



JUN 7 2007

TO: Andrew C. von Eschenbach, M.D.
Commissioner
Food and Drug Administration

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

SUBJECT: Emergency Response to Hurricanes Katrina and Rita: Audit of Food and Drug Administration's Award Process for a Contract With Marriott International, Inc. (A-03-06-00541)

This report provides the results of our audit of the Food and Drug Administration's (FDA) award process for a contract with Marriott International, Inc. (Marriott), of Nashville, Tennessee. The audit is one of several reviews of procurements by FDA 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

During Hurricane Katrina, flooding damaged FDA's New Orleans district office. FDA's Southeast Regional Director temporarily relocated the New Orleans district office to the Nashville branch office. To provide lodging for the displaced employees and their families, FDA awarded a fixed-price contract to Marriott. The contract obligated Marriott to lodge displaced Louisiana-based FDA employees near the temporary duty station in Nashville. The contract, effective September 2, 2005, and modified September 23, 2005, provided \$159,000 for this purpose.

FDA's Office of Field Financial and Acquisitions Services was responsible for soliciting, negotiating, awarding, and administering the contract. FDA's Office of Acquisitions and Grants Services was designated to oversee relief operations and to implement management controls related to hurricane financial transactions.

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.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

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

Scope

We limited our audit to the award process for FDA's contract HHSF222200550028P, effective September 2, 2005, with Marriott and the September 23, 2005, modification to that contract. We did not assess FDA'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 FDA's Office of Acquisitions and Grants Services in Rockville, Maryland, in May 2006.

Methodology

To accomplish our objective, we:

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

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

RESULTS OF AUDIT

FDA complied with FAR and HHSAR requirements during the award process for contract HHSF222200550028P with Marriott and its subsequent modification. FDA awarded the contract under full and open competition. The contracting officer determined that the price was fair and reasonable. Pursuant to FAR 6.001(c), the contract modification was exempt from requirements for full and open competition because it 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-03-06-00541.