DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Contract Review

VETERANS HEALTH ADMINISTRATION

VA's Noncompliance with Preaward Review Requirements for Sole-Source Proposals for Healthcare Services

REVIEW | REPORT #18-04150-261 | SEPTEMBER 30, 2020

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Executive Summary

The VA Office of Inspector General's (OIG) Office of Contract Review examined whether VA complied with the requirement to obtain an OIG preaward review of healthcare resource proposals from affiliated educational institutions, as outlined in VA Directive 1663, *Health Care Resources Contracting–Buying*.[1] The directive required an OIG preaward review for sole-source healthcare resource proposals valued at $500,000 or more through the lifecycle of the contract. This review focused on the level of compliance with that directive between May 1, 2013, and April 30, 2018 (the review period).[2]

The findings in this review are significant because good stewardship of taxpayer dollars helps ensure the Veterans Health Administration (VHA) properly uses that money to provide health care to veterans at fair and reasonable prices.

What the Review Found

The OIG determined that between May 1, 2013, and April 30, 2018, contracting officers awarded 227 contracts with a total value of $278.5 million without an OIG preaward review. All were above the threshold for which a review was required.[3] Of the contracts that met the threshold for an OIG preaward review, 63 percent were awarded without the review. Veterans Integrated Service Network (VISN) 23 awarded the highest in total contracts value ($28.2 million) and the highest number (28) of these contracts.

Contracting officers said the primary reason for not obtaining an OIG review was that the estimated values of the contracts were below the dollar threshold. However, the OIG determined from the contract files that contracting officers intentionally awarded and extended interim contracts to circumvent the review requirements for contracts valued at $500,000 or more (as discussed more fully in the report).[4] In several of these cases, the amount awarded was within $1,000 of the threshold for OIG review.

The OIG also found that the monetary value of options to extend the contract periods were not considered when determining the value of the original proposals, regardless of the intent to

[1] VA Directive 1663, *Health Care Resources Contracting–Buying*, Title 38 U.S.C. § 8153, August 10, 2006.

[2] On May 10, 2018, the directive was revised to require OIG preaward reviews for sole-source healthcare proposals totaling $400,000 during any single year of the contract. The OIG will review VA's compliance with the revised threshold when enough contracts have been awarded to allow for a meaningful analysis.

[3] The threshold in VA Directive 1663 applies to the proposal amount prior to contract award; however, the OIG team was unable to obtain the proposal amount from the Enterprise Contract Management System and used the contract award amount when determining compliance with the threshold.

[4] VA Directive 1663 (2006), paragraph 4.c., provides that interim contracts could be awarded on an emergency basis for short-term needs or as an interim measure while completing long term contracts, were limited to 180 days—with one 180-day extension on an "exception basis," and could not exceed one year.

exercise the extensions. Combined with the use of interim contracts, this practice artificially lowered the initial value of the contracts to less than the dollar threshold that required review by the Medical Sharing Office (MSO) and the OIG. The MSO is part of the VHA Procurement and Logistics Office and oversees all sole-source contracts with affiliated institutions. While VA Directive 1663, dated August 10, 2006, did not mention MSO, that program office was responsible for ensuring the policy contained in VA Directive 1663 was implemented and followed within VHA.

The OIG determined that contracting officers repeatedly used interim contracts to procure healthcare services without the required OIG preaward review. Specifically, the OIG found 200 of the 227 contracts reviewed were interim contracts (88 percent). VISN 5 awarded the highest dollar contract value in interim contracts without a preaward review ($27.6 million), and VISN 23 awarded the highest number of interim contracts (26 contracts). During the review, the team noted some services, such as orthopedic and neurosurgery services at both the Baltimore, Maryland, and Memphis, Tennessee, VA medical centers appeared to have recurring noncompliant interim contracts; therefore, the team also determined which of the interim contract services were repeated. The OIG determined 90 of the 200 interim contracts were repeated, totaling $114.2 million in contract value.

The OIG also determined that for the 227 contracts reviewed, contracting officers did not consistently document the determination that the price was fair and reasonable, as required by regulation and policy, discussed more fully below. During the review period, 127 of the 227 contracts (56 percent) reviewed had no documentation in the electronic contract file regarding how the prices were determined to be fair and reasonable. The total value of contracts lacking such documentation was $158.9 million out of $278.5 million. Additionally, several of the fair and reasonable determinations in the contract files relied on price analysis in lieu of the cost analysis when the latter was required by VHA policy for contracts for hourly personnel.[5] The review team sampled 14 of the contracts that contained documentation of a fair and reasonable price determination and concluded that the OIG would have questioned a minimum of $4.1 million of the $34.2 million in contract prices.

What the OIG Recommended

As of May 10, 2018, the directive requires OIG preaward reviews for sole-source healthcare proposals totaling $400,000 during any single year of the contract. If properly implemented, the new threshold for OIG review of contracts valued at $400,000 annually, instead of $500,000 per contract, should significantly reduce the occurrence of noncompliant contracts. VHA has

[5] A price analysis compares the offered price with other prices, such as additional offers, historical prices, or the independent government cost estimate and should be used for per-procedure contracts, whereas a cost analysis examines the cost elements that comprise the offered price, such as labor, fringes, and overhead and is used for hourly rate personnel.

implemented a process whereby the MSO reviews all interim contracts, which was not required during the review period for this report.

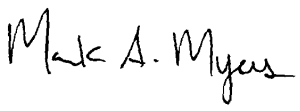
The OIG made three recommendations to the VHA executive director for procurement:

1. Ensure contracting officers are requesting preaward reviews for all sole-source healthcare resource contracts with an annual value at or above $400,000, in keeping with the May 2018 revisions to VA Directive 1663.
2. Require an OIG preaward review for all interim contracts that exceed the $400,000 annual threshold.
3. Mandate an immediate postaward review for any sole-source contract awarded on an interim basis as an emergency contract.

Management Comments

VHA's executive director and chief acquisition officer concurred with both OIG findings; however, they did not concur with all of the recommendations. VA concurred with Recommendation 1, but did not concur with Recommendations 2 and 3. VA responded that they do not concur because Recommendation 2 does not conform to department policy and Recommendation 3 is already required by policy. VA's comments on this report are provided in appendix I. The OIG maintains that VA's assertions and nonconcurrence related to the second recommendation appear to be based on a misunderstanding of terminology and the applicability of governing authorities. Nonconcurrence on the third recommendation is based on the assertion that the work is already being completed, yet the OIG lacks sufficient evidence that the recommendation has been adequately addressed. Moreover, the OIG contends that nonconcurrence with and inaction on Recommendations 2 and 3 effectively allows contracting officers to continue to award sole-source contracts with no insight into costs underlying the contract prices, which can result in millions of dollars of additional expense to U.S. taxpayers.

The OIG considers all recommendations open and will follow up on the planned actions until they are completed.



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Abbreviations

FAR	Federal Acquisition Regulation
GSA	General Services Administration
ICA	Interim Contract Authority
MSO	Medical Sharing Office
OIG	Office of Inspector General
P&LO	VHA Procurement and Logistics Office
SOP	standard operating procedure
VAAR	VA Acquisition Regulation
VAMC	Veterans Affairs Medical Center
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

Introduction

The VA Office of Inspector General's (OIG) Office of Contract Review examined Veterans Health Administration (VHA) compliance with VA Directive 1663,[6] specifically the VHA requirement to obtain an OIG preaward review for sole-source healthcare resource proposals valued at $500,000 or more through the lifecycle of the contract. The review period extended from May 1, 2013, through April 30, 2018, after which the preaward threshold was lowered to $400,000. This OIG review was conducted to determine whether VHA contracting officers requested a preaward review when required, and the potential impact of any noncompliance.

Sharing of Healthcare Resources under 38 U.S.C. § 8153

One of VA's statutory missions is to assist and participate in education and training programs for health professional students and residents.[7] VA's physician education program is conducted in collaboration with 144 of 152 medical schools accredited by the Liaison Committee on Medical Education and all 34 Doctor of Osteopathic Medicine granting schools. In addition, more than 40 other clinical health profession education programs are represented by partnerships with over 1,800 unique colleges and universities.[8] These partnerships are called affiliations. VA is authorized under section 8153 of Title 38 to enter into contracts or other agreements for healthcare resources with any healthcare provider. Federal law also provides that if a healthcare resource is acquired from an affiliated educational institution for a commercial service or commercial item, then the acquisition is approved for other than full and open competition, including sole-source procurement.[9] These sole-source procurements can be with an affiliated academic institution, teaching hospital, or individual physician or practice group associated with the affiliated institution. Other procurements may be sole-sourced if there is written justification in accordance with section 3304(e) of Title 41. In general, these sole-source awards allow VA to fill positions for which VA is unable to hire or allow VA to procure services on a per-procedure basis, which is a fixed fee for a specified service.

VA Directive 1663

VA Directive 1663, *Health Care Resources Contracting – Buying, Title 38 U.S.C. § 8153*, dated August 10, 2006, set forth VA policy for implementing the provisions of the law. Prior to May

[6] VA Directive 1663 implements the authority of 38 U.S.C. § 8153 to procure certain healthcare resource contracts using sole-source procedures.

[7] Title 38 U.S.C. § 7406 as implemented by VA Directive 1400.09(1) *Education of Physicians and Dentists*, September 9, 2016.

[8] VA Office of Academic Affiliations brochure retrieved from https://www.va.gov/OAA/docs/OAA_Statistics_2019.pdf, on January 8, 2020.

[9] 38 U.S.C. § 8153(a)(3)(A).

