



Department of Veterans Affairs Office of Inspector General

Review of Allegations of Contracting Irregularities, VA Medical Center, Tuscaloosa, Alabama

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Executive Summary

Introduction

On May 20, 2008, an anonymous complaint was received at the VA Office of Inspector General's Hotline alleging that 38 U.S.C. § 8153 (implemented by VA Directive 1663) was being improperly used to hire two contracted administrative employees in the Human Resources Management Services (HRMS) department at the Tuscaloosa VA Medical Center (VAMC). Section 8153 gives VA certain authority to contract for healthcare resources. A review was conducted to determine whether the resources were procured; whether the VAMC used § 8153 authority; and, whether proper procedures were followed.

Results

Our review did not substantiate the allegation that the VAMC improperly used § 8153 authority to purchase services for HRMS because § 8153 authority was not used in the procurement. The VAMC issued two purchase orders against a General Services Administration Federal Supply Schedule (FSS) contract to purchase the services of two individuals to provide services to the HRMS. We found that the VAMC did not comply with the requirements of Federal Acquisition Regulations (FAR) Part 8.405, that establish the procedures to be followed when purchasing services at hourly rates from FSS contracts.

We found that on two occasions the HRMS improperly selected the contractor and negotiated the terms and conditions of the procurement, which included improperly referring to the contractor two retired VA employees to perform the work. Instead of having a contracting officer or purchasing agent provide a Request for Quotation (RFQ) with a statement of work to the FSS contractor, as required by FAR, and having the contractor identify individuals to provide the services, the HRMS identified two retired VA employees to provide the services and arranged for them to be hired by an FSS contractor solely for the purpose of providing services to the VAMC.

The HRMS then completed each purchase order, which included a statement of work, the identity of the individual to provide the services, and the negotiated price, and sent it to the Purchasing Agent stating that it was a "special" or expedited procurement. The Purchasing Agent then issued the completed purchase orders to the FSS vendor. No one prepared or issued a RFQ to at least three FSS contractors as required under FAR 8.405-2. In addition, neither the HRMS nor the Purchasing Agent prepared a justification for restricted consideration as required under FAR 8.405-6. We also found no justification for

HRMS to have required these purchase orders to be issued as expedited procurements or to justify a sole-source purchase.

We found that the Purchasing Agent was not aware of the provisions of FAR Part 8.405 that establish the procedures to be followed when ordering supplies and services from the FSS. We also found that the Purchasing Agent's actions may have been due in part to a provision in her Performance Plan that states that action should be taken on a "special" (expedited) request within three workdays. The Purchasing Agent told us that her annual performance appraisal is affected if she fails to acquire goods or services within the time-frame requested on the purchase order, VA Form 2237, submitted by the requesting service. Such a requirement is inconsistent with the standard in the performance plan requiring the Purchasing Agent to comply with the FAR.

Recommendations

We recommend that the VISN 7 Director:

1. Take action to ensure that program offices and purchasing agents comply with the provisions of FAR 8.405 when purchasing off FSS contracts.
2. Provide training to the Purchasing Agent and other warranted contracting personnel in VISN 7 regarding the provisions of FAR Part 8.4 relating to the use of the FSS.
3. Issue policy requiring all program offices to provide written justification in accordance with FAR Part 8.405-6 or Part 6 when procuring supplies or services on a sole-source or expedited basis.
4. Clarify provisions in performance plans for this and other warranted contracting personnel that require the processing of expedited requests within a certain time frame, unless the program office has provided adequate justification showing an urgent need and the time period is adequate to ensure compliance with applicable acquisition rules and regulations.
5. Take action to ensure that purchase orders issued to obtain the services of the two contract employees are not extended or modified to add additional services.

VISN 7 Director's Comments

The VA Integrated Services Network (VISN) 7 Director concurred with all recommendations of the report and set forth a plan of action to correct the problems. The VISN 7 Director stated that action had been taken to ensure that program officials and purchasing agents complied with FAR Part 8.4 when purchasing from the FSS and that training on the requirements of FAR Part 8.4 would be provided to VISN 7 contracting personnel. In addition, all procurements that require written justification when purchasing on a sole-source or expedited basis would be reviewed and justified by someone at the highest levels at the facility and the procurement would be reviewed by the Chief of Logistics or Assistant Chief of Logistics prior to placement of the order.

