



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Contract Award and Administration Irregularities Offices of Information & Technology and Acquisition & Materiel Management VA Central Office

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Executive Summary

Introduction

On July 7, 2006, the VA Secretary requested that the VA Office of Inspector General investigate whether the award and administration of several task orders and a Blanket Purchase Agreement (BPA) issued by VA's Acquisition Operations Service (AOS) on behalf of the Office of Cyber and Information Security (OCIS) complied with Federal Acquisition Regulations (FAR) and were in the best interest of the Government. The scope of work to be performed under the task orders related to a forensic data analysis of the contents of electronic media devices believed to contain VA information that was stored on a VA employee's personal external hard drive stolen May 3, 2006, and to create a master database of that information. Among other files, the media contained the Beneficiary Identification and Records Locator Subsystem (BIRLS) database of approximately 26.5 million records.

Results

On June 1, 2006, at the request of Mr. Pedro Cadenas, former OCIS Associate Deputy Assistant Secretary, AOS awarded a task order to Internet Security Systems (ISS) against that company's Federal Supply Schedule (FSS) contract. The Task Order was awarded sole-source to ISS based on Mr. Cadenas' representations that there was an urgent and compelling need and that ISS was "a renowned contractor who has demonstrated global capacity of satisfying this critical requirement." In the middle of the night on June 3, also at the insistence of Mr. Cadenas, AOS awarded a 3-year BPA to ISS for forensic analysis services. Two task orders valued at \$102,406 and \$100,012 for labor were issued against the BPA in June.

Our review found that there was no justification for the sole-source award to ISS; no award should have been made to ISS because they did not offer forensic analysis on their FSS contract; the award of the BPA did not comply with the FAR; the proposal submitted by ISS in response to the Request for Quotations for the BPA should have been rejected as non-responsive; and, the second task order issued against the BPA for the creation of a Standard Query Language database was not within the scope of the BPA because it did not involve forensic analysis services. We also concluded that the task order for the database should have been terminated.

In addition, VA significantly overpaid for the services. This occurred because the labor hour rate for an ISS "specialized security analyst" was significantly higher than the rates offered by other FSS contracts. We also found that the number of hours to complete the forensic analysis of the media devices was greatly inflated, as was the number of hours to complete the database. According to the invoices submitted by ISS, VA was charged 376 labor hours more than the do-not-exceed amount in the first task order issued against the

BPA. In addition, the current Contracting Officer's Technical Representative authorized payment for all claimed travel without obtaining the documentation required to ensure payment was allowable under the applicable Federal Travel Regulations. We also questioned whether the database would be considered a Privacy Act system of records and recommended that the Office of Information and Technology discuss the matter with the Office of General Counsel.

We attributed the problems with this procurement to a number of factors, including the failure to develop an acquisition plan and conduct market research, misrepresentations by Mr. Cadenas, poor contract administration, and lack of effective communication between the program office and the contracting activity. We assigned responsibility for the problems in the award and administration of the task orders and BPA to Mr. Cadenas; the Director, AOS; the Contracting Officer responsible for awarding and administering the BPA; and a contract employee who was the Contract Specialist assigned to this procurement. We recommended appropriate administrative action for those individuals who are currently VA employees.

Finally, regarding payments to ISS, we recommended that payment for 376 labor hours, which exceeded the do-not-exceed threshold in the first Task Order issued against the BPA, be withheld until ISS provides evidence that it was asked to perform the services, including who requested it, when, what services were requested, the number of hours requested, and what deliverable was produced. We recommended that payment for travel expenses claimed against any of the Task Orders be withheld until ISS provides the supporting documentation required by the FAR, and the Contracting Officer's Technical Representative verifies expenses and determines they are allowable under Federal Travel Regulations.

Comments

The Assistant Secretary for Information & Technology and the Associate Deputy Assistant Secretary for Acquisition & Materiel Management did not dispute our findings and conclusions and concurred with the recommendations. The Assistant Secretary for Information & Technology also advised that the database is currently part of a system of records maintained by the Office of General Counsel and will be destroyed once pending litigation is completed.

(original signed by:)

JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Introduction

Purpose

On July 7, 2006, the VA Secretary requested that the VA Office of Inspector General (OIG) investigate whether the award and administration of several task orders and a Blanket Purchase Agreement (BPA) issued by VA's Acquisition Operations Service (AOS) on behalf of the Office of Cyber and Information Security (OCIS) complied with the Federal Acquisition Regulations (FAR) and were in the best interest of the Government. The awards were made to obtain forensic data analyses of the contents of numerous electronic media believed to contain the same information that was stolen from a VA employee's personal computer hard drive, and to create a single database of that information. The Secretary told us he directed that no additional task orders be awarded to the contractor in question, Internet Security Systems (ISS), until we completed our investigation.

Background

On May 3, 2006, a VA employee reported that a personal external hard drive and laptop were stolen from his home during a burglary. Using portable media storage devices, such as compact disks and a thumb drive, the employee had transported data from his VA worksite and downloaded the information onto the personal hard drive that was stolen. Shortly after he reported the theft, the VA employee turned over 17 portable media devices to the Office of General Counsel (OGC) that he used to transport the VA data from his office to his home. The media devices were turned over to the OIG for analysis as part of an OIG investigation. On the morning of June 1, 2006, the OIG returned the media devices to VA. Later that same day, the OIG provided OGC with an analysis of the types of files on each media device.

On June 1, 2006, VA awarded a task order (June 1 Task Order) to ISS against that company's Federal Supply Schedule (FSS) contract. The Task Order was awarded on a sole-source basis citing urgent and compelling needs of VA. The justification for sole-source was documented in a Memorandum to the File dated June 1. The Memorandum, prepared by Mr. Pedro Cadenas, the former Associate Deputy Assistant Secretary for OCIS, states:

The Office of Cyber and Information Security has been tasked to perform a data forensic analysis of 17 compact disks (CDs); these CDs contain information from the BIRLS database which was stolen that contains approximately 26.5 million records. The information provided from the analysis will be used to perform a risk assessment of the potential impacts to Veterans and The Department of Veterans Affairs.

The risk assessment is time sensitive and must be expedited immediately to limit the potential damage. Internet Security Systems is a renowned contractor who has demonstrated global capacity of satisfying this critical requirement. Consequently, it is in the best interest of the Department of Veterans Affairs to issue a task order against ISS.

The Task Order was for the services of two Specialized Security Analysts for an estimated 48 hours of work at the rate of \$265.99 per hour, not to exceed \$12,767.52. The Task Order required two deliverables: (1) a Preliminary Report (Forensic Analysis of Electronic Media) due June 2, 2006, and (2) a Final Report (Forensic Analysis of Electronic Media) due no later than June 7, 2006. The information to be obtained in conducting the forensic analysis was identified in an attachment to the Task Order titled "Task Order for IT Forensic Work on Potential Lost Data," and primarily consisted of identifying and quantifying the files on each media device, the names of the files, and the file format (Word, Excel, TXT, etc.). The attachment has been referred to in various documents as a "punch list" and a "statement of objectives." The period of performance was June 1-2, 2006. At the request of Mr. Cadenas, the June 1 Task Order was modified on June 2 to add an additional 8 hours, which increased the not-to-exceed amount for labor by \$2,127.92. The AOS Contracting Officer who awarded the June 1 Task Order (CO-1), told us ISS employees were on-site to begin work prior to award. Mr. Cadenas was designated as the Contracting Officer's Technical Representative (COTR).

