



**Department of Veterans Affairs
Office of Inspector General**

**Review of Allegations of
Mismanagement, Central Alabama
Veterans Health Care System**

To Report Suspected Wrongdoing in VA Programs and Operations

**Telephone: 1-800-488-8244 between 8:30AM and 4PM Eastern Time,
Monday through Friday, excluding Federal holidays**

E-Mail: yaoighotline@va.gov

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Executive Summary

Introduction

The Office of Inspector General received correspondence from the Chairman, Senate Committee on Veterans' Affairs and the Chairman, House Committee on Veterans' Affairs containing allegations of mismanagement at the Central Alabama Veterans Health Care System (CAVHCS). On May 21, 2008, we referred eight allegations to the Director, Veterans Integrated Systems Network 7 (VISN), for a response. The allegations included:

1. Improper contract to purchase the services of a retired VA employee to be the facility's Financial Manager;
2. Improper contract to purchase the services of a retired VA employee to provide services in the Credentialing and Privileging Office;
3. Improper payment of a retention allowance to the Interim Associate Chief Nurse, Geriatrics and Extended Care;
4. Inappropriate payment of a retention allowance to the Chief, Podiatry Service;
5. Improper payments to the nurses in the Emergency Department;
6. Two employees improperly intimidated during phone calls to veterans that when completing the patient satisfaction survey high scores were needed to prevent the closure of the facility;
7. A secretary was improperly paid overtime as a reward; and
8. The Acting Director was receiving compensatory time off.

The VISN provided a response and supporting documentation on August 5, 2008. After reviewing the VISN's response, we had additional questions and concerns that were referred back to the VISN on September 23, 2008, for further clarification and review. The VISN responded on October 30, 2008, and provided additional documentation.

Results

The VISN did not substantiate allegations 1 and 2. Both allegations relate to the procurement of services. Based on the information provided by the VISN, we concluded that both contracting actions violated Federal acquisition regulations. We substantiated that CAVHCS did not comply with Federal Acquisition Regulations when contracting for the services of a retired VA employee as the Financial Manager and for the service of another retired VA employee to provide assistance to the Credentialing and Privileging office. There was no justification for awarding these procurements without competition. The Statement of Work

(SOW) to procure the services of a Financial Manager was inadequate and the purchase order issued to procure the services for the Credentialing and Privileging office did not include a SOW. To procure Financial Manager services, the contracting entity issued a purchase order against a Federal Supply Schedule contract that was not authorized to sell the services being requested. In addition, the services to be provided were personal services and the duties and responsibilities included inherently governmental functions. VA does not have statutory authority to issue personal services contracts and it is improper to contract for inherently governmental functions.

The deficiencies in the procurement actions were not unlike those identified in a report we issued on October 6, 2008, *Review of Allegations of Contracting Irregularities, VA Medical Center, Tuscaloosa, Alabama*. For example, the procurement actions in the October 6 report and this report all involved retired VA employees and were awarded without competition as required by Federal Acquisition Regulations (FAR).

The VISN substantiated allegation 4, partially substantiated allegations 5 and 7, and took corrective action. Allegation 4 relates to the payment of a retention allowance; allegation 5 relates to a salary increase and an incentive allowance; and, allegation 7 relates to payment of overtime. The VISN did not substantiate allegations 3, 6, and 8 and the information provided was sufficient to support these conclusions. The unsubstantiated allegations are not discussed in the report.

Recommendations

We recommend that the Director, VISN 7:

1. Have the Chief Logistics Officer conduct a review of all purchase orders within the VISN to procure services to ensure that the contracting officers and purchasing agents are complying with applicable Federal procurement laws and regulations.
2. Institute a second level of review at the VISN level for all procurements of services from FSS contracts to ensure compliance with FAR 8.4, Federal Supply Schedules.
3. Institute a second level of review at the VISN level for all procurements for services when the services will be provided by retired VA employees.
4. Take action to ensure that all management officials comply with the provisions of VA Directive 5700/17 when entering into fee basis agreements

VISN 7 Director's Comments

The VISN Director concurred with the recommendations and set forth an implementation plan to take corrective action.

