatment and that the participants will have to make other arrangements. Their only choice under the current federal program will be to travel to the NYC area for treatment. This option is not feasible for many of these responders and is certainly not the intent of Congress when funding this program. Otherwise, the treatment program participants will have to pay for their treatment through their own health insurance or some other way. If this gap in treatment coverage is to be avoided, CDC/NIOSH will have to develop a new solicitation and award a new contract in the next few months. In my judgment, this will be quite difficult even if they start immediately.

There is also the potential for the loss in coverage for the monitoring exams being provided for the national responders and soon for the many federal workers. The current contract arrangements with the firm providing these examinations run out in the next few months. Their contract is awarded in conjunction with the grant award to Mount Sinai Medical Center, and the Mount Sinai grant award will need to be modified in order to extend the contract for the national responder examinations. Given that Mount Sinai will

soon be in the last year of their grant award, it is not clear whether this modification will be permitted especially in the absence of a longer term arrangement. In this case, the thousands of national responders due for medical monitoring examinations will not receive those exams unless they travel to the NYC area. If unable to come to New York, medical monitoring to detect WTC-related medical conditions will not be available to these responders.

There were a number of other potential benefits of the business processing center contract that are jeopardized by the cancellation. Currently, each of the six major medical centers provides separate prescription services for patients being treated in the program. This contract would have consolidated these into a single program serving all of the participants (except for the NYC Fire Department which has its own plan). The new contract would have reduced costs for the program and provided greater flexibility and services for the participants.

The business processing center contract would have also have provided better information on the medical utilization and costs of the current program. By processing all of the reimbursement for medical monitoring and treatment through a single center (rather than the separate grants), NIOSH would have better and more timely information on the types of treatment being provided and the costs of various types of treatment. DHHS and Congress have both asked for this type of information to help in planning for future program needs, and both have been critical of the medical cost information currently available to them. This contract would have helped to correct that information deficiency. It would have also improved the ability for the current program to add additional medical providers to the program by enabling a mechanism to reimburse these providers.

Finally, the cancellation of this contract potentially jeopardizes the overall medical monitoring and treatment program including the services provided in the NYC area. The original grant awards for this program only included medical monitoring presumed to be occurring every 18 months for a number of participants less than those currently enrolled.

The enrollment of additional participants and the appropriation of funding for treatment have required that these original grants be modified in order to include the additional funding needed for the expanded responsibilities. Given the cancellation of the contract solicitation, these awards will need to be modified again in the next several months to accommodate the additional funding for medical treatment. If these modifications are not allowed, then the programs could run out of funding. For some, this could happen in the next two or three months. Such a disruption of services would be disastrous for the participants and would seriously jeopardize the health of many of them.

All of the current grants expire about mid way through 2009. In order to leave ample time for preparing the new award announcements, obtain the necessary reviews and approvals, announce the application process for the new awards, allow time for the institutions to prepare new applications, review the applications, and make the awards, CDC/NIOSH will start application process sometime in the summer of 2008. Unless, the Department determines how it intends to provide the funding for this program (either through the business processing center, through the current grant mechanism, or some other way) in the next few months, we face the real possibility that the medical monitoring and treatment for all WTC responders will end next year or that there will be a gap in coverage. Should this happen, the health and well being of thousands of WTC responders who willingly served their country in its time of need will be endangered by the inability of the Department of Health and Human Services to appropriately administer this important program.

Without this program, these brave men and women will be forced to rely on a fragmented medical system utilizing private philanthropy, health insurance, line of duty disability retirement, and workers' compensation to support the necessary medical monitoring and treatment for the thousands of people whose health may have been impacted by their WTC exposures. This fragmented approach will inevitably leave many of the ill and disabled rescue and recovery workers without necessary medical treatment by providers experienced in providing this care and will only worsen their health conditions. The delays and uncertainty about payments would discourage many of the ill rescue and

recovery workers from seeking necessary care and discourage medical institutions from providing that care. We need the federal government to immediately develop an administrative plan building on the current program to ensure that the money appropriated last year and this fiscal year for the WTC Medical Monitoring and Treatment program will be made available to fund a comprehensive monitoring and treatment for fire fighters, police, and all of the other workers who responded to 9/11 and that includes all of these workers, regardless of where they live.

Thanks you for your time. I would be glad to answer any questions.