2018, the directive required VA contracting officers to obtain an OIG *preaward* review for sole-source proposals with a total value of $500,000 or more and required a *postaward* review when unusual and compelling urgency required an immediate contract award. Per the directive,

> All non-competitive initially signed proposals valued at $500,000 or more require a pre-award audit by the OIG, prior to beginning price negotiations, except as set forth in the following.
>
> (a) The OIG must complete the pre-award audit within 20 business days. Thereafter, the Contracting Officer may proceed with award.
>
> (b) Upon determination by the Contracting Officer that unusual and compelling urgency requires immediate award without a pre-award audit, the OIG shall perform a post-award audit of the contract.[10]

VA Directive 1663, *Health Care Resources (HCR) Contracting – Buying, Title 38 U.S.C. § 8153*, dated May 10, 2018, revised and replaced VA Directive 1663 that was dated August 10, 2006. The revised directive states,

> The [contracting officer (CO)] may request that the OIG provide field pricing verification assistance in determining or validating the actual costs of the affiliated educational institution or other entities affiliated with VA to provide services required by VA. **The CO must submit contracts valued at $400,000 annually to the OIG.** [emphasis added] To provide pricing verification assistance, the OIG shall review supporting documents, accounting records, and any other pertinent data (to include interviewing representatives). Nothing in this section shall limit the authority of the OIG under section 6 of the Inspectors General Act of 1978 (5 U.S.C. App. 3, § 6) [to review] contracts awarded under the authority of 38 U.S.C. § 8153, irrespective of value.[11]

Oversight Responsibility

The Medical Sharing Office (MSO) is part of the VHA Procurement and Logistics Office and oversees all sole-source contracts with affiliated institutions. While the older version of VA Directive 1663 did not mention MSO specifically, it was the responsible program office for ensuring the directive's policy was implemented and followed within VHA. Although the revised version does identify MSO as the responsible program office, it points to the MSO

[10] VA Directive 1663, *Health Care Resources Contracting – Buying, Title 38 U.S.C. § 8153*, dated August 10, 2006, paragraph 4.b.(8).

[11] VA Directive 1663, *Health Care Resources (HCR) Contracting – Buying, Title 38 U.S.C. 8153*, dated May 10, 2018, paragraph 3.i. The referenced section of the Inspectors General Act of 1978 refers to the various authorities of the Inspector General that permit the OIG to review contracts of any dollar amount within its jurisdiction.

electronic SharePoint site and VHA Procurement Manual as the locations for contract process information. MSO conducts and coordinates reviews among various internal functions (organizational entities).[12] MSO provides oversight and guidance for healthcare resource procurements, including ensuring guidance on the processes is maintained on the MSO SharePoint site and in the VHA Procurement Manual. MSO also conducts, processes, and approves the procurement reviews through Patient Care Services, the National Surgery Office, and the Office of General Counsel.[13]

Requirement for Fair and Reasonable Determinations

Contracting officers are required to determine a price is fair and reasonable before awarding a contract, as described below:

- The Federal Acquisition Regulation (FAR) states, "Before making [an] award, the contracting officer must determine that the proposed price is fair and reasonable."[14]
- The FAR provides examples of records that are "normally" contained in contract files and specifically identifies the contracting officer's determination of a fair and reasonable price, which may include cost and pricing data, other than cost and pricing data, or waivers for cost and pricing data.[15] The cost or price analysis is also specifically identified as a record "normally" in the contract file.[16]
- The VA Acquisition Regulation (VAAR) requires "[a]n explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision."[17]
- Directive 1663 states, "All fair and reasonable pricing for healthcare resources contracts must be determined in accordance with FAR 15.404-2."[18] FAR provides details regarding requesting field pricing assistance.[19]

[12] VA Directive 1663, *Health Care Resources (HCR) Contracting – Buying*, Title 38 U.S.C. § 8153, dated May 10, 2018, paragraph 2.a.

[13] VA Directive 1663, *Health Care Resources (HCR) Contracting – Buying*, Title 38 U.S.C. § 8153, dated May 10, 2018, paragraph 3.f.

[14] FAR part 13, sub. 13.1, 13.106-3(a), "Basis for award," accessed on August 8, 2018.

[15] FAR part 4, sub. 4.8, 4.803(a)(17), "Content of contract files," accessed on November 15, 2019.

[16] FAR part 4, sub. 4.8, 4.803(a)(19) "Content of contract files," accessed on November 15, 2019.

[17] VAAR part 873, sub. 873.1, 873.109(c)(4), "Documentation," accessed on August 8, 2018.

[18] VA Directive 1663, *Health Care Resources Contracting – Buying*, Title 38 U.S.C. § 8153, dated August 10, 2006, paragraph 4.b.(4).

[19] FAR part 14, sub. 15.4, 15.404-2, "Data to Support Proposal Analysis," accessed on August 8, 2018.

- The VHA Procurement Manual (VHAPM) states that the price negotiation memorandum serves as documentation of decisions made in determining fair and reasonable.[20]

Price analysis and cost analysis are the two preferred methods to determine whether a price is fair and reasonable. A price analysis compares the offered price with other prices, such as additional offers, historical prices, or the independent government cost estimate.[21] VA policy clearly indicates a price analysis should be performed for per-procedure contracts:

> Proposals for services provided at the Affiliated Institution facility shall be based on Medicare Part A (hospital) and Medicare Part B (physician), adjusted to ensure that VA pays only for services actually provided at the Affiliated Institution.[22]

A cost analysis examines the individual cost elements that make up the offered price, such as labor, fringes, and overhead.[23] VA policy also clearly indicates a cost analysis should be performed for contracts for hourly rate personnel:

> Determining fair and reasonable FTE [full-time equivalent]/fixed hourly rates for VA healthcare resources contracts shall be to reimburse the affiliated institution for all reasonable direct expenses associated with the contract (such as salaries, fringe benefits, medical journals, professional dues, continuing professional education, and malpractice insurance). Administrative costs that are reasonably related to the services provided to the VA may be included in determining contract rates (examples of such costs include costs of administering the contract, billing, scheduling, physician rotations, etc.).[24]

Scope and Methodology

In September 2015, long before beginning this review, the Office of Contract Review issued a report that included findings of improperly contracted physician services using interim contracts.[25] An interim contract could be awarded on an emergency basis for short-term needs or

[20] VHAPM, Part 815 SOP, paragraph 3.9, "Price Negotiation Memorandum (PNM)," accessed August 8, 2018.

[21] FAR part 13, sub. 13.1, 13.106-3(a)(2), "Basis for award," accessed on August 8, 2018.

[22] VHAPM, Part 815 SOP, paragraph 5.4.2. This paragraph only applies to contracts priced on a per-procedure basis.

[23] FAR part 15, sub. 15.4, 15.404-1(a)(3), "Basis for award," accessed on November 15, 2019.

[24] VHAPM, Part 815 SOP, paragraph 5.2.3. This paragraph only applies to full-time-equivalent /fixed hourly rates contracts.

[25] The Office of Contract Review and Evaluation Division was created in October 1993 primarily to review Federal Supply Schedule contract proposals and evaluate compliance with the Veterans Health Care Act of 1992 (Public Law 102-585). Beginning in fiscal year 2000, the office added the responsibility of providing preaward reviews for sole-source healthcare resource proposals from affiliates. The office was subsequently reorganized and renamed Office of Contract Review in January 2006. The 2015 report was the *Review of Allegations Regarding Quality of Care, Professional Conduct, and Contractual Issues for Cardiothoracic Surgery and Perfusion Services at the VA North Texas Health Care System Provided by the University of Texas – Southwestern Medical Center* (VA OIG Report No. 14-04598-461, September 30, 2015).

while completing long-term contracts and were limited to 180 days with a maximum of one 180-day extension. As an approved class deviation from VAAR 801.602-70, interim contracts may be approved "prior to obtaining the full legal and technical reviews required by the regulation."[26] MSO interpreted VA Directive 1663 to mean an OIG preaward review was not required for interim contracts, which the OIG Office of Contract Review has not disputed.[27] The lack of a preaward review, however, puts VA at significant risk of overpaying for the services procured. A preliminary analysis of data from the Enterprise Contract Management System revealed several VISNs had multiple sole-source healthcare resource contracts valued above the threshold that did not benefit from a preaward review; therefore, the OIG team decided to include all VA regions, or VISNs, in its review.

The Office of Contract Review's healthcare resources team conducted the review from May 2018 through August 2019. The team examined documentation in the electronic contract files to confirm that each contract included in the review

1. Was awarded between May 1, 2013, and April 30, 2018;
2. Used sole-source methods under the authority of Title 38 U.S.C. § 8153;
3. Was valued at $500,000 or more; and
4. Did not undergo an OIG preaward review.

The OIG selected a sample of contracts meeting these criteria and asked the awarding contracting officers for their reasons for not obtaining a review before the award. Finally, the team analyzed and summarized the data. For more information on the methodology, see appendix A.

[26] VA Directive 1663, *Health Care Resources Contracting – Buying*, Title 38 U.S.C. § 8153, dated August 10, 2006, paragraph 4.c.

[27] Verified via email from the MSO Director on April 29, 2019.

Results and Recommendations

Finding 1: VHA Contracting Officers Avoided an OIG Preaward Review for More Than Half of the Proposals Above the Threshold by Repeatedly Using Multiple Short-Term Contracts.

The OIG determined that VHA contracting officers did not obtain a preaward review for 63 percent of sole-source healthcare resource proposals that exceeded the review threshold of $500,000.[28] The OIG found contracting officers instead awarded short-term, interim contracts to avoid triggering the preaward review threshold. This resulted in millions of dollars of taxpayer money being spent without adequate oversight.

The review team analyzed a total of 358 healthcare resource proposals or contracts.[29] The OIG had conducted preaward reviews of 131 healthcare resource proposals totaling $925 million. However, VHA awarded an additional 227 contracts valued at $279 million without obtaining a preaward review (see appendix E).[30] The proportion of reviewed proposals to unreviewed contracts is presented in Figure 1.

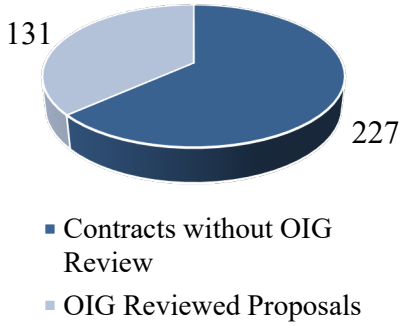


Figure 1. *Number of sole-source healthcare resource proposals/contracts*

Source: VA OIG analysis of sole-source contracts, September 4, 2019

The Office of Contract Review's analysis of the 227 contract awards without a preaward review found that 200 of the contract awards were interim contracts. These awards are also identified in appendix E.

Contracting Officers Intentionally Used Short-Term Contracts to Circumvent MSO and OIG Reviews

The frequency with which contracting officers used circumventing techniques combined with making awards slightly under the review threshold, as well as contracting officers' testimony, indicated the contracting officers were aware of the threshold and were deliberately avoiding the review process.

In interviews, contracting officers stated that if the original contract was awarded for less than the threshold amount of $500,000, neither an OIG preaward review nor a technical review and

[28] As discussed below, there were 227 unreviewed awards of the 358 total contracts and proposals.

[29] A proposal reviewed by the OIG may or may not have resulted in a contract. Additionally, the OIG can only recommend pricing; therefore, any resulting contract may have been made for a different amount.