(original signed by:)

MAUREEN REGAN

Counselor to the Inspector

General

INTRODUCTION

Background

In response to complaints received from the Chairman, Senate Committee on Veterans' Affairs and the Chairman, House Committee on Veterans' Affairs, on May 21, 2008, the VA Office of Inspector General (OIG) referred eight allegations regarding the Central Alabama Veterans Health Care System (CAVHCS) to the Director, Veterans Integrated Network 7 (VISN) for review. The allegations included:

1. Improper contract to purchase the services of a retired VA employee to be the facility's Financial Manager;
2. Improper contract to purchase the services of a retired VA employee to provide services in the Credentialing and Privileging Office;
3. Improper payment of a retention allowance to the Interim Associate Chief Nurse, Geriatrics and Extended Care;
4. Inappropriate payment of a retention allowance to the Chief, Podiatry Service;
5. Improper payments to the nurses in the Emergency Department;
6. Two employees improperly intimidated during phone calls to veterans that when completing the patient satisfaction survey high scores were needed to prevent the closure of the facility;
7. A secretary was improperly paid overtime as a reward; and
8. The Acting Director was receiving compensatory time off.

The VISN provided a response and supporting documentation on August 5, 2008. After reviewing the VISN's response, we had additional questions and concerns that were referred back to the VISN on September 23, 2008, for further clarification and review. The VISN responded on October 30, 2008, and provided additional documentation.

Summary of Findings

The VISN did not substantiate allegations 1 and 2. Both allegations relate to the procurement of services. Based on the information provided by the VISN, we concluded that both contracting actions violated Federal acquisition regulations. The VISN substantiated allegation 4, partially substantiated allegations 5 and 7, and took corrective action. Allegation 4 relates to the payment of a retention allowance; allegation 5 relates to a salary increase and an incentive allowance; and, allegation 7 relates to payment of overtime. The VISN did not substantiate allegations 3, 6, and 8 and the information provided by the VISN was

sufficient to support these conclusions. These unsubstantiated allegations will not be discussed further in this report.

RESULTS AND CONCLUSIONS

Issue 1: Whether contracting actions to procure the services of two retired VA employees complied with Federal acquisition regulations.

We substantiated that CAVHCS did not comply with Federal Acquisition Regulations when contracting for the services of a retired VA employee as the Financial Manager and for the services of another retired VA employee to provide assistance to the Credentialing and Privileging office. The deficiencies in the procurement actions were not unlike those identified in a report we issued on October 6, 2008, *Review of Allegations of Contracting Irregularities, VA Medical Center, Tuscaloosa, Alabama*. For example, the procurement actions in the October 6 report and this report all involved retired VA employees and were taken without competition as required by Federal Acquisition Regulations (FAR).

Allegation 1: A retired VA employee was inappropriately hired as a contractor to provide services as the facility's Financial Manager.

On March 6, 2008, the Contracting Officer issued a "verbal" purchase order to a General Services Administration (GSA) Federal Supply Schedule (FSS) contractor, Team Staff GS. Team Staff GS has a contract under GSA Schedule 874V, Logistics Worldwide (Logworld) to sell services that support logistics such as distribution and transportation logistics services, deployment logistics services, logistics training, operations, and maintenance logistics management and support services.

The "description" section of the purchase order states that it is for a "personal services contract employee, serving as CAVHCS Financial Manager (Project Administrator), starting March 10, 2008." Under the purchase order Team Staff GS was to provide financial management services for 70 days for a total cost of \$44,464.00. The daily rate was calculated using a proposed hourly rate. There is no documentation showing that a Request for Quotations (RFQ) was issued to Team Staff GS or any other FSS vendors. The documentation indicates that CAVHCS, not the vendor, identified and recommended a retired VA employee to provide the services under the purchase order.