The requirements in the performance plan for the purchasing agents were discussed and clarified with the purchasing agents. Finally, the Director stated that the Tuscaloosa VAMC would not approve any alterations, extensions, or modifications to the purchase orders addressed in this report.

(original signed by:)
MAUREEN REGAN
Counselor to the Inspector
General

INTRODUCTION

Purpose

The Office of Inspector General conducted a review of a Hotline complaint alleging that two contract employees at the Tuscaloosa, Alabama VAMC “were hired under the provisions outlined in VA Directive 1663, designed to address short-term shortages of clinical staff.” The complainant alleged two contract employees were hired for the HRMS department to perform administrative work, while the hospital’s clinical staff continued to be short-staffed.

Background

At the request of the HRMS, the Purchasing Agent for the Tuscaloosa VAMC issued two purchase orders to procure the services of two retired annuitants for HRMS from an FSS contractor without competition. The HRMS contacted the vendor, negotiated the terms and conditions of the purchase order, identified and referred to the vendor two retired VA employees to work under the contract, and prepared the purchase orders that were ultimately issued by the Purchasing Agent.

Purchase Order One

Purchase Order One was issued on January 28, 2008, to procure the services of a retired annuitant in HRMS. The purchase order called for approximately 800 hours of services and was valued at \$36,476. The HRMS told us that the VAMC had a need for a Lead Human Resources (HR) Assistant because the former incumbent had been promoted. On June 20, 2007, the position was initially advertised VA-wide through the Office of Personnel Management’s USAJobs website, and they continued to recruit to fill the position. The HRMS told us that hiring from within her organization was not a viable option because the HR assistants currently on staff did not have the training and expertise for the position. Eventually, the position was offered to an employee at another VAMC, who declined the offer.

Subsequently, the HRMS spoke with a VISN 7 Contract Manager to determine if she could hire a retired annuitant as a contract employee, specifically under a sole-source contract. The individual previously worked in HRMS and the HRMS was familiar with her work and experience. The VISN 7 Contract Manager told her a sole-source contract would not be feasible as the work to be performed was administrative in nature. The Contract Manager then referred the matter to a VISN 7 Contract Office Supervisor who advised the HRMS that JHT, Inc. had a General Services Administration (GSA) contract that could be used. The Contract Office Supervisor then gave the HRMS the contact information for JHT, Inc. The

HRMS contacted JHT, Inc. and requested they provide an estimate of costs. She also advised JHT, Inc. that she knew someone who could do the work. JHT, Inc. asked the HRMS to have the retired annuitant contact them. JHT, Inc. provided the HRMS with a cost estimate which she then presented to the Tuscaloosa VAMC Associate Director who approved the procurement action. The HRMS then prepared and submitted the purchase order to purchase the services for the retired annuitant from JHT, Inc. to the purchasing department. The purchase order was issued with a priority level of “special,” which means that the request should be expedited.

The retired annuitant retired in 2005 after working at Tuscaloosa VAMC for 35 years in HRMS. After retirement, she returned to work in the HRMS department for a short period of time as a fee-basis employee. After the HRMS contacted her about coming back to work as a contract employee through JHT, Inc., she made arrangements with JHT, Inc. to begin the employment process. She began working in February 2008 as a contract employee 24 hours a week. Although she does not supervise other employees, she assigns work and conducts training classes for the HR assistants.

Purchase Order Two

Purchase Order Two was issued on April 25, 2008 to obtain the services of another retired annuitant to assist the HRMS department with a high priority project for the Tuscaloosa VAMC – the transitioning from paper Official Personnel Files (OPF) to the new electronic Official Personnel Files (e-OPF). The purchase order was for approximately 648 hours of services valued at \$19,380. This purchase order was also issued with a priority level of “special,” meaning that the request should be expedited. The HRMS told us she needed experienced, qualified help for this high priority project. Although she attempted to use the current HR assistants to perform this task, this did not prove successful. The HRMS did not provide written documentation justifying why this procurement needed to be expedited or sole-sourced to JHT, Inc.