[30] Some of the service providers received multiple contracts; the OIG determined the number of discrete contract services was 166.

oversight by MSO was required. The threshold for MSO review of sole-source contracts was also $500,000.[31] Therefore, contracting officers could avoid both OIG preaward review and MSO oversight if the initial estimated contract amount was less than the established threshold.

The OIG determined contracting officers did not consider the value of the extension of services option when determining the value of the contract, regardless of the intent to exercise the extension.[32] This practice, combined with using interim contracts, artificially lowered the initial estimated value of several contracts to less than the threshold requiring review by MSO and the OIG. The OIG identified three techniques contracting officers commonly used to circumvent MSO and OIG reviews. Contracting officers would

1. Award contracts for less than the six-month period specified in the procurement policy,[33]
2. Award successive contracts for the same service, and
3. Extend existing contracts beyond the authorized period.

Contracting Officials Awarded Contracts for Less than Six Months and Then Extended the Period of Performance

The OIG determined contracting officers would award the contract for a period of performance less than the six months stated in the directive that would trigger additional oversight. The OIG found 48 (24 percent) of the 200 interim contracts had an initial contract value between $400,000 and $500,000, and a period of performance less than six months.[34] As discussed below, contracting officers would later issue modifications to these contracts that extended the periods of performance, some beyond the maximum allowed by the clause required by the directive, and increased the obligation amounts above the $500,000 threshold.[35] There was no explanation or justification in the contract files for why the contracting officers awarded the contracts for a duration shorter than prescribed in the directive. Details regarding the services procured in this manner are presented in appendix C.

[31] VA Directive 1663, *Health Care Resources Contracting – Buying, Title 38 U.S.C. § 8153*, dated August 10, 2006, paragraph 3.h. The directive stated contracting officers were to submit solicitations to the VHA Prosthetics and Clinical Logistics Office. However, a subsection of that office, MSO, performed the reviews, which was verified via email from the MSO Director on April 29, 2019.

[32] Clause 52.217-8, Option to Extend Services (NOV 1999), states that the contracting officer may extend the contract for up to six months at the rates set in the contract.

[33] VA Directive 1663, *Health Care Resources Contracting – Buying, Title 38 U.S.C. § 8153*, dated August 10, 2006, paragraph 4.c.(2).

[34] Some contracts had more than one circumventing technique used; therefore, the numbers will not sum to the total.

[35] The obligation amount is the amount the government has assigned to the contract from currently available funds.

Contracting Officials Awarded Successive Interim Contracts

The OIG determined that contracting officers repeatedly used multiple interim contracts to procure healthcare services. The OIG found 90 of the 200 interim contracts (45 percent), were repeat interim contracts. The 90 repeat interim contracts represented $114.2 million of the interim contract total of $250.9 million. A detailed table of repeat interim contract services is presented in appendix D. A summary by VISN of the 227 contracts awarded without an OIG preaward review, including interim contracts and repeat interim contracts, is presented in appendix E.

Contracting Officials Extended Contracts Beyond the Allowed Duration

The OIG determined contracting officers would also extend contracts beyond the allowed duration. The OIG found 52 of the 227 contracts (23 percent) that did not undergo OIG preaward review were extended more than the six-month period allowed by the option to extend the term of the contract clause.[36] Although the clause has a fill-in for the amount of time the contract may be extended, the contracts reviewed usually allowed a six-month extension, regardless of the initial duration of the contract. Details regarding contracts that were extended beyond the contract authority are presented in appendix F.

Examples of Contracting Officers Circumventing Required Reviews

As part of this review, the OIG team examined all 227 contract files. This report presents seven specific examples of contracting officers in effect circumventing required reviews. For each contract service, the team reviewed the contract files and the data for awards made before and after the reviewed contracts for that service. Two of the examples, although infrequently found among the reviewed contracts, illustrate how potential splitting of requirements can bypass the review process.

Procurement of Orthopedic Services for Memphis VAMC

The OIG determined VA procured $5.9 million of orthopedic services over more than three years using interim contracts, each of which was awarded for less than the threshold amount and less than the six-month period specified by policy, successive contracts were awarded, and existing contracts were extended beyond the authorized six-month period. Five of the seven contracts were awarded at amounts close to the review threshold, as presented in table 1.

[36] Clause 52.217-9 Option to Extend the Term of the Contract allows the contracting officers to extend the contract beyond the priced base and option periods by up to six months.

Table 1. Orthopedic Service Contracts at Memphis, Tennessee, VAMC (by Most Recent to Oldest Contracts from October 2013 through June 2017)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
June 1–30, 2017	1	1	$162,354*	$114,986
March 1–May 31, 2017	3	3	$487,062*	$456,895
June 1, 2016–February 28, 2017	3	9	$487,062†	$1,293,944
August 1, 2015–May 31, 2016	2	10	$249,936	$1,389,202
October 1, 2014–July 31, 2015	4	10	$499,872	$1,184,991
February 1–September 30, 2014	5	9	$499,872‡	$999,744
October 1, 2013–February 28, 2014	5	5	$499,872*	$449,894
October 1, 2013–June 30, 2017			**$2,886,030**	**$5,889,656**

Source: VA OIG Analysis of Selected Contracts, September 9, 2019
Notes:
** Contracts were not included in the 227 contracts reviewed further in this report because both the original award amount and the total contract value were below the threshold.*
† File contained an email stating VA was attempting to keep the award value less than $500,000 (see discussion below).
‡ Contract was not included in the 227 contracts reviewed further in this report because no authority was cited for the use of sole-source procedures.

The OIG found the contracting officer, in procuring orthopedic services for the Memphis VAMC, acknowledged in an email that VA was attempting to keep the award value less than $500,000. In an email chain included in the file, the contracting officer provided a prospective contract to the contractor with a request for signature.[37] In the email the contracting officer acknowledged the review threshold to the contractor in the following statement:

> I am unable to use the previous document you signed as the total dollar amount exceeded the threshold for Medical Sharing Office Reviews and would take months. We are needing to keep this action under $500K. We understand if the hours are underestimated and will adjust accordingly with each submitted invoice.[38]

[37] Typically, the contractor provides a signed proposal to the contracting officer. In the event the contracting officer accepts the proposal, the contracting officer signs the document and the document becomes the awarded contract.

[38] Email from the contracting officer to the contractor on May 23, 2016. Although the OIG reports are due within 20 business days of receipt of a complete proposal package, the contracting officer is referring to the MSO review process in the email.

Procurement of Cadaveric Organ Services for VA Portland Health Care System in Portland, Oregon

The OIG determined VA procured $7.3 million of cadaveric organ services over more than three years using interim contracts, most of which were awarded for less than the threshold amount, all of which were awarded for less than the six-month period in policy that triggers additional oversight, and successive contracts were awarded for the same service.[39] The OIG found the price negotiation memorandum in the contract file for cadaveric organ services for the Portland, Oregon VAMC stated the award would be for three months at $622,000; however, the subsequent award was for two months for $440,000 and there was no explanation in the file for the change. A long-term contract was then awarded for the performance period September 1, 2017, through August 31, 2022.

Table 2. Cadaveric Organ Services at VA Portland Health Care System, Portland, Oregon (by Most Recent to Oldest Contracts from April 2014 through August 2017)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
January 1–August 31, 2017	2	8	$492,642*	$1,513,511
April 1–December 31, 2016	3	9	$647,440*	$1,834,326
August 1, 2015–March 31, 2016	2	8	$457,760*	$1,012,983
December 1, 2014–July 31, 2015	2	8	$457,760	$1,569,697
April 1–November 30, 2014	2	8	$440,000†	$1,386,840
April 1, 2014–August 31, 2017			**$2,495,602**	**$7,317,357**

Source: VA OIG Analysis of Selected Contracts, September 9, 2019

Notes to Table 2:

**Although a document in the file stated a sole-source justification was not required if the contract is procured under 38 U.S.C. § 8153, the team did not consider this sufficient evidence of procurement under the directive to include this contract in the review and the contract was not included in the 227 contracts further reviewed.*

†File contained the price negotiation memorandum specified above.

[39] Cadaveric organ services involve removing organs from deceased donors in preparation to transplant the organ into a veteran.

Procurement of Cardiothoracic Services for the VA Salt Lake City Health Care System in Utah

The OIG determined VA procured $9.3 million in cardiothoracic services at the VA Salt Lake City Health Care System over seven years using interim contracts, all of which were awarded for less than the threshold amount, most of which were awarded for less than six-months, and successive contracts were awarded for the same service. The most recent contract expired on September 28, 2019, and the OIG has not received a review request for a potential follow-on contract as of April 20, 2020.

Table 3. Cardiothoracic Services at the VA Salt Lake City Health Care System (by Most Recent to Oldest Contracts from September 2012 through September 2019)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
April 29–September 28, 2019	5	10	$494,753*	$989,506
September 29, 2018–April 28, 2019	2	7	$197,658*	$692,410
November 29, 2017–September 28, 2018	5	10	$494,753	$989,008
December 1, 2016–November 30, 2017	6	12	$495,000	$1,186,597
May 31—November 30, 2016	5	6	$495,000	$989,816
June 1, 2015–May 31, 2016	6	12	$495,000	$1,185,916
July 1, 2014–May 31, 2015	5	11	$495,000	$1,091,000
August 1, 2013–June 30, 2014	5	11	$495,000	$1,089,000
September 1, 2012–July 31, 2013	5	11	$495,000*	$1,089,000
September 1, 2012–September 28, 2019			**$4,157,164**	**$9,302,253**

Source: VA OIG Analysis of Salt Lake City and Baltimore Contracts, November 12, 2019

**The contract award not included in the 227 contracts reviewed further in this report because the award was outside the review period.*

Procurement of Emergency Physician Services for the Charlie Norwood VA Medical Center in Augusta, Georgia

The OIG determined VA procured $7.8 million in emergency physician services over more than three years using interim contracts, each of which was awarded for less than the threshold amount, successive contracts were awarded, and existing contracts were extended significantly beyond the initially authorized six-month period. One of the contracts was awarded for a one-month service period. Although a six-month extension was authorized by the contract, the contracting officer extended the contract for a total performance period of 30 months. The prior contract was also extended significantly beyond the authorized six months (see table 4).