The Statement of Work (SOW) provided by the VISN is not referenced or otherwise incorporated in the purchase order. The SOW describes the position as "Financial Manager" and lists the duties and responsibilities of the Financial Manager for CAVHCS. It also contains a section titled "Supervisor Controls," which includes a subsection titled "Supervision of Subordinate Personnel." This subsection states that the contract employee will be responsible for planning the

work accomplished by subordinates, evaluates their performance, interviews candidates and makes selection for position in the Financial Management Service; effects minor disciplinary measures, recommends action in more serious cases, and sets parameters and maintains requirements for subordinates' performance appraisals as required by the Office of Personnel Management.

Based on the information provided by the VISN, we substantiated the allegation that the procurement of these services was inappropriate. The following are the more significant deficiencies we identified:

- ◆ The procurement did not comply with the procedures established in Federal Acquisition Regulations, Section 8.405, which sets forth FSS ordering procedures;
- ◆ CAVHCS identified and proposed to the vendor that a specific retired VA employee provide the services under the purchase order;
- ◆ The services procured were not within the scope of services provided under the vendor's GSA schedule and the parties intentionally changed the position description so it would appear to match the labor category on the vendor's FSS contract;
- ◆ The services provided under the purchase order included inherently governmental functions that cannot be performed by a contractor; and
- ◆ There is no statutory authority to award personal services contracts.

Procurement did not comply with Federal Acquisition Regulations: FAR Section 8.405 sets forth the procedures for ordering supplies and services against FSS contracts. FAR Section 8.405-2 establishes the procedures to be used when ordering services priced at hourly rates or requiring a statement of work. This section delineates what shall be included in the SOW and the procedures for developing and issuing an RFQ to FSS vendors. Because this procurement action was to purchase services at hourly rates, included a SOW, and exceeded the micro-purchase threshold of \$3,000, CAVHCS was required to prepare and send an RFQ to at least three FSS vendors that offered services that would meet the requirements. The FAR requires that the RFQ include a SOW and evaluation criteria, e.g., experience, past performance, etc. CAVHCS did not prepare or issue an RFQ; instead CAVHCS sole-sourced the procurement to Team Staff GS using a purchase order.

FAR 8.405-6 provides that an ordering activity may restrict consideration of schedule contractors to less than three contractors, but must justify its action. For orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold of \$100,000, the ordering activity contracting officer is required to document the circumstances when restricting consideration. Circumstances that may justify restricting consideration include: (1) only one

source is capable of responding due to the unique or specialized nature of the work, (2) the new work is a logical follow-on to an original FSS order, (3) and/or that an urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays. No documentation was provided to justify restricting consideration and, based on the information provided, we concluded that there was no basis to restrict consideration.

CAVHCS identified and referred the retired VA employee to the vendor: The documentation indicates that the CAVHCS identified and selected a specific individual to provide the services, which is inconsistent with normal contracting practices. The purchasing organization has the responsibility to delineate in the SOW the qualifications needed to fill the position. It is the vendor's responsibility to propose key personnel who meet the qualifications and the purchaser organization verifies that the individual proposed meets the requirements before issuing a task order.

Statement of Work is incomplete: The SOW for this procurement consists of a position description for the facility's Financial Manager, which does not comply with the applicable FAR requirements. Under FAR 8.405-2 (b) a SOW must include: the work to be performed, location of work, period of performance, deliverable schedule, applicable performance standards, and any special requirements such as security clearances, travel, special knowledge, etc. The SOW provided for this procurement is incomplete because it does not address the qualifications needed to perform the services or other key requirements such as where the work is to be performed, security clearances, privacy and cybersecurity training, number of days and hours the individual is expected to work each day, etc. It also does not identify deliverables and or include performance monitors.

The services procured were not within the scope of services authorized under the vendor's GSA schedule: Based on the vendor's FSS contract, we concluded that the services were outside the scope of services the vendor was authorized to sell. The FSS contract was awarded under GSA Schedule 874V, Logistics Worldwide (Logworld). The vendor was only authorized to sell logistics services and services that support logistics. The Financial Manager services provided CAVHCS were not related to logistics and did not meet the description for any labor category in the FSS contract.