The HRMS knew an HR specialist who had worked for the Tuscaloosa VAMC for 31 years and would be retiring on February 29, 2008. The HRMS presented a proposal to the Position Management Committee at the facility to hire this individual to work on the e-OPF project on a contract basis. The committee approved the proposal and the VAMC Director approved the committee’s decision. The HRMS then contacted the individual and inquired whether she would be interested in returning to work in the HRMS department on the e-OPF project after her retirement. The individual accepted the offer and the HRMS and the retired annuitant contacted JHT, Inc. to begin the process.

Based on review of e-mail correspondence between the HRMS and JHT, Inc., the HRMS negotiated the price and the terms and conditions of the purchase order with JHT, Inc. The HRMS then completed the purchase order to purchase the services of this individual from JHT, Inc. through its FSS contract and provided it to the Purchasing Agent. The Purchasing Agent processed the purchase order and the retired annuitant began working in May 2008 as a contract employee. Her current duties include auditing the paper OPFs that are to be transferred to e-OPFs as well as other administrative duties. Since the HRMS was hiring this employee on a contract basis to assist with the project, there was no vacancy announcement for this position. The project was to last from May 2008 to December 2008.

Contracting Process

The Purchasing Agent told us she received the requests for the two contract employee positions on two separate VA Forms 2237, purchase orders, from the HRMS. Each purchase order was completely filled out including a full description of the positions, a description of the retired annuitants who were going to fill the positions, the hourly rate VA would be charged, number of hours, the vendor's name (JHT, Inc.), address, and was marked as a "special," which the Purchasing Agent told us meant that the requests needed to be expedited. Although the Purchasing Agent verified that JHT, Inc. was a GSA contractor, she was not familiar with the company or any of its employees, and did not know either of the two individuals that the HRMS referred to JHT, Inc. to provide services under the contract. The Purchasing Agent also stated that the labor category used to determine the hourly rate for the two employees was determined by the contractor and the HRMS and she did not assess whether the work to be provided met the designated labor category. She merely processed the purchase orders that were prepared by the HRMS.

The Purchasing Agent told us that she did not issue an RFQ or otherwise solicit offers for either of the two purchase orders because of time limitations due to the fact that the HRMS requested that both purchase orders be expedited. She also stated that since GSA FSS contractors were a mandatory source, (*see* 48 C.F.R. § 8.002(a)(2)(ii)), she did not believe she had to solicit proposals.

The Purchasing Agent told us her annual performance appraisal is affected if she failed to acquire goods or services within the time-frame requested on the VA Form 2237. Therefore, if she receives a request that is to be expedited, she is required to obtain the goods or services as soon as possible. If the request is to be expedited, the end user must request a certain contractor. If no contractor is requested, the Purchasing Agent stated that she would send the request back to the end user to change the request to a standard, so she could bid the request out to various contractors. After receiving clarification from her supervisor, the

Purchasing Agent stated that her Performance Plan requires her to begin the contracting process within three days after receipt of the purchase order when the purchase order is marked as a “special” (expedited) request. The deadline for awarding the contract is the delivery date chosen by the end user that is designated on the purchase order. The Purchasing Agent’s performance plan shows that in “Technical Support,” a critical element, she has three work days to take action on a “special” request.

The Purchasing Agent admitted that she was not familiar with the requirements of FAR Part 8.4 and was under the impression that no competition was required when ordering from FSS schedules. She stated that she has not received specific training regarding the FAR and the proper procedures for ordering from FSS schedules.

The VISN 7 Contract Office Supervisor told us she had suggested JHT, Inc. to the HRMS as a possible contractor. JHT, Inc. had previously been used to provide employment services at the Augusta VAMC, which is how she became familiar with the company. She was not involved in the contracting process at Tuscaloosa for the HRMS employees and did not give advice regarding whether the procurement required that proposals be sought from at least three FSS vendors or whether there was justification to purchase on a sole-source basis from JHT, Inc.

Scope and Methodology

To assess the allegation, a site visit was conducted on July 1-2, 2008. We interviewed the HRMS, the Purchasing Agent, the two contract employees in the HRMS Department, and the VISN 7 Contract Office Supervisor. We reviewed appropriate documentation to include: the purchase orders (VA Forms 2237 – Requests for Services to the Purchasing Department), the position descriptions for each contract employee, job announcement for the Lead HR Assistant position, the GSA FSS contract, the Purchasing Agent’s performance plan, e-mail correspondence, and other relevant documents.