Table 4. Emergency Physician Services at the Charlie Norwood VAMC in Augusta, Georgia (by Most Recent to Oldest Contracts from September 2013 through June 2017)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
January 1, 2015–June 30, 2017	1	30	$218,400	$6,469,112
September 27, 2013–December 31, 2014	6	15	$438,600	$1,335,748
September 27, 2013–June 30. 2017			**$657,000**	**$7,804,860**

Source: VA OIG Analysis of Selected Contracts, September 9, 2019

Procurement of Orthopedic Services for the Harry S. Truman Veterans' Memorial Hospital in Columbia, Missouri

In a second example of unauthorized contract extensions, the OIG determined VA procured $3.2 million in orthopedic services over more than seven years using two interim contracts, each of which was awarded for less than the threshold amount. The contracts were extended significantly beyond six months and successive contracts were awarded. The contracting officer awarded one contract for a six-month service period, which was extended for a total performance period of 54 months. The prior contract was also extended beyond the authorized six months. Both contracts were awarded at an amount below the review threshold, as presented in table 5. The review team noted VA subsequently awarded a five-year contract, effective July 2018, for this service. Although there was an OIG preaward review in the contract file, the data were not current; the review was issued on March 10, 2016, more than two years before the award was made.

Table 5. Orthopedic Services at the Harry S. Truman Memorial Veterans' Hospital in Columbia, Missouri (by Most Recent to Oldest Contracts from October 2010 through June 2018)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
January 1, 2014–June 30, 2018	6	54	$217,508	$1,837,899
October 1, 2010–December 31, 2013	12	39	$450,000*	$1,388,790
October 1, 2010–June 30, 2018			**$667,508**	**$3,226,689**

Source: VA OIG Analysis of Selected Contracts, September 9, 2019

**The task order to the basic ordering agreement was not included in the 227 contracts reviewed further in this report because the basic ordering agreement was awarded before the review period.*

Procurement of Orthopedic Services for Baltimore, Maryland, VAMC

The OIG determined VA procured $11.2 million in orthopedic services over more than five years using interim contracts, most of which were awarded for less than the threshold amount, some were awarded for less than the six-month period specified in the policy, successive contracts were awarded, and some contracts were extended beyond the authorized six-month period. During the earlier periods listed in the table, the services paid on an hourly basis and the per-procedure services were awarded on separate contracts. Later contracts combined both types of services; however, the duration of those contracts was significantly shorter. In nine of the 10 contracts, the original award amount was less than the review threshold of $500,000. The review team also noted that the original award amounts from the April 2017 contract to the April 2018 contract (see next page) was reduced from $964,539 to $499,974, despite the same number of months in each original contract (three months). A long-term contract for the services was awarded effective November 1, 2019. However, the OIG preaward review for this procurement was of an hourly rate proposal; the awarded contract included both hourly rate and per-procedure services. Additionally, the OIG report was dated October 13, 2017, two years before the contract was awarded.

Table 6. Orthopedic Services at the Baltimore, Maryland, VAMC (by Most Recent to Oldest Contracts from October 2013 through August 2019)

Total period of performance	Original term (months)	Final term (months)	Original award amount	Total obligation amount
April 1–August 31, 2019	3	7	$499,974*†	$833,289
January 1 –March 31, 2019	3	3	$499,974*†	$499,974
April 1, 2018–December 31, 2018	3	9	$499,974†	$1,548,811
April 1, 2017–March 31, 2018	3	12	$964,539†	$2,111,183
March 1, 2016–March 31,2017	7	13	$415,163ǂ	$1,074,971
March 1, 2016–March 31, 2017	7	13	$381,121ˣ	$1,228,527
April 1, 2015–February 29, 2016	5	11	$243,810ǂ	$705,738
April 1, 2015–February 29, 2016	5	11	$479,670ˣ	$1,297,979
October 1, 2013–March 31, 2015	12	18	$414,768ǂ	$833,311
October 1, 2013–March 31, 2015	12	18	$384,000ˣ	$1,065,981
October 1, 2013–August 31, 2019			**$4,782,993**	**$11,199,764**

Source: VA OIG Analysis of Salt Lake City and Baltimore Contracts, November 12, 2019
Notes to Table 6:
** The contract was not included in the 227 contracts reviewed further in this report because the award date was outside the review period.*
† Contract includes both the hourly portion and the per-procedure portion of the service.
ǂ Contract includes the hourly portion of the service only.
ˣ Contract includes the per-procedure portion of the service only.

Procurement of Radiology Services for the San Francisco, California, VAMC

In another example of a potential split requirement, the OIG determined VA procured about $5.1 million of radiology services over three years using multiple interim contracts per period of service, each of which was awarded at or below the threshold amount. In table 7, the associated contracts are grouped together and subtotaled to present the total award and obligation amounts for the period of performance. Successive contracts were awarded and some contracts were extended beyond the authorized six-month period. The OIG found two of the three contract files for April 1, 2014, through September 30, 2015, contained identical copies of a sole-source memo, dated May 28, 2013, and an independent government cost estimate, dated April 4, 2013, both of which indicate the radiology services were intended to be procured together. The OIG found no documentation in either file to explain why the services were separated nor is there a proposal in either file. The third contract file did not contain a sole-source memo, an independent government cost estimate, an explanation for separating the services, or a proposal. The OIG

determined the radiology services had been similarly procured using three contracts during the prior period, as presented in table 7. In July 2019, the OIG received a preaward review request for this service in which the various types of radiology were properly combined into one solicitation and one corresponding proposal.

Table 7. Radiology Services at the San Francisco, California, VAMC (by Most Recent to Oldest Contracts from October 2012 through September 2015)

Total period of performance	Type of radiology	Original term (months)	Final term (months)	Original award amount	Total obligation amount
April 1, 2014–September 30, 2015	Musculoskeletal	12	18	$470,056	$938,774
April 1, 2014–March 31, 2015	Neuroradiology	12	12	$455,406*	$819,907
April 1, 2014–September 30, 2015	Interventional	12	18	$400,000	$520,480
	Subtotal			**$1,325,462**	**$2,279,161**
October 1, 2012–March 31, 2014	Diagnostic	6	18	$250,000†	$918,997
October 1, 2012–March 31, 2014	Neuroradiology	6	18	$500,000†	$1,455,406
October 1, 2012–March 31, 2014	Interventional	6	18	$108,940†	$424,140
	Subtotal			**$858,940**	**$2,798,543**
October 1, 2012–September 30, 2015	**Total**			**$2,184,402**	**$5,077,704**

Source: VA OIG Analysis of Selected Contracts, September 9, 2019

**The contract modifications did not specify a period of performance.*

†Contract was not included in the 227 contracts further reviewed in this report because the contract was awarded before the review period.

Finding 2: Contracting Officers Did Not Consistently Document the Price Awarded Was Fair and Reasonable

The OIG determined that contracting officers failed to consistently document the awarded contract price was fair and reasonable, as required in regulation and policy. The OIG found 127 of the 227 contracts without an OIG preaward review (56 percent) had no documentation in the electronic contract files regarding how the price was determined to be fair and reasonable. The total amount contracted without such documentation was $158.9 million of $278.5 million (57 percent), as detailed in table 8.

The OIG team reviewed the 227 contracts awarded without an OIG review to determine how the contracting officer determined the price was fair and reasonable. The review team identified the methods used by contracting officers in table 8. The VA used an appropriate method for determining the price was fair and reasonable in 24 of the 227 contracts reviewed (10.6 percent), as indicated by the highlights in table 8. The remaining methods listed were inadequate to determine the price was fair and reasonable. The review team further broke down the fair and reasonable information by VISN (see appendix G) but was unable to identify any additional patterns in the data.

Table 8. Lack of Documentation and the Frequency of Contracting Officers' Use of Fair and Reasonable Methods When Recorded

Fair and reasonable method	Contract value	Number of contracts
Not documented	$158,862,223	127
Compared to two or more[40]	$42,060,150	29
Compared to current or prior contract	$33,489,711	26
VHA's review of the proposal	$16,409,401	18
Compared to independent government cost estimate	$8,480,198	7
Compared to salary survey(s)	$7,766,195	8
Compared to Medicare rates	$5,581,336	6
Compared to GSA schedule	$3,561,929	3
Compared to market research	$2,270,027	3
Totals	**$278,481,170**	**227**

Source: VA OIG Analysis of Sole-Source Contracts, September 9, 2019

[40] To simplify the presentation of findings, those contracts that compared the award price to the prior/current contract and one other source of comparison are consolidated. Proposed prices were compared to two or more of the following: Prior/current contract, Independent Government Cost Estimate (IGCE), General Services Administration Federal Supply Schedule, market research, salary survey(s), Department of Labor data, and Consumer Price Index (CPI).

Inadequate Basis for Fair and Reasonable Determinations

Contracting officers evaluated 24 of the 227 contracts (11 percent) using the correct style of analysis;[41] however, the data were not vetted or validated. The remaining contracts in table 8 and appendix G represent methods in which a price analysis was used in lieu of the cost analysis called for in the VHA Procurement Manual, which has little or no value in the context of a sole-source procurement.

Per the FAR, using the previous contract as a standard for a fair and reasonable price is not valid when the previous contract was a sole-source contract for which no cost or price analysis was performed.[42] VA policy states that salary surveys should not be the sole basis to determine fair and reasonable pricing.[43]

Impact of No Preaward Reviews and No Determination of Fair and Reasonable Pricing

The OIG team reviewed a sample of 14 contracts to calculate an estimated impact of contracting officers not obtaining the required OIG preaward review.[44] Four of the contracts had insufficient documentation to determine what, if any, savings might have been realized through an OIG review.[45] The team reviewed the file data for the remaining 10 contracts and estimated a preaward review would have resulted in recommendations of approximately $4.1 million in better use of funds of the aggregate contract value of more than $34.2 million (13 percent), as detailed in table 9.[46]

The actual total dollar impact could be higher as there were 213 contracts valued in excess of $244.9 million for which an impact was not calculated.[47] The OIG noted that during the review period, the OIG's 131 preaward reviews that were completed in accordance with VA Directive

[41] The method "Compare to Medicare Rates" (six instances) used a price analysis whereas the method "VHA's Review of the Proposal" (18 instances) used a cost analysis. See table 8 and appendix G.

[42] FAR part 15, sub. 15.4, 15.404-1, "Proposal analysis techniques," paragraph (b)(2)(ii)(A), accessed on November 15, 2019.

[43] VHAPM, Part 815.404-MSO Healthcare Pricing SOP, paragraph 10.3.2.

[44] The OIG team only selected contracts with some documentation of fair and reasonable price determinations.