CO-1 approved ISS to commence work at 1:00 pm on June 1. About 10:45 pm that night, the Acting Director of the Data Management and Analysis Services (DMAS) in VA's Office of Policy arrived. Shortly thereafter, the DMAS Acting Director noted that the ISS employees could not access the files, which were in a Statistical Analysis Systems (SAS) format. ISS had assured VA that its staff was familiar with SAS programming. The Acting Director took the data and put it in a format that ISS could read. He told us Mr. Cadenas was aware the ISS employees were not able to access the files. In a discussion with ISS employees several days later, the Acting Director also learned that ISS was not familiar with the data elements in the BIRLS system, which was important for them to complete the task.

On June 2, 2006, there were a series of e-mails and meetings between Mr. Cadenas and staff from AOS and OGC to discuss additional work needed to complete the analysis of the information stored on the media devices. At the first meeting, Mr. Cadenas directed AOS to award a follow-on task order to ISS to continue the work being performed under the existing Task Order. CO-1 questioned the legality of the action, noting that the FAR prohibited a sole-source follow-on contract when the original Task Order was a sole-source award [FAR 8.405-6(b)(2)]. The AOS Director instructed CO-1 to prepare a request to deviate from the FAR; however, the Deputy Assistant Secretary for the Office of Acquisition and Materiel Management (OA&MM) denied the request and, at approximately 8:00 p.m., a decision was made to compete a BPA using FSS vendors. A

BPA can be established against an FSS contract to fill repetitive needs for supplies or services [FAR 8.405-3 (a)(1)]. At this point, a new AOS Contracting Officer (CO-2) was assigned the procurement.

At 10:00 p.m., a Request for Quotations (RFQ) was sent to FSS vendors. The RFQ included the same attachment that detailed the work required for the June 1 Task Order and was referred to as a Statement of Objectives (SOO). Vendors were required to respond within 3 hours, by 1:00 a.m. June 3. Although CO-1 had suggested basing the award on best price, Mr. Cadenas wanted the award to be based on best value. This required the vendors to submit additional information, including a technical proposal and past performance. Two vendors responded to the RFQ: ISS and First Advantage. These were the only vendors that we could verify actually received the RFQ in time to respond to it. The proposals were forwarded to Mr. Cadenas at 2:09 a.m. on June 3 for a technical evaluation. Mr. Cadenas, who was expected to be the COTR for the BPA, was the sole technical evaluator.

Because the ISS proposal did not include a labor category and General Services Administration (GSA) FSS schedule information as required in the RFQ, at 2:13 a.m., a Contract Specialist, an employee of a VA contractor providing contracting assistance to AOS, asked ISS to provide the required information and set a 7:00 a.m. deadline. ISS did not provide the information by the deadline.

In an e-mail sent from his home account at 4:03 a.m., Mr. Cadenas stated that he performed a technical evaluation of the two proposals and recommended ISS as the best value meeting the needs of the requirement.

At 4:09 a.m. on June 3, CO-2 authorized ISS to commence work. He signed the BPA on June 6. The award was for a 3-year BPA with a ceiling for all task orders not to exceed \$2,679,900, which exceeded the \$500,000 maximum order limitation on ISS' FSS contract. The BPA contained one labor category, Specialized Security Analyst, and the scope of the services that could be provided under the BPA was defined as "forensic analysis and career counseling support services" for VA. The labor rate was not discounted off the price on the FSS contract and the guaranteed minimum purchase was \$50,000.

Although work under the BPA began on June 3, CO-2 did not approve the first Task Order against the BPA until June 6 (June 6 Task Order). The June 6 Task Order, valued at \$112,406, was virtually identical to the June 1 Task Order. The services, deliverables, and the due date for the final report were identical as was the attachment describing the information to be provided by the contractor. The only difference we noted was that the June 1 Task Order called for the services of two Specialized Security Analysts and the June 6 Task Order was for "a Specialized Security Analyst," singular.

On June 6, Mr. Cadenas requested additional services from ISS under the BPA – the creation of a master database containing all the information on the media devices. He noted in his request that the task was “critical.” On June 23, CO-2 issued a task order against the BPA for \$120,012 (June 23 Task Order). The task was to create a Standard Query Language (SQL) database of data elements, due by July 19, 2006. On June 29, 2006, VA announced the stolen hard drive and laptop had been recovered.

On July 24, ISS submitted an invoice for payment for the June 1 Task Order. VA authorized payment for the full amount, which included \$14,895.44 for labor and \$1,616.09 for travel expenses. On July 25, ISS submitted separate invoices for payment under the June 6 and June 23 Task Orders. In response to questions we asked on October 30, 2006, about these invoices, the COTR who succeeded Mr. Cadenas told us on November 2, 2006, that she authorized payment that day (November 2) for the full amount. Payment authorized for the June 6 Task Order included \$202,418.41 (761 labor hours), which was \$100,012 above the “do not exceed” limit in the Task Order, and \$9,892.91 for travel. The authorized payment was for \$100,012 for labor and \$19,029.91 for travel. None of the invoices broke the labor hours down by date or time and ISS did not include receipts to support the claimed travel.

Scope and Methodology

This investigation included a review of documentation related to the planning, award, and administration of the initial Task Order, the BPA, and the two Task Orders issued against the BPA. We also interviewed the AOS Director, CO-1, CO-2, the Contract Specialist, and other VA and contractor personnel, including the then Acting Assistant Secretary for Information and Technology, Mr. Robert Howard, and the Acting Director, DMAS.

We were unable to interview Mr. Cadenas because he opted to resign several days early after he was ordered by his supervisor to report to work for the interview. Knowing that Mr. Cadenas was scheduled to resign his position on July 14 and was on paid administrative leave pending his resignation, on July 10 we asked Mr. Cadenas’ supervisor to arrange for Mr. Cadenas to be interviewed on Wednesday, July 12. Mr. Cadenas initially agreed but subsequently stated that he could not make the interview because of personal plans. Mr. Cadenas’ supervisor ordered him to report to work on July 12 and be interviewed in this and another related administrative investigation. In response, Mr. Cadenas chose to resign on July 11, three days earlier than planned. We attempted to interview him when he came to VA on July 11 to be processed out, but he refused. We were unable to obtain any records relating to Mr. Cadenas’ administration of the contract; there were no hard copy files and he had used professional software to erase the hard drive on his computer.

Results and Conclusions

Issue: Whether the award and administration of the initial Task Order, the BPA, and the Task Orders issued against the BPA complied with the FAR and were in VA's best interest

Findings

We reviewed the circumstances surrounding the award and administration of each Task Order and the BPA and determined that the awards were not in compliance with the FAR, were not administered properly, and that the Government's interests were not protected. We identified numerous problems directly related to the following:

- no acquisition planning or market research was conducted;
- comprehensive statements of work defining VA's requirements were not developed;
- no urgent and compelling need existed to justify the sole-source procurement or the unrealistic timeframes that OCIS placed on the subsequent BPA and associated Task Orders;
- the BPA was awarded without adequate competition;
- the wrong labor category was used;
- the June 23 Task Order was outside the scope of the BPA;
- contract administration was inadequate or non-existent; and
- VA authorized payment for work outside the scope of the Task Order and without proper documentation to support ISS' travel expenses.

