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TO: Julie L. Gerberding, M.D., M.P.H.
Director
Centers for Disease Control and Prevention

FROM: Daniel R. Levinson *Daniel R. Levinson*
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SUBJECT: Emergency Response to Hurricanes Katrina and Rita: Audit of Centers for Disease Control and Prevention's Award Process for a Commercial Purchase Order to McKesson Drug Company (A-04-06-01031)

This report provides the results of our audit of the Centers for Disease Control and Prevention's (CDC) award process for a commercial purchase order to McKesson Drug Company (McKesson) of Memphis, Tennessee. The audit is one of several reviews of procurements by CDC and other components of the Department of Health and Human Services (HHS) in response to Hurricanes Katrina and Rita in 2005.

BACKGROUND

Hurricane Relief Efforts

Following Hurricanes Katrina and Rita, Congress provided more than \$63 billion to the Department of Homeland Security for disaster relief. Under its National Response Plan, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) coordinated relief efforts by assigning tasks, known as missions, to other Federal agencies. FEMA agreed to reimburse the other agencies for their costs.

FEMA assigned HHS the responsibility for relief operations in the areas of public health and medical services. As part of the HHS relief operations, CDC awarded a commercial purchase order to McKesson in the amount of \$890,240. The order called for McKesson to make an emergency delivery of pharmaceutical products requested by the Louisiana Department of Health and Hospitals for use in storm-affected areas.

CDC's Procurement and Grants Office was responsible for negotiating, awarding, and administering the purchase order.

Federal Acquisition Regulations

The Federal Acquisition Regulation (FAR) defines a contract as a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate a Government expenditure of appropriated funds, including awards, job orders, letter contracts, orders, and bilateral contract modifications (FAR 2.101).

The FAR establishes the basic requirements for acquisitions by Federal agencies. The Health and Human Services Acquisition Regulation (HHSAR) implements and supplements the FAR and provides requirements that specifically govern the HHS contract process.

The FAR and the HHSAR provide, among other things, that HHS agencies award each contract to a responsible party (FAR 9.103(a)) and document compliance with requirements for full and open competition and the determination that the price was fair and reasonable (FAR 6.101(b) and 15.402(a)). Agencies also must develop a statement or description of the goods or services being requested (FAR 16.504(a)(4)(iii)).

Letter contracts may be used only for urgent needs. Unpriced orders, which must contain price ceilings, may be used only when it is impractical to obtain pricing. In addition, agencies must consider the appropriate contract type pursuant to guidance in FAR part 16. In certain situations, consideration must be given to small and minority businesses and local firms.

On September 8, 2005, recognizing the unusual and compelling circumstances created by Hurricanes Katrina and Rita, the HHS Office of Acquisition Management and Policy issued a “Class Justification for Other than Full and Open Competition and Waiver of Synopsis Requirements” (waiver). The waiver, which was effective until October 27, 2005, allowed HHS agencies to temporarily limit actions taken to ensure full and open competition during the procurement of urgently needed items. For example, the extent of market research and other competitive procedures could be limited as considered necessary in the circumstances. For procurements valued at more than \$100,000, the waiver required HHS agencies to ensure that their procurement records included a copy of the waiver, a note indicating compliance with the applicable limitations, and a signed statement that the award was made in response to the hurricanes.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to determine whether CDC complied with FAR and HHSAR requirements during the award process involving McKesson.

Scope

We limited our audit to the award process for CDC's September 13, 2005, commercial purchase order DEOC-PGO-B8-T1-00001 to McKesson. We did not assess CDC's overall internal control environment.

We performed fieldwork at CDC's Procurement and Grants Office in Atlanta, Georgia, from January through April 2006.

Methodology

To accomplish our objective, we:

- reviewed FAR and HHSAR requirements;
- met with CDC officials to ensure an adequate understanding of CDC's actions during the award process and the basis for those actions;
- examined the records of negotiation and other documentation related to the award of the commercial purchase order to determine whether CDC followed FAR and HHSAR requirements; and
- reviewed progress reports and payment history data to assess whether controls were in place to ensure purchase order performance and payment.

We performed our audit in accordance with generally accepted government auditing standards.

RESULTS OF AUDIT

CDC complied with FAR and HHSAR requirements during the award process for commercial purchase order DEOC-PGO-B8-T1-00001 to McKesson. Procurement records showed that CDC had performed market research to identify potential sources for the requested pharmaceutical products and that McKesson was the only source that could immediately deliver all requested products to the storm-affected areas. In accordance with the waiver, no further competitive procedures were considered necessary. Furthermore, the procurement records contained all documentation required by the waiver.

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This audit was conducted in conjunction with the President's Council on Integrity and Efficiency (PCIE) as part of its examination of relief efforts provided by the Federal Government in the aftermath of Hurricanes Katrina and Rita. As such, a copy of the report has been forwarded to the PCIE Homeland Security Working Group, which is coordinating Inspectors General reviews of this important subject.

If you have any questions about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov. Please refer to report number A-04-06-01031.