[45] On further examination, three of the sampled contracts had insufficient data in the file to calculate any portion of an estimated impact. One of the contracts had sufficient information to calculate the impact of the annual escalation, but no information to calculate the impact of the base period's prices.

[46] The precise totals are $4,101,555 and $32,338,696, respectively.

[47] Total number of contracts (227) less number of sampled contracts (14) equals the number of contracts not included in the sample (213). The total contract value ($278.5) less the value of sampled contracts ($34.2) equals the value of contracts not included in the sample ($244.9).

1663, recommended reductions totaling $289 million, resulting in an average questioned amount of 31 percent of the proposed prices.

Table 9. Estimated Impact to VA if the OIG Had Conducted Preaward Reviews of the Sampled Contracts (by Greatest to Least Impact)

VISN	Requirement	Contract amount	Estimated impact
2	Interventional radiologist	$3,188,200	$1,071,406
2	Comprehensive eye services	$2,253,218	$622,482
20	Lung transplant	$4,101,255	$446,576
10	Anesthesiology physician services	$1,573,333	$431,723
9	Radiology services	$4,245,812	$364,432
2	Non-physician services for radiation	$2,607,632	$349,162
6	Retinal services	$1,659,672	$307,467
12	Hemodialysis and CRRT services[48]	$3,907,349	$293,119
23	Vascular services	$676,002	$189,889
2	Emergency room physicians	$716,677	$25,299
6	Emergency department physician	$6,708,373	Insufficient data
23	Pathology services	$1,336,722	Insufficient data
23	Radiology	$1,100,000	Insufficient data
19	Vascular physician services	$119,295	Insufficient data
	Totals	**$34,193,540**	**$4,101,555**

Source: VA OIG Analysis of Impact, February 12, 2019

Conclusion

VA Directive 1663 (effective 2006) required an OIG preaward review for sole-source healthcare contracts valued above $500,000. The OIG found VHA contracting officers did not obtain a preaward review for more than 63 percent of contracts. The OIG determined contracting officers circumvented MSO and OIG preaward review requirements for contracts valued at or above $500,000 primarily through the use of interim contracts. Contracting officers also shortened the duration of the contract, awarded successive contracts, and extended contracts beyond the

[48] CRRT is Continuous Renal Replacement Therapy.

authorized duration. As a result, millions of dollars of taxpayer money were spent without adequate oversight.

The OIG also found that contracting officers did not consistently document whether the price was found to be fair and reasonable, which is required by regulation and policy. Of the 227 apparently noncompliant contracts (as to directive requirements), 24 (11 percent) had adequate fair and reasonable determinations based on the cost or price analysis required by VHA policy in the contract file. There were 127 contracts without any documentation of a determination, which totaled to $158.9 million. Many of the fair and reasonable determinations in the remaining contract files were insufficient and relied on a price analysis in lieu of the cost analysis required by VHA policy. The OIG's calculated impact of the lack of OIG preaward reviews for a sample of 14 contracts that had some fair and reasonable documentation was $4.1 million.[49]

Recommendations 1–3

The OIG made the following recommendations for the VHA executive director for procurement:

1. Ensure contracting officers are requesting preaward reviews for all sole-source healthcare resource contracts with an annual value at or above $400,000 in keeping with the May 2018 revisions to VA Directive 1663.
2. Require an OIG preaward review for all interim contracts that exceed the $400,000 annual threshold.
3. Mandate an immediate postaward review for any sole-source contract awarded on an interim basis as an emergency contract.

Management Comments

On July 14, 2020, the executive director at the VHA Procurement and Logistics Office (P&LO) concurred with our findings; however, P&LO concurred with only Recommendation 1, and did not concur with Recommendations 2 and 3.

In response to Recommendation 1, P&LO stated that it believes that the Medical Sharing Office (MSO) has already taken steps to address the issues in the report by notifying stakeholders of the new threshold for OIG review, updating the MSO checklist used to review documents, updating a guide to affiliates, and by providing training to contracting officers. For Recommendation 2, P&LO responded that they do not concur because the recommendation does not conform to department policy regarding Interim Contract Authority (ICA), which P&LO contends is applicable to the contracts within the OIG review. P&LO stated that it also does not concur with

[49] Because four contracts had insufficient information for estimating the impact of circumventing an OIG review, in effect, the $4.1 million applied to the remaining 10 contracts.

Recommendation 3 because its policy already requires the recommended action. The full text of VA's comments on the report can be found in appendix I.

OIG Response

P&LO concurred with Recommendation 1 and asserted MSO staff had already taken steps to address the issues in the report after the OIG review ended. The OIG recognizes that P&LO has made changes since April 2018 and lauds its efforts at corrective action. The OIG will leave this recommendation as open, however, until sufficient documentation can be presented that demonstrates that the measures are having the intended impact. The OIG will continue to monitor the VA's progress.

P&LO's failure to concur with Recommendation 2 on the basis it does not conform to the department's policy regarding interim contract authority would suggest VA lacks the authority to make changes that may require revisions to policies to align with corrective measures and advancements. P&LO did not provide any narrative or analysis with regards to the merit or feasibility of the underlying recommendation. Some misunderstanding of terms also calls into the question of the applicability of the policy to the contracts at issue.

Additionally, P&LO misconstrues the general use of the term "interim" in this report with the much more specific "interim contract authority" (ICA) detailed in VA Directive 1663. During informal conversations with MSO around the draft of this report they were given to review, the OIG reiterated to MSO staff that the report's use of "interim" refers to a contract for 12 months or less, representing short-term contracts issued for long-term requirements and does not refer to an ICA. Regardless, MSO shared its list of ICA requests from May 2013 through April 2018. The OIG compared MSO's list of ICA requests to the list of contracts reviewed for this report and found 17 matches, which were shared with MSO staff on July 10, 2020. Therefore, of the 200 interim contracts identified in this report, 17 requested interim contract authority/ICA by MSO and 183 did not. As not all interim contracts during the review period requested interim contract authority, P&LO's nonconcurrence would allow VA to continue to avoid OIG preaward review when required (as when no MSO review has been done). As this review and MSO's response have illustrated, there have been many more instances of interim contracts than those requesting ICA by MSO.

P&LO's response to Recommendation 3 that the policy already requires the recommended action is inadequate for closure. During the review period from May 1, 2013, through July 9, 2020 (87 months in total), the OIG's Office of Contract Review has not received any requests for postaward reviews of emergency healthcare resource procurements. P&LO provided no assertions that the policy would be enforced and did not provide adequate documentation to warrant the recommendation be closed.

P&LO's statement that "OIG is using the ICA language and corresponding authority for any and all short-term contracts awarded that fall under the requisite parameters of data extracted from

eCMS" reflects a misunderstanding of both the draft report and informal conversations with the OIG team, as well as this final report. As detailed in the report (draft and final) and explained in the OIG team's informal conversation with MSO staff during VA's comment period, the OIG started with broad parameters in extracting potential contracts from eCMS, then verified the sole-source authority used in the procurement through the contract file documentation. Only those procurements that specifically identified Title 38 U.S.C. § 8153 as the authority or stated they were procured pursuant to VA Directive 1663 were included in the review. The OIG excluded from the review all procurements that cited any other authority, or no authority, for a sole-source procurement. Additionally, as explained above, the OIG team made clear that it is using the common meaning of "interim" to describe something temporary or provisional. However, as detailed earlier in this report, after MSO provided data on the contracts that had received ICA approval the OIG verified that only a small number of the ICA requests were included in this review's results.

Nonconcurrence and inaction on the second recommendation would allow both authorized and unauthorized interim contracts to avoid an OIG preaward review contrary to the intent of current requirements—effectively creating a loophole. During the review period, interim contracts made up 200 of the 227 contracts that lacked an OIG preaward review, only 17 of which were verified as having requested approval to be an interim contract. Nonconcurrence and inaction on the third recommendation would result in emergency contracts having no pricing support to verify that VA was a good steward of taxpayer dollars; moreover, the OIG did not receive any postaward review requests during the 87-month review period.

All recommendations therefore remain open.

Appendix A: Scope and Methodology

Scope

The OIG's Office of Contract Review initiated this review after VA Directive 1663 was updated on May 10, 2018. The review team sought to determine whether VA was noncompliant with the previous threshold of $500,000 per contract. The updated VA Directive 1663 revised the threshold to $400,000 annually. The OIG originally anticipated limiting the scope of the review to VISNs that had initial indications of potential significant noncompliance as determined by a review of data from the contract management system. However, a preliminary analysis indicated multiple VISNs with potentially significant noncompliance. As a result, the OIG expanded the scope to include all VISNs. A five-year review period was selected because healthcare resource contracts are typically for a base year and four one-year options. Using a five-year review period would include a significant portion of the services procured under 38 U.S.C. § 8153. The scope of the review focused on VHA's sole-source contracts awarded from May 1, 2013, through April 30, 2018, using the authority in 38 U.S.C. § 8153 and as implemented by the 2006 version of VA Directive 1663 (which required an OIG preaward review for contracts valued at or above $500,000).

Methodology

To conduct this review, the OIG Office of Contract Review requested a data extraction from VA's Enterprise Contract Management System listing all sole-source healthcare resource contracts that potentially met the criteria for inclusion in the review. The contract file should contain sole-source justification for applicable contracts,[50] consistent with the FAR's valid justifications permitting other than full and open competition.[51] Therefore, the review team examined the files for the contracts identified as potentially being subject to this review to determine what justifications, if any, were in the files for the sole-source procurements. Any contract files that did not definitively state the contract was procured under 38 U.S.C § 8153 or Directive 1663 were removed from consideration. The OIG then validated contract data and determined which contracts were noncompliant with the review requirement. To comply with the FAR regarding contract files,[52] VA requires contracting officers to include in the electronic

[50] FAR part 13, sub. 13.5, 13.501(b), "Contract file documentation" paragraph (4), accessed on November 15, 2019.

[51] FAR part 6, sub. 6.3, 6.302, "Circumstances permitting other than full and open competition," accessed on November 15, 2019.