In a document faxed to CAVHCS, the vendor asked VA to insert the labor category "Project Administrator" in the purchases order to keep them "in compliance with the GSA." This indicates that the vendor recognized that its FSS contract did not include a labor category for a Financial Manager. The description in the FSS contract for "Project Administrator" is not consistent with the

description of duties contained in the SOW. The description in the FSS contract for the labor category “Project Administrator” states:

Serves as the contractor counterpart to the Government contracting officer. Manages substantial contract support operations involving multiple projects/task orders and personnel at diverse locations. Organizes, directs and coordinates planning and execution of all contract support activities.

In comparison, the position description for a Financial Manager that was included with the purchase order states, in relevant part:

As the healthcare system’s financial expert, the Financial Manager [is responsible] for establishing and maintaining an integrated system of financial staff services that contributes to effective management control over facility operations. Financial operations support the mission and programs of a 176 bed two-division general medical/psychiatric Health Care System with... Financial services provided include accounting, budgeting, third party insurance collections, managerial financial analysis, and a system of financial reporting.

Because the duties or responsibilities of the Financial Manager contained in the SOW are inconsistent with services the vendor was authorized to sell under its Logworld FSS contract, it was inappropriate for CAVHCS to use this FSS contract to purchase these services. It also was inappropriate for the vendor to use its FSS contract to sell services that were outside the scope of the contract.

Services provided under the purchase order were inherently governmental: Because it is the policy of the Government to perform inherently governmental activities with Government personnel, agencies are prohibited from using contractors to perform these activities. (OMB Circular A-76 and 48 CFR 7.302 and 7.503.) Inherently governmental functions include the direction and control of Federal employees, the approval of position descriptions and performance standards for Federal employees, and the selection or non-selection of individuals for Federal Government employment, including interviewing the individuals for employment. 48 CFR 7.503.

The SOW contains duties and responsibilities that constitute inherently governmental functions. The most notable are related to the hiring and supervision of Federal employees, which are found in Section II, Supervisory Controls, Subparagraph B, Supervision of Subordinate Personnel, of the SOW, and states as follows:

The Financial Manager plans the work to be accomplished by subordinates, assigns the work, evaluates the performance; gives advice, counsel, or instruction to subordinates; interviews candidates and makes selections for positions in the Financial Management Service; hears and attempts to resolve minor complaints.

It was improper to contract for services that included inherently governmental functions.

CAVHCS has no statutory authority to award a personal services contract: FAR 37.104 (b) prohibits agencies from awarding personal services contracts unless specifically authorized by statute to do so. The Office of General Counsel has long held that VA does not have statutory authority to award personal services contracts.

The purchase order specifically defines the services being procured as “personal services.” More importantly, the description of duties and responsibilities appears to create an employer-employee relationship that is characteristic of a personal services contract.

Allegation 2: The purchase order issued to a retired VA employee to provide services to the Credentialing and Privileging Office was inappropriate.

The records show that the individual retired in December 2007 after working over 30 years for the consolidated Pharmacy Service. On January 7, 2008, a Health Systems Specialist issued a memorandum to the Acting Director, with the concurrence of the Chief of Staff and the Manager, Financial Management, to enter into a fee basis agreement with the retired VA employee, effective on January 10, 2008. Under the fee basis agreement, the individual was to be paid at an hourly rate of \$26.57 hour, or \$4,251.58 per month, for an estimated 2 month time period with a total compensation of \$8, 503.17 to provide services to the Credentialing and Privileging Office. The services to be provided included responsibility for taking a credentialing/recredentialing application and processing it from beginning to end, assisting with preparing credentialing application packets and answering simple credentialing questions, assisting with the purging of inactive files, retrieving profile data, and ensuring that all provider files have current information. The Acting Director signed the memorandum but did not indicate whether she approved or disapproved the proposed fee basis agreement.