In addition to violating FAR requirements, as a result of these actions VA significantly overpaid for the services provided.

We attributed the deficiencies in these procurements to Mr. Cadenas, who was responsible for identifying VA's requirements and determining the labor category needed to perform the work; conducting market research; conducting the technical evaluation of proposals; and, as the COTR, monitoring contract performance. Mr. Cadenas misrepresented the urgency of the need for services and steered the contract to ISS. Mr. Cadenas also apparently authorized ISS to provide services that were outside the do-not-exceed threshold on the June 6 Task Order.

Although several contracting officials in AOS tried to ensure compliance with the requirements of the FAR, the AOS Director did not support their efforts. AOS Director's failure to support the contracting staff and ensure compliance with the FAR contributed to the deficiencies identified with these procurements. CO-2 and the Contract Specialist also failed to ensure compliance with the FAR. In particular, they did not review the proposals submitted in response to the RFQ for the BPA to ensure they were responsive to the RFQ, did not conduct market research, and awarded a task order that was outside the scope of the BPA.

Applicable FAR Provisions

Procedures for ordering goods or services from FSS contracts are contained in FAR Subpart 8.4. Entities placing orders against an FSS contract are required to follow the provisions of FAR Subpart 7.1 [FAR 8]. Subpart 7.1 requires agencies to perform acquisition planning and conduct market research for all acquisitions [FAR 7.102]. FAR 7.103(c) requires the agency head to ensure that acquisition planners address the requirement to specify needs, develop specifications, and solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be required. VA Acquisition Regulations require Advance Procurement Planning at each contracting activity for procurement actions in excess of \$100,000 and on all actions, regardless of dollar value, for consulting services [VAAR 807.102].¹ Written acquisition plans are required for all acquisitions with an anticipated cost in excess of \$1 million.

FAR Part 10 sets forth the policy and procedures for conducting market research. The purpose of market research is to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

The procedures in FAR 8.405-2 are applicable when ordering services that are priced at hourly rates established in the FSS contract. These procedures require the development of a statement of work (SOW) that includes: the work to be performed; the location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements such as security clearances, travel, and special knowledge. In addition, to the maximum extent practicable, the requirements should be in the form of performance-based statements. For orders that exceed the micro-purchase threshold (\$2,500), an RFQ that includes the SOW and evaluation criteria must be sent to at least three FSS vendors that offer services that will meet the agency's needs. When awarding a BPA, the ordering activity is required to provide the SOW to additional FSS vendors that offer the required services. The number of vendors depends on the complexity, scope, estimated value of the requirement, and the results of market research. The ordering activity is also required to seek price reductions.

¹ Advance Procurement Planning is also required for all actions, regardless of dollar value, for automated data processing hardware and software, with certain exceptions, and maintenance and repair of facilities.

FAR 8.405-3 prescribes procedures for establishing a BPA against an FSS contract. BPAs are authorized to fill repetitive needs for supplies or services and must address the frequency of ordering, invoicing, discounts, requirements (e.g., estimated quantities, work to be performed), the delivery locations, and time. When the BPA contains hourly rates for services, for each task order issued the ordering activity must develop a SOW for requirements covered by the BPA.

FAR 8.405-6 delineates the requirements when the ordering activity restricts consideration of schedule providers to fewer than the number of vendors specified in FAR 8.405-2. Circumstances that may justify restriction include: only one source is capable of responding due to the unique or specialized nature of the work; the new work is a logical follow-on to an original FSS order provided the original order was not issued under sole source or limited source procedures; the item is particular to one manufacturer; and there is an urgent and compelling need and following ordering procedures would result in unacceptable delays.

June 1 and June 6 Task Orders

We found no evidence that Mr. Cadenas conducted any acquisition planning or market research before demanding the award of task orders to ISS for the forensic analysis of the media devices. This resulted in an unjustified sole-source award and significantly increased the cost to VA to obtain the services needed. We identified a multitude of problems with the award and administration of the Task Orders, the more significant of which are discussed below.

No Justification for a Sole-Source Award: The June 1 Task Order was awarded sole-source to ISS based on representations of Mr. Cadenas that we concluded were both inaccurate and misleading. According to the Memorandum prepared by Mr. Cadenas to justify restricting consideration to fewer than three schedule contractors, as required by FAR 8.405-2, the work was “time sensitive and must be expedited immediately to limit the potential damage.” The justification did not provide a time frame when the work needed to be completed and did not explain why following the ordering procedures set forth in FAR 8.405-2 would result in an unacceptable delay; and we found no documentation in the records to support the need for a sole-source award. The due dates for the preliminary and final reports that were contained in the June 1 Task Order, June 2 and June 7, which implied that there was an urgent and compelling need, were self-imposed. Although this was a “hot” issue and VA was getting many questions from the Congress, the White House, and others, Mr. Howard told us there was no specific deadline for needing the analysis.

ISS was identified and selected based solely on the recommendation of Mr. Cadenas. In his June 1 Memorandum justifying a sole-source award to ISS, Mr. Cadenas stated, “Internet Security Systems is a renowned contractor who has demonstrated global capability of satisfying this critical requirement.” We do not dispute that ISS is a

renowned contractor in the area of internet and systems security; however, we found no evidence to support Mr. Cadenas' statement that they have "demonstrated global capability of satisfying this critical requirement." We are not aware of any prior VA contract with ISS for the type of work required under the Task Order; there is no evidence in ISS' proposals that they had conducted similar forensic analysis in the past; and there is no evidence that Mr. Cadenas or anyone else involved in this procurement contacted other ISS customers to verify past performance in conducting forensic analysis of media storage devices. Forensic analysis is not a service offered by ISS on its FSS contract.

Competition, even among three FSS vendors as required under the FAR, is an incentive for vendors to offer discounts off the FSS contract prices. The labor rates that VA paid ISS were not discounted. Because this was a sole-source procurement, there was no incentive to offer a discount.

During several meetings attended by contracting officials and others, Mr. Cadenas made statements indicating that he had a personal relationship with high level officials in ISS. CO-1 told us that, during a meeting with Mr. Cadenas June 1, Mr. Cadenas clearly indicated he had a personal relationship with high-level ISS officials. CO-1 said he did not consider this an issue at the time, and appointed Mr. Cadenas as the COTR. Two other contracting officials told us they also heard Mr. Cadenas state he had friends at ISS. Considering these statements in conjunction with the findings discussed above, we concluded that Mr. Cadenas steered the June 1 Task Order and the subsequent BPA to ISS for reasons other than urgent need for the services or ISS' reputation and ability to perform this type of work.

Requirements were not defined: Contrary to the requirements of FAR 8.405-2, a SOW or SOO that adequately identified the work to be performed, performance standards, and special requirements was never developed. The June 1 Task Order states that the vendor was to provide two consultants (Specialized Security Analysts) to acquire and analyze electronic media evidence from multiple sources in accordance with items listed in an Attachment. The Attachment, titled "Task Order for IT Forensic Work on Potential Lost Data," lists the information that the vendor was to provide as a result of the analysis. The June 6 Task Order is virtually identical to the June 1 Task Order, except the requirement was for a single Specialized Security Analyst and the estimated number of hours increased from 48 to 385. It is not clear whether the Attachment, used by the contractors to prepare their technical proposals, was intended to be either a SOW or SOO. The DMAS Acting Director told us he prepared the document, which he referred to as a punch list, but did not intend for it to be a SOW. However, AOS understood that the document was the SOW. For the RFQ issued on June 2 for the BPA, it is referred to as the SOO.