[52] FAR part 4, sub. 4.8, 4.801, "General," accessed on November 15, 2019.

contract file all documents necessary to support the contracting officers' decisions.[53] Therefore, the OIG relied on the electronic files as containing all relevant documents for this review. The team reviewed documentation in the electronic contract files to determine that each contract included in the review met the following criteria:

- Procurement under the authority of Title 38 U.S.C. § 8153
- Sole-source procurement
- OIG preaward review not performed for the associated solicitation[54]
- Base contract award made during the review period (May 1, 2013, through April 30, 2018)
- Contract awarded at or modified to $500,000 or more

The OIG calculated the contract value for determining if the contract met the threshold for OIG review by reviewing the amount of the award in the electronic contract file and the final contract amount from either the contract and related modifications, or from the obligation amounts reported in the Federal Procurement Data System – Next Generation (FPDS) database. The review team identified the VISN responsible for the contract by using the contract office name field in the Enterprise Contract Management System file and matching to VA's VISN map obtained from VA's website on October 17, 2018 (see appendix B). The team selected a judgmental sample of 22 apparently noncompliant contracts to identify the rationales for awarding these contracts without an OIG preaward review and inquired of the awarding contracting officers their reasons for not obtaining a review before the award.

Fraud

The OIG was alert to any indicators for fraud, other illegal acts, and abuse during this review. OIG staff exercised due diligence in staying alert to these indicators. A standardized checklist was not utilized during the review.

Data Reliability

The OIG used the Enterprise Contract Management System to obtain data on contracts. The Enterprise Contract Management System provides a structure for entering all contract

[53] *VA Procurement Policy Memorandum (2018-03) Mandatory Usage of VA's Enterprise Contract Management System (eCMS)*, paragraph 8.a. This memorandum was issued January 26, 2018. However, a memorandum by the same name was issued in fiscal year 2012. Unfortunately, the document had been rescinded at the time of this review and was no longer available.

[54] One of the contracts awarded had an OIG preaward review in the file that was issued three years before the contract was awarded. The service and affiliate were the same for the reviewed solicitation and the contract; however, the procuring activity canceled the original solicitation and resolicited.

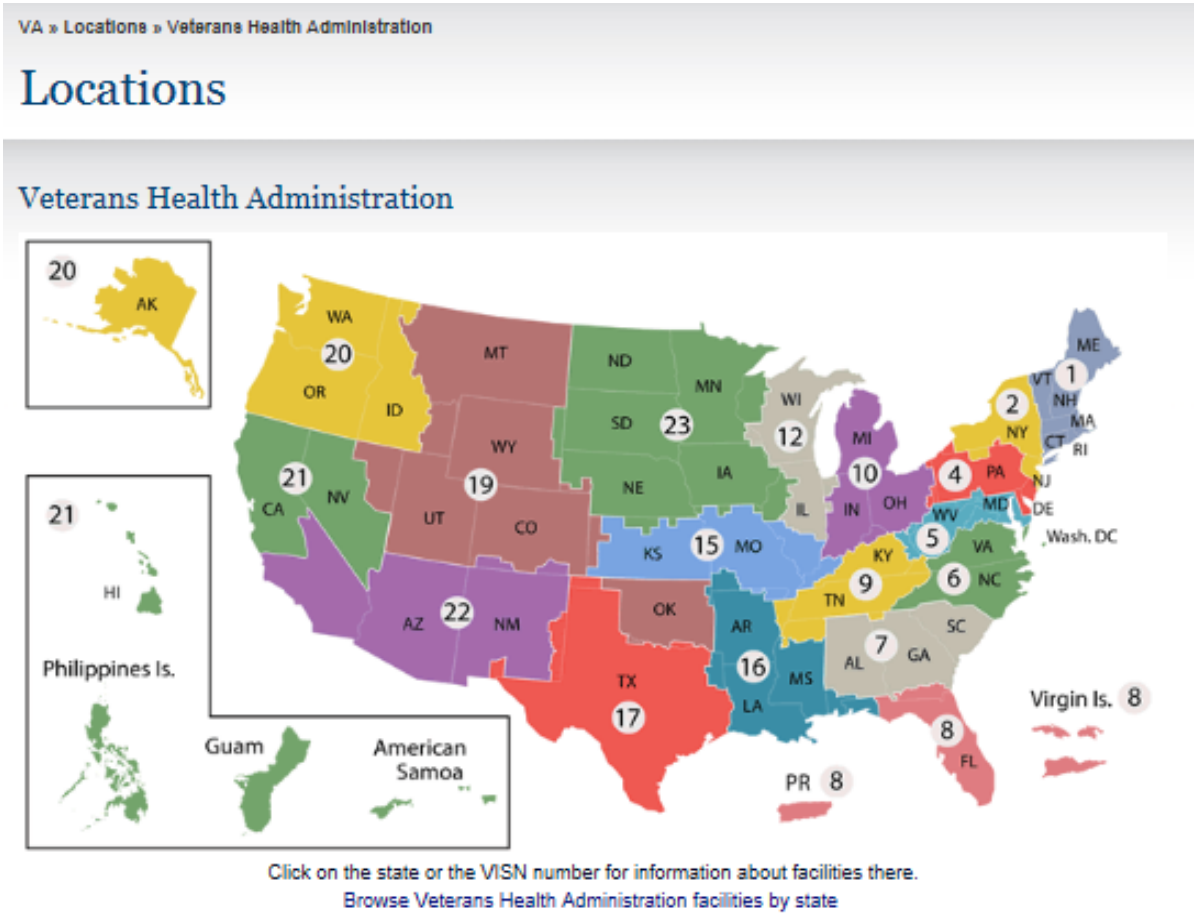
information to include amendments and modifications. To test for reliability, the team determined whether any data were missing from key fields, including any calculation errors, or were outside the time frame requested. The OIG also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. The OIG determined the validity of the data on a contract-by-contract basis instead of using a checklist to determine the reliability of the data.

The OIG's list of potential contracts to review was obtained from the Enterprise Contract Management System database; however, the database relies on contracting officers to correctly identify various characteristics of the contract. Therefore, there may be additional contracts that should have been included in this review. Additionally, not all of the sole-source healthcare resource contracts had a sole-source justification in the file or the justification was "unusual or compelling urgency" or "only one responsible source." As those contracts were excluded from this review the OIG was unable to determine the magnitude of additional contracts that met the threshold but did not have an OIG preaward review. However, the data were determined to be sufficiently reliable for the review objectives.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspector General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix B: VISN Map



Click on the state or the VISN number for information about facilities there.
Browse Veterans Health Administration facilities by state

Veterans Integrated Service Networks (VISN):

VISN 1: VA New England Healthcare System
VISN 2: New York/New Jersey VA Health Care Network
VISN 4: VA Healthcare - VISN 4
VISN 5: VA Capitol Health Care Network
VISN 6: VA Mid-Atlantic Health Care Network
VISN 7: VA Southeast Network
VISN 8: VA Sunshine Healthcare Network
VISN 9: VA MidSouth Healthcare Network
VISN 10: VA Healthcare System
VISN 12: VA Great Lakes Health Care System
VISN 15: VA Heartland Network
VISN 16: South Central VA Health Care Network
VISN 17: VA Heart of Texas Health Care Network
VISN 19: Rocky Mountain Network
VISN 20: Northwest Network
VISN 21: Sierra Pacific Network
VISN 22: Desert Pacific Healthcare Network
VISN 23: VA Midwest Health Care Network

Source: VA Website, downloaded October 17, 2018
Note: VISN numbering has gaps because some VISNs were previously merged

Appendix C: Contracts Awarded for Less than the Period Specified in Policy at Amounts Slightly Below the Review Threshold

Contracts in this table were initially awarded for less than six months at an amount between $400,000 and $500,000. The threshold for MSO and OIG review was $500,000.

Table C.1. Contracts Awarded for Less than the Period Specified in VA Policy at Amounts Slightly Below the Review Threshold (by Greatest to Least Total Obligated Amount)

VISN	Location	Service	Original contract amount	Original contract term (months)	Total obligated amount
4	Philadelphia, PA	Radiation oncology	$494,852	3	$2,632,752
19	Aurora, CO	Radiation oncology	$482,962	4	$2,077,038
9	Memphis, TN	Neurosurgery	$485,800	5	$1,846,040
6	Durham, NC	Radiation oncology	$409,308	3	$1,799,884
23	Minneapolis, MN	Cardiovascular and thoracic surgery	$475,868	2	$1,729,073
23	Iowa City, IA	Neurosurgery	$453,583	5	$1,718,810
19	Salt Lake City, UT	Radiology	$497,000	3	$1,717,629
23	Minneapolis, MN	Cardiothoracic	$435,970	2	$1,575,418
17	San Antonio, TX	Urology	$471,938	3	$1,574,992
20	Portland, OR	Cadaveric organ service	$457,760	2	$1,569,697
5	Baltimore, MD	Orthopedic	$499,974	3	$1,548,811
20	Portland, OR	Liver/Renal physician	$444,910	5	$1,512,693
17	Dallas, TX	Cardiothoracic	$499,653	3	$1,498,958
17	Dallas, TX	Cardiothoracic	$499,653	3	$1,498,958
19	Salt Lake City, UT	Anesthesiology	$465,141	3	$1,395,420
19	Salt Lake City, UT	Anesthesiology	$465,140	3	$1,395,420
20	Portland, OR	Cadaveric organ service	$440,000	2	$1,386,840
9	Memphis, TN	Neurosurgery	$485,800	5	$1,362,950
23	Omaha, NE	Pathology	$419,707	3	$1,336,722
5	Baltimore, MD	Orthopedic	$479,670	5	$1,297,979

Table C.1. Contracts Awarded for Less than the Period Specified in VA Policy at Amounts Slightly Below the Review Threshold (by Greatest to Least Total Obligated Amount)

VISN	Location	Service	Original contract amount	Original contract term (months)	Total obligated amount
9	Memphis, TN	Orthopedic	$487,062	3	$1,293,944
17	Dallas, TX	Neurosurgery	$499,253	4	$1,248,132
19	Aurora, CO	Radiation oncology	$485,646	4	$1,216,978
19	Aurora, CO	Radiation oncology	$485,646	4	$1,202,314
17	Dallas, TX	Anesthesiology – Intensivist	$412,906	3	$1,197,479
9	Memphis, TN	Orthopedic	$499,872	4	$1,184,991
17	San Antonio, TX	Urology	$466,438	3	$1,119,747
23	Sioux Falls, SD	Radiology	$440,000	4	$1,100,000
17	Dallas, TX	General, oncology, and vascular surgery	$499,355	4	$1,098,582
19	Salt Lake City, UT	Cardiothoracic surgery	$495,000	5	$1,091,000
20	Portland, OR	Liver/Renal physician	$495,085	5	$1,089,188
19	Salt Lake City, UT	Cardiothoracic surgery	$495,000	5	$1,089,000
20	Portland, OR	Liver/Renal physician	$491,103	5	$1,059,170
17	Dallas, TX	Anesthesiology – Cardiothoracic	$488,668	5	$1,048,598
9	Memphis, TN	Neurosurgery	$485,800	5	$1,068,760
20	Portland, OR	Liver/Renal physician	$462,497	5	$1,017,494
2	Brooklyn, NY	Radiation oncology	$499,834	3	$999,675
19	Salt Lake City, UT	Cardiothoracic surgery	$495,000	5	$989,816
19	Salt Lake City, UT	Cardiothoracic surgery	$494,753	5	$989,008
23	Scottsbluff, NE	Community-Based outpatient clinics	$453,875	5	$926,172
9	Memphis, TN	General surgery	$412,975	5	$895,822
2	Manhattan, NY	Vascular surgery	$476,334	5	$843,459
2	Manhattan, NY	Neurosurgery	$461,542	3	$726,860
23	Minneapolis, MN	Vascular surgery	$497,252	5	$676,008
9	Memphis, TN	Neurosurgery	$485,800	5	$582,960
23	Omaha, NE	Radiology	$448,344	2	$552,774