The fee basis agreement was not utilized. Instead, on January 9, 2008, CAVHCS issued a purchase order to the retired VA employee procuring her services for 60 days at a cost of \$216 per day, which would be \$27 per hour based on an 8 hour

workday. However, the purchase order does not define what constitutes a workday. The total cost listed on the purchase order was \$12,960. The vendor is listed as the individual c/o the VA Medical Center in Montgomery, Alabama. The purchase order does not contain a SOW or any description of the services that were to be rendered and the document provided is not signed by the retired VA employee. Although the purchase order indicates that this was an emergency procurement, there is no documentation to support this statement. We were not provided any documentation justifying a sole-source procurement as required under FAR Subpart 6.300.

We can find no legal authority that would allow CAVHCS to issue a purchase order directly to the retired VA employee to provide these services. This procurement should have been conducted using the procedures set forth in FAR Part 37, Service Contracts, General, FAR Part 8.4, Federal Supply Schedules, or FAR Part 13, Simplified Acquisition Procedures. CAVHCS circumvented Federal procurement laws and regulations by issuing a purchase order directly to the individual providing the services. CAVHCS also circumvented Federal personnel laws and regulations that would have required an off-set of the individual's retirement annuity if she was rehired as required under 5 USC § 8468.

In response to our initial request for information regarding this allegation, CAVHCS stated that the individual "possesses the requisite skills to perform the consultative services she provided in the way of Credentialing and Privileging." While it may be true that the retired VA employee possessed the requisite skills, we reviewed the individual's resume and found that she had no experience in credentialing and privileging or any unique qualifications or expertise that would justify a sole-source procurement. In addition, no evidence was provided to support the statement in the purchase order that this was an emergency procurement.

We note that it would have been inappropriate to use the fee basis agreement as proposed because the position was not covered under the legislative authority for fee basis agreements. (38 USC § 7405.) In addition, payment on an hourly basis is prohibited by VA policy. (VA Handbook 5007/17.)

Conclusion

CAVHCS failed to comply with Federal procurement regulations when taking action to procure the services of two retired VA employees. The findings and conclusions in this report mirror those in a prior OIG Report issued on October 6, 2008, pertaining to contracting irregularities at the VAMC, Tuscaloosa, Alabama, which suggests that the problems with the procurement of services are more widespread within the VISN than previously realized.

Recommendations

We recommend that the Director, VISN 7:

1. Have the Chief Logistics Officer conduct a review of all purchase orders within the VISN for the procurement of services to ensure that the contracting officers and purchasing agents are complying with applicable Federal procurement laws and regulations.
2. Institute a second level of review at the VISN level for all procurements of services from FSS contracts to ensure compliance with FAR 8.4, Federal Supply Schedules.
3. Institute a second level of review at the VISN level for all procurements for services when the services will be provided by retired VA employees.
4. Take action to ensure that all management officials comply with the provisions of VA Directive 5700/17 when entering into fee basis agreements.

Issue 2: Whether CAVHCS complied with existing policies and regulations when awarding retention allowances and overtime to employees.

Allegations 4, 5 and 7 involved alleged improper payments to VA employees. VISN 7 substantiated or partially substantiated these allegations and took appropriate corrective action.

Allegation 4: Inappropriate payment of a retention allowance to the former Chief, Podiatry Service.

CAVHCS substantiated the allegation and stated that it would issue a bill of collection.

On November 2, 2006, CAVHCS offered the former Chief, Podiatry Service a 25 percent annual retention allowance for a 2-year period of time on the basis that he was likely to leave Federal Service. In the August 6, 2008, response, the VISN stated that the retention incentive was based on an agreement under which the individual was to remain in his position as Chief of Podiatry for the 2-year time period. The VISN stated that when the individual was reassigned in November 2007 to another position, the retention bonus should have been terminated. To correct the overpayment, the VISN told us that a bill of collection would be issued.

A review of the documentation provided with the August 8 response revealed that the Supervisory Certification/Retention Incentive form completed by the Acting Chief, Surgical Service to support the retention allowance listed two positions in other VA medical centers as bona fide offers of employment. Because these were not positions that would cause him to leave Federal service and the records provided contained no indication that he intended to leave Federal service, we asked the VISN to reevaluate whether the individual was eligible to receive a retention allowance. Upon further review, the VISN agreed that the former Chief, Podiatry Service was not eligible for the retention incentive because the only job offers he received and discussed with his supervisor were with other VA facilities. Accordingly, the VISN decided to cancel the incentive bonus retroactively to the date it was effective and issue a bill of collection. We consider the issue resolved.