RESULTS AND CONCLUSIONS

Issue 1: Whether the Tuscaloosa VAMC improperly used 38 U.S.C. § 8153 authority to hire administrative staff for the HRMS department.

Findings

We did not substantiate the allegation.

VA Directive 1663 (Health Care Resources Contracting – Buying, Title 38 U.S.C. § 8153) implements the provisions of 38 U.S.C. § 8153 that allows VA to avoid certain Federal laws and regulations when contracting for health care resources that might otherwise not be feasibly available by direct hire. Section 8153 authority was not used to procure the services of the two contract employees identified in the complaint or the services of any HRMS employee or other non-clinical employee.

Conclusion

The allegation was not substantiated because the Tuscaloosa VAMC did not use 38 U.S.C. § 8153 authority or the provisions of VA Directive 1663 to hire administrative staff for the HRMS department.

Issue 2: Whether the contracting entity followed FAR requirements to procure the services of two administrative contract employees for the HRMS department.

Findings

We concluded that the VA contracting entity did not follow FAR Part 8.4 requirements to procure services using the Federal Supply Schedules.

FAR Requirements: FAR Part 8.4 establishes the procedures for ordering supplies and services against GSA Federal Supply Schedule contracts. FAR Part 8.405-2 establishes the procedures to be used when ordering services priced at hourly rates or requiring a statement of work (SOW). This section delineates what shall be included in the SOW and the procedures for developing and issuing a Request for Quotation (RFQ) to FSS vendors. When purchasing services at hourly rates or requiring a SOW, for orders exceeding the micro-purchase threshold of \$3,000, an RFQ is required be sent to at least three FSS vendors that offer services that would meet the agency's needs. The RFQ must include a SOW and evaluation criteria, e.g., experience, past performance, etc.

Under § 8.405-6 of the FAR, 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 shall 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.

Because the purchase orders issued to JHT, Inc. were for services to be procured at hourly rates, FAR Part 8.405-2 required that an RFQ be issued to at least three FSS vendors. Because the order was above the micro-purchase threshold, written justification was required to restrict consideration to less than three vendors.

This procurement violated the provisions of FAR Part 8.4 because an RFQ was not issued to at least three FSS contractors before issuing the purchase orders and there was no justification for restricting consideration, as required under FAR Part 8.405-6. There was no urgent need to fill either position and there is no evidence that JHT, Inc. was the only contractor to provide services due to the specialized

nature of the work or that the work to be provided was follow-up to a previous contract with JHT, Inc.

We also concluded that the process within the Tuscaloosa VAMC was flawed. The HRMS has no authority to contact JHT, Inc. and negotiate the terms and conditions of the purchase order, including hiring certain individuals to perform the services required under the contract. The HRMS should have prepared a SOW, conducted market research to identify potential vendors who could provide the services, and presented this information to the Purchasing Agent who should have issued the RFQ. It is the vendor's responsibility to identify key personnel to perform the services required and for VA to verify that the individuals proposed meet the requirements. While it would have been appropriate for the Tuscaloosa VAMC management to approve the contracting for the necessary services, they had no authority to approve the hiring of any particular individuals without going through the procurement process.

The errors in this procurement occurred in part due to inconsistencies in the Purchasing Agent's performance plan. The performance plan requires action to be taken on "special" (expedited) requests within three work days; however, the performance plan also requires that the Purchasing Agent award all purchase orders in accordance with applicable Federal Acquisition regulations. The Purchasing Agent also believes that she is required to complete the transaction within the time frame specified by the using services, which may preclude compliance with FAR 8.405-2 when an RFQ is required or with FAR 8.405-6 when justification is required for restricting consideration.

The errors in this procurement also occurred because the Purchasing Agent was not knowledgeable regarding FAR requirements for purchasing off the FSS.

Conclusion

The Tuscaloosa VAMC failed to comply with the provisions of the FAR when issuing purchase orders to procure the services of two contract employees for HRMS. In addition to not preparing an RFQ and issuing it to at least three FSS vendors, there was no justification for expediting the procurement or restricting consideration to less than three vendors. Further, the Purchasing Agent was not knowledgeable regarding the provisions in FAR Part 8.4 for purchasing off the FSS. Moreover, the Purchasing Agent's Performance Plan is vague, which does not provide guidance as to adequate compliance with the FAR. In addition, the HRMS inappropriately negotiated the terms and conditions of the procurement with the vendor, including identifying and referring two former VA employees to be hired by the contractor to fulfill the requirements.