At a minimum, a SOW or SOO for the work to be performed under the June 1 and June 6 Task Orders should have included the number or type of media devices to be analyzed,

the type/size/format of the data on the media devices, and the program(s) needed to access the data. This information was available to OCIS prior to soliciting quotations. Shortly after the theft of the hard drive and laptop, VA was aware that the employee had transported from his office to his home information from the BIRLS file for approximately 26.5 million individuals and it was known that the information was in SAS format. However, other than stating that the information was from the BIRLS file and the estimated number of veterans, no other information relevant to this requirement was included in the RFQ. VA was aware prior to the award of the June 1 Task Order that the OIG had performed a similar analysis of the media devices and would be providing the analysis by the close of business on June 1. The OIG analysis identified specific files, the nature of the data, and the size of the files. This information was critical for VA to adequately identify the nature of the services needed to conduct the analysis, the expertise and level of experience of the personnel providing the services, and estimating the number of hours needed to complete the tasks and provide the deliverables.

Failure to plan the acquisition and conduct market research resulted in an improper award for services outside the scope of ISS' FSS contract: The RFQ and the June 1 and June 6 Task Orders describe the services required as “forensic analysis.” In response, ISS offered and VA accepted the labor category, “specialized security analyst.” Because the job function of the labor category offered by ISS did not match VA’s requirement for forensic analysis, ISS should not have been awarded the June 1 Task Order, the BPA, or the Task Orders issued against the BPA.² This problem would have been evident to OCIS and AOS had either organization performed even the most basic acquisition planning and market research.

We reviewed ISS’ FSS contract and those of other FSS vendors and found that the services provided by a “forensic analyst” differ significantly from the services provided by a “specialized security analyst” employed by ISS.³ The primary functional responsibility for a “specialized security analyst” employed with ISS is to provide specialized technical assistance and advice in handling network security incidents. The services include determining the source of the incident, preventing the spread to other systems, stopping the incident at the source, restoring the affected systems or networks to normal operation, and ensuring that systems and networks are protected from future occurrences. This is the most expensive labor category on the ISS contract at \$265.99 per hour. It was the wrong labor category for this procurement because the services required to perform the tasks identified in the June 1 and the June 6 Task Orders did not involve resolving a network security incident and the services provided by ISS under their FSS contract did not include forensic analysis. The word “forensic” is not used at

² See *Matter of Tarheel Specialties*, Comp.Gen. B-298197 (2006) and *Matter of American Systems Consulting*, Comp.Gen. B-294644 (2004).

³ Based on our analysis of the media devices, which was very similar to the work that was to be performed under the June 1 and June 6 Task Orders, we question whether the services of a “forensic” analyst were necessary. Labor categories on the FSS that include “forensic” work usually involve litigation and include work that involves expert testimony or the identification/preservation of evidence. However, we do not belabor this point in this report.

all in ISS' FSS contract and was only mentioned briefly in its response to the RFQ. In comparison, the functional responsibilities of a "computer forensic analyst" offered on another FSS vendor's contract includes "performing forensic analysis of computer magnetic storage media and to copy, recover, and analyze all data; prepares professional reports of analysis, and presents expert testimony." Similar services are described on other FSS contracts for similarly titled labor categories.

In addition to the inappropriateness of awarding a contract to an FSS vendor who did not offer the services required, VA paid significantly more for the services of a "specialized security analyst" than VA would have paid for the services of a "forensic analyst." The labor rate on another vendor's FSS contract ranged from \$51.18 per hour for a Forensic Analyst Level I to \$70.98 per hour for a Forensic Analyst Level II, both of which are significantly less than the \$266.99 per hour that VA paid ISS for "specialized security analysts." Another FSS contractor offered forensic analysis services at rates that ranged from \$78.22 per hour for a Computer Forensic Analyst I to \$112.62 per hour for a Computer Forensic Analyst IV. We identified these and other FSS vendors in less than 1 hour using simple internet research tools. This demonstrates that, even if there was an urgent and compelling need, market research would not have impeded the timely award of a task order and would have resulted in a considerable cost savings. Assuming that the estimated hours in the June 1 and June 6 Task Orders were reasonable, if VA had procured the services of a Forensic Analyst, VA would have paid between \$22,570.38 and \$49,665.42 for the services to be provided under the June 1 and June 6 Task Orders. This represents a savings of between \$94,731.21 (80 percent) and \$67,636.17 (58 percent) when compared to the amount VA agreed to pay ISS.

Lack of planning, monitoring, and poor contract administration caused VA to pay excessive labor hours: The lack of acquisition planning, market research, and performance monitoring are evident in the amount VA paid for the services required under the June 1 Task Order. Labor costs for the services to be provided under the June 1 Task Order were not to exceed \$12,767.52. This amount was based on an estimated 48 labor hours to complete the work at the rate of \$265.99 per hour. Within 24 hours, the contract was modified to increase the number of hours by 8 for a total of 56 hours. Subsequently, this was determined not to be sufficient and VA procured an additional 385 hours under the June 6 Task Order for services needed to satisfy the requirement. We found nothing in any of the records provided showing how these estimated hours were determined or that they were either reasonable or necessary.

Even though VA was aware that the OIG analyzed the media devices and provided VA the results on June 1, no one contacted the OIG to determine the estimated number of hours that might be needed to complete the project or the level of expertise (labor category) needed to conduct the analysis and prepare the report. Based on our experience in performing a similar analysis of the same media devices, we concluded that the level of effort needed to provide the services identified in the June 1 and June 6 Task Orders

should not have exceeded 48 hours. No evidence was provided to justify the additional 385 hours that VA paid to obtain the deliverables specified in the June 1 and June 6 Task Orders. The invoice submitted by ISS on July 25 requested payment for 761 hours to perform the services under the June 6 Task Order. We found no support for the almost 100 percent increase in the hours and cannot fathom any justification for requiring this level of effort to meet the requirements of the Task Order.

According to ISS, the final report due on or before June 7 was delivered on June 5. Assuming that ISS worked non-stop under both Task Orders, using two employees for the June 1 Task Order and one for the work performed under the June 6 Task Order,⁴ the maximum number of possible hours that could have been spent to complete the task would not have exceeded 132 hours. This is far less than the 441 hours that VA estimated, and will ultimately pay, for these services under the June 1 and June 6 Task Orders.⁵ Using the labor rate for a specialized security specialist, if the work was completed in 48 hours, VA would have paid \$12,767 for labor costs to have the media devices analyzed. Applying the labor rates for the appropriate labor category, Forensic Analyst, the services would have cost significantly less.⁶

Records and other information obtained during our investigation show that ISS was asked to perform additional work under the June 6 Task Order after the final report was submitted by ISS and accepted by VA on June 5. For example, there is a second report from ISS dated June 9, the genesis of which is unclear. The report states that Mr. Cadenas requested additional work relating to Health Insurance Portability and Accountability Act (HIPAA) records. Since neither Task Order was modified to add additional work, any work that OCIS may have asked ISS to perform after delivery of the final report was outside the scope of the June 1 and June 6 Task Orders. Work performed outside the scope of the Task Orders constitutes an unauthorized procurement and should not have been ordered or paid for. Based on our knowledge of HIPAA and the media devices, it was not possible to determine whether the information on the devices was HIPAA protected. To make a determination regarding HIPAA, the analyst would need to know the source of the information and when the information was obtained. Information regarding a medical diagnosis that is not obtained directly from a Veterans Health Administration record prior to the publication of the final HIPAA regulations on February 20, 2003, is not protected. This information could not be ascertained by reviewing the media devices. Mr. Cadenas should have known this prior to requesting the work.

