



MAY 16 2007

**TO:** Elias A. Zerhouni, M.D.  
Director  
National Institutes of Health

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

**SUBJECT:** Emergency Response to Hurricanes Katrina and Rita: Audit of the National Institutes of Health's National Heart, Lung, and Blood Institute's Award Process for a Contract With Davison Motor Company, Inc. (A-03-06-00545)

This report provides the results of our audit of the National Institutes of Health's (NIH) National Heart, Lung, and Blood Institute's (NHLBI) award process for a contract with Davison Motor Company, Inc. (Davison), of Ruston, Louisiana. The audit is one of several reviews of procurements by NHLBI 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 Hurricane Katrina, NIH identified a compelling and urgent need for an electric generator to provide necessary air circulation and lighting for the primate center at an NIH-funded research facility in Covington, Louisiana. This facility supports NIH extramural investigations in gene therapy research and studies of infectious diseases. NIH's National Center for Research Resources requested that NHLBI contract for the generator.

To address the critical need at the research facility, NHLBI awarded a fixed-price contract to Davison. The contract obligated Davison to deliver an electric generator and fuel to the Covington facility. The contract, effective September 1, 2005, provided \$92,500 for this purpose.

NHLBI's Procurement Section was responsible for soliciting, negotiating, awarding, and administering the contract. The NIH Division of Acquisition Policy and Evaluation acts as the NIH liaison with HHS and other Government agencies in acquisition matters.

## **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)).

FAR 6.302-2 recognizes that an unusual and compelling urgency could preclude full and open competition if a delay in awarding a contract would result in serious financial or other injury to the Government. However, written justifications and approvals are required (FAR 6.303 and 6.304).

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.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

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

### **Scope**

We limited our audit to the award process for NHLBI's contract 263-MJ-515139, effective September 1, 2005, with Davison. We did not assess NHLBI'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 the NIH Division of Acquisition Policy and Evaluation in Rockville, Maryland, from May through June 2006.

## **Methodology**

To accomplish our objective, we:

- reviewed FAR and HHSAR requirements,
- met with NIH officials to ensure an adequate understanding of NHLBI'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 NHLBI followed FAR and HHSAR requirements.

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

## **RESULTS OF AUDIT**

NHLBI complied with FAR and HHSAR requirements during the award process for contract 263-MJ-515139 with Davison. NHLBI awarded this contract to meet an unusual and compelling urgency that precluded full and open competition. According to the procurement records, NHLBI had determined that delaying the contract award would have resulted in injury or death of the animals housed at the Covington facility's primate center. The injury or death of these animals would have seriously jeopardized NIH extramural investigations at the facility. Furthermore, the procurement records contained all required documentation, including written justifications and approvals.

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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](mailto:Joe.Green@oig.hhs.gov). Please refer to report number A-03-06-00545.