Allegation 5: Whether nurses in the Emergency Department were paid improperly.

The allegation that the nurses in the Emergency Department were inappropriately paid at the pay scale for the Intensive Care Unit (ICU) nurses was substantiated. The error occurred in pay periods 2 and 3 in calendar year 2008. It was identified by CAVHCS after the first pay period and the salaries were readjusted. However,

no bills of collection were issued to collect the overpayments. The VISN stated that bills of collection would be issued.

The complainant also alleged that the Emergency Department nurses were inappropriately given a 10 percent retention allowance. The information provided by CAVHCS shows that the policies and procedures for giving the nurses a retention allowance were followed.

Allegation 7: Whether an administrative assistant in the Director's Office was improperly paid overtime as a reward.

The allegation that an administrative assistant in the Director's Office worked at least 80 to 90 percent overtime on weekends which was perceived by other employees as a reward was partially substantiated. In the August 6 response, the VISN stated that the individual was authorized overtime to meet operational needs at CAVHCS and that all overtime was approved prior to being worked. The VISN denied that it was being used as an incentive. In support of the response, the VISN provided time cards for the employee for a 1-year time period.

We reviewed the information provided by the VISN and noted that the only documentation that the overtime was approved in advance were notes on the time cards generated by VA's Employee Time and Attendance system. We also noted that not all the entries for overtime indicated preapproval. In addition, we observed that the employee frequently took sick or annual leave and that the overtime was often worked on the weekends that coincided with the leave. We asked the VISN to provide documentation showing that the leave was approved in advance and was not necessitated by the employee's absences from work.

In response, the VISN revisited the issue and determined that the approvals for overtime were primarily through verbal communication between the employee and her immediate supervisor, the Acting Director. To prevent similar problems in the future, the VISN told us that instructions were given to CAVHCS leadership reiterating that overtime and compensatory time must be preapproved prior to being worked and all preapprovals must be documented in writing. We consider the matter resolved.

Management Comments

**Department of
Veterans Affairs**

Memorandum

Date: January 23, 2009
From: Director, VA Southeast Network (10N7)
Subj: Review of Allegations of Mismanagement, Central Alabama Veterans Health Care System
To: VA Office of Inspector General (OIG) (50C)

1. I have reviewed the report and concur with the recommendations. The following action plan will be initiated:
 1. Have the Chief Logistics Officer conduct a review of all purchase orders within the VISN to procure services to ensure that the contracting officers and purchasing agents are complying with applicable Federal procurement laws and regulations.

PLAN: The review will commence immediately and will be completed by 9/30/09.
 2. Institute a second level of review at the VISN level for all procurements of services from FSS contracts to ensure compliance with FAR 8.4, Federal Supply Schedules.

PLAN: Effective immediately, all procurements of services over the micro-purchase level must be procured using the Electronic Contract Management System (eCMS). eCMS transactions must be reviewed at the VISN level prior to release for procurement.
 3. Institute a second level of review at the VISN level for all procurements for services when the services will be provided by retired VA employees.

PLAN: Effective immediately, all procurements of services over the micro-purchase level must be procured using the Electronic Contract Management System (eCMS). eCMS transactions must be reviewed at the VISN level prior to release for procurement.
 4. The VISN 7 HR Officers will be provided an overview of the intent of VHA Handbook 5700/17 Pay Administration as it relates to the appropriate use of the Fee Basis pay rates for personnel. They will be asked to brief their management teams on the appropriate provisions of fee basis agreements.

PLAN: This will be completed by March 31, 2009.

2. Please contact Mark Anderson, Deputy Network Director, VISN 7 at 678-924-5722 for further information.

(original signed by:)
Lawrence A. Biro

Appendix B
OIG Contact and Staff Acknowledgments

OIG Contact

Maureen Regan

Acknowledgments

Report Distribution

VA Distribution

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