The hours needed by ISS to complete the work may have been increased due to the fact that neither the RFQ, the SOO, nor the COTR advised ISS that the files were subsets of the BIRLS database, did not identify the fields contained in BIRLS, and did not ensure

⁴ As previously noted, the Task Order was for one Specialized Security Analyst, not two or more.

⁵ Fifty six hours were paid under the June 1 task Order and 385 hours under the June 6 Task Order.

⁶ VA would have paid \$2,457 at a rate of \$51.18 per hour and \$5405 at the \$112.62 per hour rate.

that they were familiar with or had access to the SAS program needed to open and review the files. All of this information should have been provided to potential offerors in the RFQ. We were told that the work could not be completed by ISS on June 1 because they could not access the information because it was in SAS format. ISS had assured VA that its staff was familiar with SAS programming; thus, their inability to access the program should have resulted in a termination of the June 1 Task Order for cause. At a minimum, VA should not have paid for the hours spent attempting to access the files.

VA's failure to implement performance monitoring and invoicing requirements may have resulted in overpayment. Payment under the June 1 and June 6 Task Orders was based on the number of hours that ISS employees worked to provide the deliverable. However, the RFQ, BPA, and the Task Orders did not identify any procedures for monitoring the number of hours ISS spent performing the work required under the contract and Mr. Cadenas did not implement any. For example, because the work was performed on-site at VA, VA should have implemented a method to monitor who performed the work and during what time periods by using sign-in/sign-out sheets. The invoices submitted by ISS identify the employee and the total number of hours worked on a specific task order. There is no breakdown of the dates or hours in a specific day that the contract employees provided services. Without a breakdown of the dates and hours worked, VA has no means to verify the accuracy of the invoices, which also may have resulted in overpayment. As one example, the June 9 report from ISS notes that they spent 36 hours attempting to access a file that was password protected. It is unclear whether the invoice included hours related to trying to access the file and, if so, how many. VA knew on June 1 that the OIG had spent considerable time and effort on this and was unable to open the file.

ISS requested, and the COTR who succeeded Mr. Cadenas authorized, payment for 761 hours of work based on the June 6 Task Order, even though the Task Order had a do-not-exceed limitation of 385 hours. No new task order, and no modification to the existing Task Order, was issued authorizing the additional hours. In June 2006, OCIS asked CO-2 to increase funding to the June 6 Task Order, but this was never done. OCIS did not ask for a modification or for a new task order and CO-2 did not advise them one was necessary. Although ISS submitted the invoice in August 2006, CO-2 told us he was not aware of the discrepancy in hours until November 2, after we began questioning him and the COTR about it and after the COTR authorized payment. CO-2 told us he believed the overcharge was a billing error, while the new COTR told us she believed ISS was asked to do additional work.

BPA

The award of the BPA to ISS was not conducted in accordance with the requirements of the FAR. There was no justification for a BPA and the procedures for awarding a BPA against an FSS contract were not followed. Other flaws include the failure to conduct acquisition planning and market research; there was also no evidence to support the need

for a 3-year BPA for an estimated 4,000 hours valued at \$2.6 million. Mr. Cadenas failed to adequately identify VA's needs, misrepresented the urgency of the work, and failed to conduct an impartial evaluation of the quotes submitted in response to the RFP. Officials in OA&MM failed to ensure that proper procedures were followed and that the Task Orders issued against the BPA were within the scope of the BPA.

Although the AOS Director ordered his staff to award the BPA as a sole-source contract, CO-1 refused. This resulted in the procurement being transferred to CO-2 and a disciplinary action, a letter of counseling, was taken against CO-1.⁷ Ultimately, OA&MM officials and OGC properly refused to award a BPA or follow-on contract to ISS on a sole-source basis after determining that a sole-source follow-on award was prohibited under the FAR and that there was no justification for a waiver. Although the process that preceded the award of the BPA gives the appearance of complying with the FAR's competition requirements, we determined that VA merely went through the motions and that the award to ISS was predetermined.

Mr. Howard acknowledged that he pushed the contract staff to identify a way to award a follow-on contract, telling them that the work must continue without a break in service. He also acknowledged that the staff probably felt they needed to find a way to retain ISS as the contractor, because that was the only way to keep the work moving. However, because there were no mandatory deadlines, this was a personal preference, which is not sufficient justification to waive or circumvent the requirements of the FAR.

BPA was the wrong contracting vehicle: Assuming there was a bona fide need to continue the work required under the June 1 Task Order without a break in service, which is not supported by the facts, the proper vehicle was a task order issued against an FSS contract with a scope of work that was limited to what was required to complete the task. BPAs are used when there are recurring needs. There is no evidence of a recurring need for a forensic analyst to analyze data on media devices.

Mr. Howard said he had no idea how long the analysis would take or what information would be needed, so he asked that the contract performance period be flexible enough to allow work to continue as long as necessary. There is no indication that program officials considered having the analysis performed in-house by personnel familiar with SAS format and the BIRLS database, or that they considered whether additional tasks could be performed in-house at a lower cost. In addition, there is no indication that anyone considered whether the additional tasks required the expertise of a forensic analyst, the only labor category requested in the RFQ, or a specialized security analyst, the only labor category awarded under the BPA. This is indicative of the lack of acquisition planning that led to VA paying more than necessary for the services provided.

⁷ Retaliation issues are addressed in a separate report.

The solicitation process for the BPA did not comply with the FAR: Assuming there was a need for a BPA, VA did not comply with FAR requirements for establishing a BPA against an FSS contract [FAR 8.405-2], and we did not identify any compelling circumstances that would justify a waiver of these requirements.

For orders exceeding the FSS maximum order threshold or when establishing a BPA, the ordering activity is required to provide the RFQ to more than three FSS contractors that offer services that will meet the needs of the ordering activity and to seek price reductions [FAR 8.405-2(c)(3)]. AOS did not comply with either requirement.

Records indicate that the RFQ was sent to five vendors at approximately 10:00 p.m. on June 2. Proposals were to be submitted no later than 1:00 a.m. on June 3, three hours later. Records also show that ISS was notified earlier in the day that VA was putting together another contract for ISS. The communication with ISS prior to issuing the RFQ, issuing the RFQ at 10:00 p.m. on a Friday night, and the 3 hour response time gave ISS an unfair advantage over any other FSS contract holder that may have been interested in submitting a proposal.