Table C.1. Contracts Awarded for Less than the Period Specified in VA Policy at Amounts Slightly Below the Review Threshold (by Greatest to Least Total Obligated Amount)

VISN	Location	Service	Original contract amount	Original contract term (months)	Total obligated amount
23	Minneapolis, MN	Neurosurgery	$462,189	5	$542,816
23	Pierre, SD	Community-Based outpatient clinics	$473,822	5	$528,862
	Totals	**48 Contracts**			**$59,855,693**

Source: VA OIG Analysis of Sole-Source Contracts September 9, 2019

Appendix D: VISNs' Repeat Interim Contracts

Table D.1. VISNs' Repeat Interim Contracts

VISN	Location	Service	Obligated amount	No. of contracts
		Neurosurgery	$2,235,531	2
		Ophthalmology	$1,705,883	2
	Baltimore, MD	Orthopedic	$9,866,503	8
	Washington, DC	Emergency physicians	$6,240,478	2
5	**Subtotal**		**$20,048,395**	**14**
	Denver, CO	Cardiothoracic	$1,432,630	2
	Aurora, CO	Radiation oncology	$2,419,292	2
	Salt Lake City, UT	Anesthesiology	$2,790,840	2
		Cardiothoracic surgery	$6,531,337	6
		Echocardiographer	$2,132,419	2
19	**Subtotal**		**$15,306,518**	**14**
	Durham, NC	Radiation oncology	$2,618,135	2
	Fayetteville, NC	Emergency physicians	$8,849,293	2
6	**Subtotal**		**$11,467,428**	**4**
	Louisville, KY	Dermatology	$2,151,717	3
	Memphis, TN	Neurosurgery	$4,860,710	4
		Orthopedic	$3,868,137	3
9	**Subtotal**		**$10,880,564**	**10**
	Portland, OR	Cadaveric organ service	$2,956,537	2
		Cardiac surgery	$1,351,850	2
		Liver/Renal physician	$5,676,099	5
20	**Subtotal**		**$9,984,486**	**9**
	Atlanta, GA	Radiation oncology	$1,185,404	2
	Augusta, GA	Emergency physicians	$7,804,860	2
7	**Subtotal**		**$8,990,264**	**4**
	Brooklyn, NY	Radiation oncology	$6,174,797	4
	Manhattan, NY	Neurosurgery	$2,563,630	4
2	**Subtotal**		**$8,738,427**	**8**

Table D.1. VISNs' Repeat Interim Contracts

VISN	Location	Service	Obligated amount	No. of contracts
23	Minneapolis, MN	Anesthesiology	$2,837,110	4
		Cardiothoracic	$4,057,043	2
	Subtotal		**$6,894,153**	**6**
	Dallas, TX	Cardiothoracic	$2,997,917	2
	San Antonio, TX	Urology	$2,694,739	2
17	**Subtotal**		**$5,692,656**	**4**
	Pittsburgh, PA	Anesthesiology	$3,012,111	2
		Cardiac surgery	$1,399,443	2
4	**Subtotal**		**$4,411,554**	**4**
22	Albuquerque, NM	Radiology	**$4,062,030**	**2**
	Providence, RI	Orthopedic	$1,857,546	3
		Urology	$1,500,575	2
1	**Subtotal**		**$3,358,121**	**5**
	Houston, TX	Liver and kidney transplant	$1,367,588	2
		Perfusionist	$1,293,528	2
16	**Subtotal**		**$2,661,116**	**4**
21	San Francisco, CA	Neuroradiology	**$1,733,522**	**2**
	Totals		**$114,229,234**	**90**

Source: VA OIG Analysis of Sole-Source Contracts September 9, 2019

Appendix E: Summary of VISN Contracts Awarded Above the Threshold Without OIG Preaward Review Using Interim Contracts and Repeat Interim Contracts

This appendix presents a summary of the contracts above the threshold for additional examination that were nevertheless awarded without an OIG preaward review, organized by VISN. The first set of columns presents the total contract value and total number of contracts awarded, which were 227 contracts valued at a total of $278.5 million. Within those contracts were a number of interim contracts, as presented in the second set of columns, which totaled 200 contracts with an aggregate value of $250.9 million. Within the interim contracts were a number of repeat contracts, as presented in the last set of columns, which totals 90 contracts with an aggregate value of $114.2 million. These last columns detail the specific location, service, contract value, and number of contracts for the services with multiple interim contracts. For example, VISN 1 issued 14 contracts over the threshold with a total contract value of $8.5 million without obtaining an OIG preaward review. Of those contracts, 10 contracts valued at $6.3 million in total were interim contracts. Still looking at the VISN 1 rows, the last set of columns indicate that of the 10 interim contracts, five contracts were repeat interim contracts. In this example, the orthopedic services in Providence were procured using three contracts totaling nearly $1.9 million and urology services were procured using two contracts for $1.5 million in total.

Table E.1. Summary of VISN Contracts Awarded Above the Threshold Without OIG Preaward Review Using Interim Contracts and Repeat Interim Contracts

	Contracts awarded without OIG review		Interim contracts		Repeat interim contract services		
VISN	Contract value	No. of contracts	Contract value	No. of contracts	Location/ service[55]	Contract value [56]	No. of contracts
1	$8,538,443	14	$6,258,412	10	Providence, RI – Orthopedic	$1,857,546	3
					Providence, RI - Urology	$1,500,575	2

[55] Due to some of the interim contract services later being placed on an unreviewed long-term contract during the review period, a calculation of the number of discrete services is not possible from this table. There were 166 discrete contract services.

[56] Contract values are rounded to the nearest dollar for presentation purposes. The total summed the unrounded amounts.

Table E.1. Summary of VISN Contracts Awarded Above the Threshold Without OIG Preaward Review Using Interim Contracts and Repeat Interim Contracts

	Contracts awarded without OIG review		Interim contracts		Repeat interim contract services		
VISN	Contract value	No. of contracts	Contract value	No. of contracts	Location/ service[55]	Contract value [56]	No. of contracts
2	$14,309,059	14	$14,309,059	14	Manhattan, NY – Neurosurgery	$2,563,630	4
					Brooklyn NY - Radiation oncology	$6,174,797	4
4	$9,729,472	8	$9,729,472	8	Pittsburgh, PA - Anesthesiology	$3,012,111	2
					Pittsburgh, PA – Cardiac surgery	$1,399,443	2
5	$27,646,470	20	$27,646,470	20	Baltimore, MD - Neurosurgery	$2,235,531	2
					Baltimore, MD – Ophthalmology	$1,705,883	2
					Baltimore, MD – Orthopedic	$9,866,503	8
					Washington, DC – Emergency physicians	$6,240,478	2
6	$16,168,378	9	$14,268,358	6	Durham, NC – Radiation Oncology	$2,618,135	2
					Fayetteville, NC – Emergency Physicians	$8,849,293	2
7	$27,163,424	14	$16,531,027	11	Atlanta, GA – Radiation oncology	$1,185,404	2
					Augusta, GA – Emergency physicians	$7,804,860	2
8	0	0	0	0	Not Applicable	$0	0
9	$19,160,843	14	$19,160,843	14	Louisville, KY - Dermatology	$2,151,717	3
					Memphis, TN - Neurosurgery	$4,860,710	4
					Memphis, TN - Orthopedic	$3,868,137	3
10	$10,585,094	5	$10,585,094	5	Not applicable	$0	0
12	$10,917,302	14	$5,108,302	8	Not applicable	$0	0

Table E.1. Summary of VISN Contracts Awarded Above the Threshold Without OIG Preaward Review Using Interim Contracts and Repeat Interim Contracts

	Contracts awarded without OIG review		Interim contracts		Repeat interim contract services		
VISN	Contract value	No. of contracts	Contract value	No. of contracts	Location/ service[55]	Contract value [56]	No. of contracts
15	$3,280,871	2	$3,280,871	2	Not applicable	$0	0
16	$8,019,785	9	$7,587,503	8	Houston, TX – Liver and kidney transplant	$1,367,588	2
					Houston, TX – Perfusionist	$1,293,528	2
17	$17,019,996	15	$17,019,996	15	Dallas, TX – Cardiothoracic	$2,997,917	2
					San Antonio, TX – Urology	$2,694,739	2
19	$22,252,653	20	$22,252,653	20	Denver, CO – Cardiothoracic	$1,432,630	2
					Aurora, CO – Radiation oncology	$2,419,292	2
					Salt Lake City, UT – Anesthesiology	$2,790,841	2
					Salt Lake City, UT – Cardiothoracic	$6,531,337	6
					Salt Lake City, UT - Echocardiographer	$2,132,419	2

Table E.1 Summary of VISN Contracts Awarded Above the Threshold Without OIG Preaward Review Using Interim Contracts and Repeat Interim Contracts

VISN	Contract value	No. of contracts	Contract value	No. of contracts	Location/ service	Contract value [57]	No. of contracts
20	$28,137,125	23	$23,577,121	17	Portland, OR – Cadaveric organ service	$2,956,537	2
					Portland, OR – Cardiac surgery	$1,351,850	2
					Portland, OR – Liver/Renal physician	$5,676,099	5
21	$7,683,278	10	$6,644,031	8	San Francisco, CA	$1,733,522	2
22	$19,620,473	8	$19,620,473	8	Albuquerque, NM – Radiology	$4,062,030	2
23	$28,248,502	28	$27,348,265	26	Minneapolis, MN – Anesthesiology	$2,837,110	4
					Minneapolis, MN - Cardiothoracic	$4,057,043	2
Total	**$278,481,169**	**227**	**$250,927,949**	**200**		**$114,229,234**	**90**

Source: VA OIG Analysis of Sole-Source Contracts September 9, 2019

[57] Contract values are rounded to the nearest dollar for presentation purposes. The total summed the unrounded amounts.

