



MAY 21 2007

Washington, D.C. 20201

TO: Joe Ellis
Assistant Secretary for Administration
and Management

FROM: Daniel R. Levinson *Daniel R. Levinson*
Inspector General

SUBJECT: Emergency Response to Hurricanes Katrina and Rita: Audit of Program Support Center's Award Process for a Contract With JMSP and Associates, Inc. (A-03-06-00522)

This report provides the results of our audit of the Program Support Center's (PSC) award process for a contract with JMSP and Associates, Inc. (JMSP), of Jacksonville, Florida. The audit is one of several reviews of procurements by PSC 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, PSC awarded a fixed-price contract and two modifications to JMSP. The contract and modifications obligated JMSP to furnish mobile medical services, including primary and acute care, to hurricane victims in the Katrina disaster area. The contract, effective October 13, 2005, and the modifications, effective November 3 and November 30, 2005, provided \$367,500 for this purpose.

PSC's Strategic Acquisition Service was responsible for soliciting, negotiating, awarding, and administering the contract.

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)). With respect to full and open competition, FAR 6.001(c) specifies that contract modifications that are within the scope of the contract are exempt from the requirements. 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 Hurricane Katrina, 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 the actions taken to ensure full and open competition during the procurement of urgently needed items and services. 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 hurricane.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

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

Scope

We limited our audit to the award process for PSC's contract HHSP233200600014A, effective October 13, 2005, with JMSP and the November 3 and November 30, 2005, modifications to that contract. We did not assess PSC's overall internal control environment. We also did not review contract performance or the acceptance and inspection of goods and services received.

We performed fieldwork at PSC's Strategic Acquisition Service in Rockville, Maryland, from January through March 2006.

Methodology

To accomplish our objective, we:

- reviewed FAR and HHSAR requirements,
- met with PSC officials to ensure an adequate understanding of PSC's actions during the award process and the basis for those actions, and
- examined the records of negotiation and other documentation related to the award of the contract to determine whether PSC followed FAR and HHSAR requirements.

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

RESULTS OF AUDIT

PSC complied with FAR and HHSAR requirements during the award process for contract HHSP233200600014A with JMSP and its subsequent modifications. PSC awarded this contract under the waiver that limited actions necessary to ensure full and open competition. According to the procurement records, PSC had determined that an unusual and compelling urgency existed sufficient to solicit from a single source, JMSP. Furthermore, the procurement records contained all documentation required by the waiver. Pursuant to FAR 6.001(c), the contract modifications were exempt from requirements for full and open competition because they fell within the scope of the original contract.

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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-03-06-00522.