Of the five contractors who were provided the RFQ, only one, First Advantage, offered forensic analysis services on their FSS contract. The others, ISS, True North Solutions, American Operations Corporation, and Patriot Technologies, did not offer the services of a forensic analyst and should not have been provided the RFQ. For example, True North Solutions provides technical and maintenance support for products manufactured by other companies, including ISS. Information regarding the labor categories and the functional responsibilities of those categories is readily available on GSA's website and would have been known if anyone in AOS or OCIS had conducted even minimal market research. The names and e-mail addresses of two of the vendors, True North Solutions and Patriot Technologies, were provided to Contract Specialist by ISS. Both vendors have a partnering relationship with ISS, which we understand may have precluded them from submitting a proposal if the proposal competed with ISS.

The FAR requires the agency to seek price reductions when awarding a BPA against an FSS contract. Competition usually results in price reductions. Of the two proposals received, only First Advantage offered discounts off the FSS schedule prices. The ISS proposal was at the FSS rate of \$265.99 per hour and there is no evidence that AOS made an attempt to negotiate lower prices. This supports the conclusion ISS had no incentive to offer a discount because it knew in advance that it would be awarded the BPA.

The technical evaluation was flawed: Although CO-1 suggested an award based solely on the lowest offered price, Mr. Cadenas insisted on a best value procurement with the following rating factors: technical evaluation, past performance, and price. The RFQ described the services required as "forensic security analysis as described in Attachment 1 – Description of Services." Attachment 1 was a description of services for the first Task Order titled "Task Order for IT Forensic Work on Potential Lost Data." It states,

“The work to be performed includes but is not limited to forensic analysis of the existing files. Other forensic IT tasks may be assigned such as forensic analysis and the like.” This is followed by a list of the information that VA wanted from the media devices. We compared Attachment 1 to the RFQ with the Attachment to the June 1 Task Order and determined that the information sought from the analysis was identical. Quoters were required to provide specific information in specified format, which included:

- A technical quote (Volume 1a) in the form of a description of the labor category proposed to perform the work described in Attachment 1.
- Past Performance (Volume 1b), to include points of contact for the technical and contractual personnel and a brief explanation of the complexity, magnitude, and type of work performed. This information was to be used to determine the quality of past performance as it related to the probability of success of the required effort.
- Price Quote (Volume 2) to be submitted as a Labor Hour Price Quote for the Forensic Analysis Task Order. Quoters were required to provide labor categories, hours, and GSA schedule rate. The RFQ stated that the estimated hours was 4,000 but did not indicate whether this was for work contemplated for the first Task Order or an aggregate total for all task orders that might be issued during the 3 year lifespan of the BPA.

The RFQ stated that the evaluation criteria would be technical factors, which included, in order of importance –

- technical merit (quoter’s ability to effectively execute the forensic analysis to include vendor capabilities and technical approach),
- past performance, and
- price, which would be evaluated for reasonableness and amount.

Although the evaluation criteria for technical merit appear to be comprehensive, the RFQ did not require the vendors to provide a technical approach to conducting a forensic analysis of the media devices. The technical quote requirement of the RFQ was limited to a description of the labor category proposed to perform the work described in Attachment 1.

A technical evaluation panel was not convened to review the proposals. The evaluation was performed by Mr. Cadenas from his home. There are no records showing his rating criteria or how he scored each of the proposals. The only record relating to his evaluation is an e-mail sent at 4:03 a.m. on June 3, in which he stated:

ISS has demonstrated a large robust forensic security capability that will meet the needs of the Department. Specifically in the areas of rapid

deployment, 24/7/365 emergency response, and dedicated Account Manager to include an infrastructure dedicated to forensic security and security intelligence (ISS X-Force). Roles and responsibilities, rules of engagement, were cited which is critical when performing forensic analysis to properly maintain the chain of custody. Even though [First Advantage] cited forensic capabilities within their proposals, they did not demonstrate robust capability that would meet the demanding needs of the Department.

We reviewed the proposals submitted by ISS and First Advantage and concluded that they did not support Mr. Cadenas' assessment. For example, the RFQ did not ask for forensic security capability or security intelligence, which appears to be the basis for Mr. Cadenas' evaluation. Rather, the RFQ requested forensic analysis services. There is nothing in either proposal on which Mr. Cadenas could evaluate "robust capability that would meet the demanding needs of the Department." The only need that VA had at the time was an analysis of the 17 media devices, one of which was inaccessible because it was password protected.

CO-2, the Contract Specialist, and/or Mr. Cadenas should have rejected the ISS proposal because it was not responsive to the requirements of the RFQ. Volume 1a of the ISS proposal, which is identical to the proposal submitted for the June 1 Task Order, does not identify the labor category proposed, as required by the RFQ. At 2:13 a.m., the Contract Specialist asked ISS to provide the required information and set a 7:00 a.m. deadline; however, ISS did not provide the information by the deadline. Nonetheless, at 4:00 a.m. on June 3, ISS was authorized to commence work under the June 6 Task Order issued against the BPA.

The focus of the information provided in Volume 1a was on the types of emergency response services ISS can provide when there is an information security breach involving attacks on a system. The experiences described relate primarily to computer security incidents, which are described as attack, computer crime, computer virus, extortion, theft of information stored in a computer, unauthorized access, and unauthorized use. Although ISS had already spent 56 hours analyzing the media devices, which should have given them an advantage in submitting a proposal directed at the specific tasks in Attachment 1, the proposal did not provide an approach to conducting a forensic analysis of the media devices.

Contrary to specific instructions in the RFQ, ISS did not submit a Volume 1b identifying other customers. Instead, Volume 1a included a "sampling" of references in which they listed the agency name and a single point of contact. The RFQ specifically required that Volume 1b include points of contact for the technical and contractual personnel and a brief explanation of the complexity, magnitude, and type of work performed. This information was to be used to determine the quality of past performance as it related to the probability of success of the required effort. ISS did not provide sufficient information from which any technical evaluator could rate past performance. We found

no documentation indicating that Mr. Cadenas or anyone else contacted any of the references identified by ISS or First Advantage. Because the evaluation was completed in less than 2 hours in the middle of the night, it is unlikely that references were contacted. More importantly, Mr. Cadenas was aware at the time that ISS could not open the files to perform the analysis required under the June 1 Task Order and had to be assisted by VA personnel. At a minimum, this should have been taken into consideration in rating the proposals on past performance.

In comparison, the proposal submitted by First Advantage was more responsive to the RFQ. For example, in a section titled "Volume 1a," First Advantage identified the labor category, as required by the RFQ. In Volume 1b, First Advantage not only provided a contact point for each customer, they also complied with the requirement of the RFQ and described the nature of the work performed for those customers. The description of services that First Advantage offered its customers focused on forensic services, not internet security. First Advantage also submitted a separate price quote, which did include a discount from its FSS contract.

Further evidence that the evaluation process was flawed is in the Price Negotiation Memorandum that was prepared by the Contract Specialist sometime after the BPA was awarded. Section V, Best Value Analysis, states, "ISS proposed a solution that provided the necessary personnel for the required services at little risk (no intermediary to which data must be transmitted electronically), is intimately familiar with the VA requirement and procedures, and has an excellent past performance history in the industry." We found no evidence to support these statements. The proposal submitted by ISS did not contain a proposed solution, there is no evidence of a risk assessment, and no one contacted any reference to determine performance history in the industry. In Section IV, Summary, the Contract Specialist states that First Advantage proposed a technical expert who was based in the United Kingdom. We found nothing in the proposal submitted by First Advantage or in any other record to support this statement. In its proposal, First Advantage stated that it had "available a range of expert and mid-tier experienced IT forensic professionals." They further stated that expert forensic staff available for this engagement included an individual who was the "former director of the largest computer forensics program among law enforcement in the United Kingdom." The proposal did not state that this individual would be performing the work, that he was currently in the United Kingdom, or that the work would be going to the United Kingdom. If there was any concern about whether First Advantage intended to perform the work on-site, or elsewhere, VA should have discussed the matter with them.