Recommendations

We recommend that the VISN 7 Director:

1. Take action to ensure that program offices and purchasing agents comply with the provisions of FAR 8.405 when purchasing off FSS contracts.
2. Provide training to the Purchasing Agent and other warranted contracting personnel in VISN 7 regarding the provisions of FAR Part 8.4 relating to the use of the FSS.
3. Issue policy requiring all program offices to provide written justification in accordance with FAR Part 8.405-6 or Part 6 when procuring supplies or services on a sole-source or expedited basis.
4. Clarify provisions in performance plans for this and other warranted contracting personnel that require the processing of expedited requests within a certain time frame, unless the program office has provided adequate justification showing an urgent need and the time period is adequate to ensure compliance with applicable acquisition rules and regulations.
5. Take action to ensure that purchase orders issued to obtain the services of the two contract employees are not extended or modified to add additional services.

Management Comments

Date: October 3, 2008

From: Director, VA Southeast Network, VISN7 (10N)

Subj: OIG Report, Review of Allegations of Contracting Irregularities, VA Medical Center, Tuscaloosa, Alabama

To: Deputy Assistant Inspector General for Management and Administration (53A)

The following is a response to the recommendations within the OIG Report on Contracting Irregularities at TVAMC:

Recommendations:

1. Take action to ensure that program offices and purchasing agents comply with the provisions of FAR 8.405 when purchasing off FSS contracts.

RESPONSE: Concur. Action has been taken to ensure that program officials and purchasing agents comply with the provision of FAR 8.405 when purchasing from FSS contracts. In addition all procurements that pertain to contracting for administrative support will be fully justified and approved by the responsible official, the Associate Director and Director of the facility. The Chief of Logistics or Assistant Chief of Logistics will review each procurement and documentation before placement of the order to insure all regulations have been complied with and all justifications provided.

2. Provide training to the Purchasing Agent and other warranted contracting personnel in VISN 7 regarding the provisions of FAR Part 8.4 relating to the use of the FSS.

RESPONSE: Concur. The VISN 7 Contracting Office is currently in the process of providing bi-monthly training on all aspects of small purchase procedures and Chapter 8 will be among the subjects covered in this training. On a local level, review of the regulations has taken place with the purchasing agents and an understanding reached that all future procurements of this type are to be reviewed by the Chief of Logistics before placement.

3. Issue policy requiring all program offices to provide written justification in accordance with FAR Part 8.405-6 or Part 6 when procuring supplies or services on a sole-source or expedited basis.

RESPONSE: Concur. Checks and balances have been put in place to ensure that all procurements of this type have been reviewed and justified at the highest levels at the facility. It is the policy of the VA Medical Center Tuscaloosa to comply with all procurement regulations and program officials will be provided additional training to insure they understand these requirements.

4. Clarify provisions in performance plans for this and other warranted contracting personnel that require the processing of expedited requests within a certain time frame, unless the program office has provided adequate justification showing an urgent need and the time period is adequate to ensure compliance with applicable acquisition rules and regulations.

RESPONSE: Concur. The performance standard referenced also states that the procurements are in accordance with applicable VA and Federal Acquisition regulations. The statement made by the purchasing agent responsible for this procurement was a misinterpretation of the standard. Action means to begin the process not to ensure that it has been completed. The Purchasing Agent has never been held to such a strict standard as completion in previous evaluations. This issue has been discussed with the Purchasing Agents and they now understand the true meaning of this requirement.

5. Take action to ensure that purchase orders issued to obtain the services of the two contract employees are not extended or modified to add additional services.

RESPONSE: Concur. Facility leadership will not approve any alterations, extensions, or modifications to the issued purchase orders.

If you have questions or need additional information Gary D. Trende at (205) 554-2003.

(original signed by:)

Lawrence A. Biro

Appendix B

OIG Contact and Staff Acknowledgments

OIG Contact	Maureen Regan
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Acknowledgments	Timothy McGrath
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	Marsha O'Mara
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