We are not advocating that First Advantage should have been awarded the BPA. We believe that if officials had done acquisition planning and market research, they would have identified other FSS vendors who provide forensic analyst services at more reasonable prices than offered by First Advantage. The price difference between ISS and

First Advantage was minimal compared to the price difference between both of them and other FSS contractors who offer forensic analysis services.

June 23 Task Order against BPA

As with the June 1 and June 6 Task Orders, we found no acquisition plan or SOW or SOO for the June 23 Task Order. The services to be provided are identified in the body of the Task Order as “Provide consultant Specialized Security Analyst to create an SQL Database of elements specified by the Department of Veterans Affairs.” The database was to be completed no later than July 19, 2006. The estimated number of hours was 376, and the not-to-exceed amount was \$100,012.24 (\$265.99 per hour x 376 hours). We concluded that VA significantly overpaid for a database that was both unnecessary and may be in violation of the Privacy Act.

The documentation provided by AOS and OCIS did not contain information relating to how VA arrived at the estimated number of hours or justifying the estimated number of hours; did not identify the information that was to be included in the database; and did not explain why the database was considered necessary, how it would be used, where it would be maintained, and who would have access to it. There was no cost estimate, no justification for having the work performed by a contractor rather than VA employees, and no comparison of the cost to have the work performed under the BPA versus by VA employees.

The services provided under the June 23 Task Order were outside the scope of the BPA because they did not involve forensic analysis. However, even if the broadest interpretation of the BPA included such services, the only awarded labor category was a specialized security analyst, which was not the proper labor category needed to perform the services. These services could, and should, have been performed by individuals in labor categories such as data analyst or database manager. We identified an FSS contract that provided the appropriate labor categories at rates ranging from \$35 to \$50 per hour. Even assuming that 376 hours was reasonable, having the work performed by individuals in the proper labor category would have saved VA between \$81,212 and \$86,852.

On June 30, seven days after the Task Order was issued, VA announced the recovery of the stolen hard drive. This obviated any need for a database containing the information stored on the media devices. Mr. Cadenas should have recognized this and taken action to terminate the Task Order for the convenience of the Government. Under FAR, VA would have only been required to pay for the percentage of work completed and other associated costs incurred by the contractor [FAR clause 52.212-4 (l)].

The invoice submitted by ISS for the services provided under the June 23 Task Order shows that the creation of the database required the services of eight ISS Specialized Security Analysts and used the entire 376 hours estimated for this project. Based on our experience with databases, SQL, and the media devices that were the source of the

information to be included in the database, we cannot comprehend how this project would require this level of effort and could not find any documentation submitted by ISS to support the hours spent. As with the June 1 and June 6 Task Orders, OCIS did not implement any procedures to monitor performance, including identifying the employees who provided the services or the hours they spent working under the Task Order. Accordingly, VA has no means by which to verify the accuracy of the invoice.

The database may be considered a system of records under the provisions of the Privacy Act, 5 USC §552a. The information contained on the media devices included personal identifiers of millions of individuals. The Privacy Act establishes certain requirements when an agency maintains records on individuals that are retrievable by the individual's name or other personal identifier. There is no evidence that OCIS consulted with OGC before creating the database.

Travel

Each Task Order contained an estimate for travel expenses based on a not-to-exceed dollar amount, which is consistent with FSS contract ordering procedures. However, travel expenses billed by ISS were not monitored or authorized for payment in accordance with the provisions of the governing GSA FSS contract. Each invoice contained a separate line item for travel with an aggregate total. Attached to the invoice was a document that broke the expenses out into categories (e.g., airfare, meals, other) with a total for each line item. There was no breakdown by contract employee or by date, and no receipts were provided. According to the FSS contract, travel should be billed at the actual cost and in accordance with Federal Travel Regulations (FTR).

On October 30, we asked the COTR whether she had obtained additional information from ISS to support the claimed travel. She told us she did not request additional data for the June 1 Task Order but did authorize payment of all claimed travel expenses. She provided us with documentation of expenses that we were told was submitted to support travel under the June 23 Task Order. We were not provided documentation to show actual expenses for the travel claim associated with the June 6 Task Order.

With respect to the travel expenses claimed for the June 23 Task Order, the COTR provided documentation from ISS for four ISS employees. For two of the employees, the submission was the expense report those employees filed with ISS. For the remaining two employees, the documentation included the expense report and receipts. We found no evidence that the travel expenses submitted were reviewed prior to payment to ensure compliance with the provisions of allowable travel payments in accordance with FAR 31.205-46. This regulation limits payment for travel to the amounts allowable under FTR.

We reviewed the expense reports and the attached receipts and questioned whether the travel was related to the June 23 Task Order. Our first concern was that the travel

occurred between June 8 and June 16, which was more than a week before the Task Order was issued on June 23, and after the final report required under the June 6 Task Order had been delivered. Also, the total claimed on the expense reports for airfare did not add up to the total amount for airfare claimed on the invoice. Additionally, the expense reports and receipts totaled about \$6,000 less than the \$19,029 claimed in the invoice for the June 23 Task Order, but about \$3,000 more than claimed on the invoice for the June 6 Task Order. Because of these multiple discrepancies, we could not independently determine whether the travel claimed was related to the June 6 or the June 23 Task Order.

We reviewed the expense reports and receipts to determine whether claimed amounts were consistent with the FTR. We found that the expenses for one contract employee far exceeded the allowable expenses under FTR. For example, the receipts and expense report for this employee showed he claimed dinners costing \$86, \$137, \$152, and \$266. The allowable per diem for meals and incidental expenses for the Washington area is \$64. The total daily meal expenses claimed for this employee ranged from \$66 to \$275. The same employee claimed \$154 for the purchase of "SAS Learning Edition 2.0"⁸ on June 7, before the travel commenced. Another claimed expense was \$215.47 for computer hardware that was to be shipped to the contract employee's residence on June 17, one day after he returned home from travel. ISS should have been required to submit vouchers showing the detailed costs incurred for travel for all contract employees, for all claimed expenses. The COTR should have verified that the expenses were consistent with the FTR before authorizing payment.

When we reviewed the documentation provided on November 2 and realized the potential overpayment for travel, we notified the COTR, the Contracting Officer, and other responsible officials and strongly suggested that they rescind the authorization for the payment of travel expenses until ISS provides proper documentation, the expenses are verified, and a determination is made as to whether they are allowable under FTR.

Conclusion

We concluded that the Task Orders and the BPA issued to ISS for forensic data analysis services and creation of a master database were awarded and administered in violation of the FAR, and were not in the best interest of the Government. Mr. Cadenas did not justify the urgency of the requirement, did not conduct any acquisition planning or market research, and did not define VA's requirements in a comprehensive statement of work or through the identification of an appropriate labor category. When the proposals were submitted in response to the RFQ for the BPA, Mr. Cadenas' technical evaluation was not supported by the submissions. Once the Task Orders and BPA were issued, Mr. Cadenas failed to monitor ISS' performance. Finally, Mr. Cadenas requested ISS

⁸ We found this expense to be of interest because ISS assured VA that the employees assigned to perform the tasks were knowledgeable about SAS programming.

perform additional analysis after they submitted a final report, and requested they perform work (the SQL database) outside the scope of the BPA. We are not recommending action be taken against Mr. Cadenas because he is no longer a Federal Government employee.

Regarding the AOS staff and the contractor employee supporting them, the AOS Director did not ensure that requirements of the FAR were followed and, when CO-1 raised questions about the legality of issuing a second sole-source contract to ISS, he (the AOS Director) did not support him. CO-2 and the Contract Specialist did not conduct market research prior to issuing the RFQ for the BPA, and did not adequately review proposals submitted in response to the RFQ. Further, they improperly issued a BPA when there was no recurring need for the services, did not properly solicit quotes for the BPA, and improperly issued a task order for the SQL database when that work was outside the scope of the BPA.

Due to the lack of acquisition planning and market research on the part of Mr. Cadenas and AOS officials, and due to Mr. Cadenas' failure to properly monitor ISS' performance, VA overpaid for the services provided. The labor category ISS provided was inappropriate, not discounted, and much more expensive than it should have been, and the number of hours ISS billed for their services is not supported and appears excessive. The current COTR inappropriately authorized payments for labor hours that exceeded the do-not-exceed threshold of the June 6 Task Order by 376 hours. The COTR also approved travel expenses without obtaining the documentation required by GSA to support the amounts charged. Additionally, VA made no independent estimate of the number of hours needed to complete the tasks. The Task Order for the SQL database should have been terminated shortly after it was issued because the stolen hard drive was recovered and there was no longer a reason to refer to data contained in the compact disks. The database, now completed, may be a system of records subject to the provisions of the Privacy Act.

Recommended Action(s) 1. We recommend that the Associate Deputy Assistant Secretary for Acquisitions takes appropriate administrative action against the AOS Director for not ensuring that the Task Order and BPA awards were in compliance with the FAR and not supporting his contracting staff when they raised legitimate issues about the legality of the procurement.

Recommended Action(s) 2. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that appropriate administrative action is taken against CO-2 for not conducting market research prior to issuing an RFQ for the BPA, not properly soliciting quotes for the BPA, not reviewing proposals submitted in response to the RFQ, awarding a BPA when there was no recurring need, and awarding a task order outside the scope of the BPA.

Recommended Action(s) 3. We recommend that the Associate Deputy Assistant Secretary for Acquisitions refers to the Contract Specialist's employer his failure to conduct market research prior to issuing an RFQ for the BPA and his failure to review proposals submitted in response to the RFQ.

Recommended Action(s) 4. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that payment for the 376 labor hours, which exceed the do-not-exceed threshold in the June 6 Task Order, is withheld from ISS until that company provides the COTR evidence that it was asked to perform the services, including who requested it, when, what services were requested, the number of hours requested, and what deliverable was produced.

Recommended Action(s) 5. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that payment for travel expenses claimed against any of the Task Orders is withheld from ISS until that company provides the supporting documentation required by the FAR, and the COTR verifies expenses and determines they are allowable under FTR.

Recommended Action(s) 6. We recommend that the Assistant Secretary for Information and Technology ensures that OGC's Professional Staff Group IV is consulted to determine if the SQL database is a system of records under the Privacy Act and should be maintained. If so, the Assistant Secretary should ensure compliance with the Act's requirements, including seeking approval for the system of records and publishing it in the Federal Regulations.

Associate Deputy Assistant Secretary Comments

**Department of
Veterans Affairs**

Memorandum

Date: February 6, 2007

From: Associate Deputy Assistant Secretary for Acquisitions
(049A)

Subject: Administrative Investigation – Contract Award and
Administration Irregularities, Offices of Information &
Technology and Acquisition & Materiel Management, VA
Central Office

To: Director, Administrative Investigations Division (51Q)

Associate Deputy Assistant Secretary's Comments to Office of Inspector General's Report

The following Associate Deputy Assistant Secretary's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommended Action(s) 1. We recommend that the Associate Deputy Assistant Secretary for Acquisitions takes appropriate administrative action against the AOS Director for not ensuring that the Task Order and BPA awards were in compliance with the FAR and not supporting his contracting staff when they raised legitimate issues about the legality of the procurement.

Concur **Target Completion Date:** 90 Days

Appropriate administrative action will be taken.

Recommended Action(s) 2. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that appropriate administrative action is taken against CO-2 for not conducting market research prior to issuing an RFQ for the BPA, not properly soliciting quotes for the BPA, not reviewing proposals submitted in response to the RFQ, awarding a BPA when there was no recurring need, and awarding a task order outside the scope of the BPA.

Concur **Target Completion Date:** 90 Days

Appropriate administrative action will be taken.

Recommended Action(s) 3. We recommend that the Associate Deputy Assistant Secretary for Acquisitions refers to the Contract Specialist's employer his failure to conduct market research prior to issuing an RFQ for the BPA and his failure to review proposals submitted in response to the RFQ.

Concur **Target Completion Date:** 90 Days

Contract Specialist's employer will be notified.

Recommended Action(s) 4. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that payment for the 376 labor hours, which exceed the do-not-exceed threshold in the June 6 Task Order, is withheld from ISS until that company provides the COTR evidence that it was asked to perform the services, including who requested it, when, what services were requested, the number of hours requested, and what deliverable was produced.

Concur **Target Completion Date:** 90 Days

Recommended Action(s) 5. We recommend that the Associate Deputy Assistant Secretary for Acquisitions ensures that payment for travel expenses claimed against any of the Task Orders is withheld from ISS until that company provides the supporting documentation required by the FAR, and the COTR verifies expenses and determines they are allowable under FTR.

Concur **Target Completion Date:** 90 Days

Payment will be withheld until supporting documentation is received and the travel validated. Some travel was paid prior to receiving the draft report. We will determine whether there was appropriate documentation to support the payment and, if not, determine whether VA can recover the overcharges.

**Department of
Veterans Affairs**

Memorandum

Date: February 7, 2007

From: Assistant Secretary for Information and Technology (005)

Subject: **Administrative Investigation – Contract Award and Administration Irregularities, Offices of Information & Technology and Acquisition & Materiel Management, VA Central Office**

TO: Director, Administrative Investigations Division (51Q)

Assistant Secretary for Information and Technology's Comments to Office of Inspector General's Report

The following comments are submitted in response to the Assistant Secretary for Information and Technology's recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommended Action(s) 6. We recommend that the Assistant Secretary for Information and Technology ensures that OGC's Professional Staff Group IV is consulted to determine if the SQL database is a system of records under the Privacy Act and should be maintained. If so, the Assistant Secretary should ensure compliance with the Act's requirements, including seeking approval for the system of records and publishing it in the Federal Regulations.

Concur **Target Completion Date:** Completed

The ADAS for E-Government met with the Office of General Counsel (GC). The GC stated that the data files were now subject to litigation hold in civil litigation and they are covered by SORN 16VA026. The file will be destroyed once litigation is completed.

OIG Contact and Staff Acknowledgments

OIG Contact	Judy Shelly, (202) 565-8617
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Acknowledgments

Report Distribution

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