Appendix F: Contracts Extended Beyond Six Months

Contracts that include clause 52.217-9 (Option to Extend the Term of the Contract), allow the contracting officer to extend the contract for six months beyond the priced base and option periods. However, as shown in the table below, 52 of the 227 contracts in the review (22.9 percent) were extended beyond the allowed six-month period. These contracts account for $81.5 million of the $278.5 million in contract value (29.3 percent) for all contracts issued without an OIG preaward review. The contract with the highest percent increase (3,000 percent) was issued for a single month but was later extended to a total of 2.5 years. While this was the most extreme example, there were 35 instances in which a contract issued for six months or less essentially became a long-term contract of more than 12 months through the use of unauthorized contract extensions.

Table F.1. Contracts Extended Beyond Six Months (by Largest to Smallest Percent Increase in Performance Period)

VISN	Location	Service	Original contract term (months)	Final contract term (months)	Time increase percent*	Total obligated amount
7	Augusta, GA	Emergency physicians	1	30	3,000%	$6,469,112
23	Fort Dodge, IA	Community-based outpatient clinics	1	10	1,000%	$1,010,814
15	Columbia, MO	Orthopedic	6	54	900%	$1,837,899
4	Pittsburgh, PA	Anesthesiology	1	8	800%	$1,268,583
7	Charleston, SC	Gastroenterology	6	35	583%	$1,466,681
7	Charleston, SC	Pulmonary	6	32	533%	$1,282,104
4	Philadelphia, PA	Radiation oncology*	3	15	500%	$2,632,752
6	Fayetteville, NC	Emergency physicians	2	10	500%	$2,140,920
15	Columbia, MO	Otolaryngology	6	30	500%	$1,442,972
9	Memphis, TN	Orthopedic	2	10	500%	$1,389,202

**The contract included clause 52.217-6 Option for Increased Quantity (Mar 1989), which does not include a time limit. However, per the prescription for the clause, 52.217-6 is not intended for use in a service contract.*[58]

[58] FAR part 17, sub. 17.2, 17.208, "Solicitation provisions and contract clauses" paragraph (d), accessed November 15, 2019.

Table F.1. Contracts Extended Beyond Six Months

VISN	Location	Service	Original contract term (months)	Final contract term (months)	Time increase percent	Total obligated amount
21	Fresno, CA	Internal medicine†	6	27	450%	$1,015,739
6	Durham, NC	Radiation oncology‡	3	13	433%	$1,799,884
5	Washington, DC	Emergency physicians	3	12	400%	$3,487,297
20	Bonner County, ID	Primary care	6	24	400%	$1,881,265
7	Augusta, GA	Interventional radiology	3	12	400%	$927,194
9	Memphis, TN	Neurosurgery†	5	19	380%	$1,846,040
23	Iowa City, IA	Neurosurgery	5	18	360%	$1,718,810
12	Milwaukee, WI	Interventional radiology	6	21	350%	$621,796
20	Portland, OR	Liver/Renal physician	5	17	340%	$1,512,693
17	San Antonio, TX	Urology	3	10	333%	$1,574,992
10	Ann Arbor, MI	Anesthesiology	6	19	317%	$5,082,232
19	Aurora, CO	Neurosurgery‡	5	15	300%	$2,077,038
23	Iowa City, IA	Kidney transplants	6	18	300%	$1,098,000
2	Syracuse, NY	Neurosurgery	6	18	300%	$525,417
7	Augusta, GA	Neuroradiology	12	34	283%	$1,028,064
9	Memphis, TN	Neurosurgery†	5	14	280%	$1,362,950
2	Rochester, NY	Ophthalmology*	9	24	367%	$2,253,218
9	Memphis, TN	General surgery	5	13	260%	$895,822
22	Oxnard, CA	Community-based outpatient clinics	6	15	250%	$6,180,698
20	Spokane, WA	Urgent care	6	15	250%	$2,624,210
23	Minneapolis, MN	Interventional radiology	6	15	250%	$1,978,095
7	Augusta, GA	Emergency physicians	6	15	250%	$1,335,748
12	Iron Mountain, MI	MRI services	6	15	250%	$1,173,428
7	Augusta, GA	Intensivist	6	15	250%	$996,838
23	Omaha, NE	Pathology	6	15	250%	$810,768
2	Manhattan, NY	Neurosurgery	6	15	250%	$763,857
16	Houston, TX	Liver and kidney transplant	6	15	250%	$705,163

Table F.1. Contracts Extended Beyond Six Months

VISN	Location	Service	Original contract term (months)	Final contract term (months)	Time increase percent	Total obligated amount
16	Houston, TX	Liver and kidney transplant†	6	15	250%	$662,425
6	Richmond, VA	Intensivists†	12	30	250%	$654,800
19	Denver, CO	Otolaryngology	6	15	250%	$612,080
2	Bronx, NY	Blood and blood products	6	15	250%	$606,693
5	Perry Point, MD	Ophthalmology[x]	5	12	240%	$759,704
10	Ann Arbor, MI	Echocardiographer	6	13	217%	$1,530,083
9	Louisville, KY	Dermatology	6	13	217%	$751,838
2	Manhattan, NY	Emergency physicians	10	18	180%	$810,517
10	Columbus, OH	Ophthalmology	12	21	175%	$1,755,000
23	Minneapolis, MN	Resident coordination	12	21	175%	$659,061
17	San Antonio, TX	Community-based outpatient clinics	12	20	167%	$1,840,428
9	Nashville, TN	Neurosurgery	12	20	167%	$578,816
5	Martinsburg, WV	Ophthalmology	12	19	158%	$833,799
21	Molokai, HI	Primary care‡	42	66	157%	$639,672
1	Providence, RI	Nephrology	24	31	129%	$599,516
	Totals	**52 Contracts**				**$81,512,727**

Source: VA OIG Analysis of Sole-Source Contracts September 9, 2019

† The contract included both clause 52.217-8 Option to Extend Services (Nov. 1999) and 52.217-9 Option to Extend the Term of the Contract (Mar. 2000). One clause states the extension is limited to six months, but the other clause allowed a longer total period of performance.

‡ Although clause 52.217-8 Option to Extend Services (Nov 1999) is included in the contract, the time period was not specified.

x No clause authorizing the extension of the contract was included in the contract.

µ The contract was not in the contract file. The OIG was unable to determine if the contract included an extension clause.

Appendix G: VISNs' Fair and Reasonable Methods

This appendix presents a summary of fair and reasonable determinations for contracts awarded without an OIG preaward review, organized by highest to lowest total contract value awarded by each VISN. The team analyzed the data but did not find any patterns to comment on aside from general overreliance on inadequate methods and a lack of documentation. It is included here for readers interested in reviewing VISN-specific information.

Table G.1. VISNs' Fair and Reasonable Methods (by Highest to Lowest Contract Value)

VISN	Location	Fair and reasonable method used	Contract value[59]	No. of contracts
23	Midwest Health Care Network	Not documented	$13,242,897	14
		Compared to two or more	$4,711,885	2
		Compared to current or prior contract	$3,272,623	4
		VHA's review of the proposal	$3,225,452	4
		Compared to IGCE[60]	$2,695,646	3
		Compared to salary survey(s)	$1,100,000	1
		Subtotal	**$28,248,5032**	**28**
20	Northwest Network	Compared to current or prior contract	$10,884,589	8
		VHA's review of the proposal	$6,278,756	7
		Compared to two or more[61]	$5,573,895	2
		Not documented	$3,107,219	3
		Compared to salary survey(s)	$2,292,666	3
		Subtotal	**$28,137,125**	**23**
5	Capitol Health Care Network	Not documented	$20,255,603	14
		Compared to IGCE	$2,753,180	1
		Compared to two or more	$2,003,717	2
		Compared to market research	$1,074,971	1
		Compared to current or prior contract	$833,799	1
		Compare to salary survey(s)	$725,199	1

[59] Total contract values do not total exactly due to rounding.

[60] IGCE is an abbreviation for Independent Government Cost Estimate.

[61] Proposed contract amounts in the "Compare to two or more" category were compared to two or more of the following: Prior/Current contract, Independent Government Cost Estimate (IGCE), General Services Administration FSS schedule, market research, salary survey(s), Department of Labor data, and the Consumer Price Index.

Table G.1. VISNs' Fair and Reasonable Methods (by Highest to Lowest Contract Value)

VISN	Location	Fair and reasonable method used	Contract value[59]	No. of contracts
		Subtotal	**$27,646,469**	**20**
7	Southeast Network	Not documented	$20,402,398	7
		Compared to two or more	$5,756,097	5
		Compared to GSA schedule	$1,004,929	2
		Subtotal	**$27,163,424**	**14**
19	Rocky Mountain Network	Not documented	$16,734,862	15
		Compared to IGCE	$3,031,371	3
		Compared to current or prior contract	$2,486,240	2
		Subtotal	**$22,252,653**	**20**
22	Desert Pacific Healthcare Network	Not documented	$18,296,232	7
		Compared to two or more	$1,324,241	1
		Subtotal	**$19,620,473**	**8**
9	MidSouth Healthcare Network	Not documented	$7,372,429	7
		Compared to current or prior contract	$4,248,642	1
		Compared to two or more	$4,230,934	4
		Compared to GSA schedule	$2,557,000	1
		Compared to Medicare rates	$751,838	1
		Subtotal	**$19,160,843**	**14**
17	Heart of Texas Health Care Network	Not documented	$16,263,492	14
		Compared to current or prior contract	$756,504	1
		Subtotal	**$17,019,996**	**15**
6	Mid-Atlantic Health Care Network	Compared to two or more	$6,708,373	1
		Not documented	$4,759,055	3
		Compared to salary survey(s)	$2,146,130	1
		Compared to Medicare rates	$1,731,280	2
		VHA's review of the proposal	$823,540	2
		Subtotal	**$16,168,378**	**9**
2	New York/New Jersey Health Care Network	Compared to current or prior Contract	$7,994,854	5
		Not documented	$5,503,689	8
		Compare to salary survey(s)	$810,517	1

Table G.1. VISNs' Fair and Reasonable Methods (by Highest to Lowest Contract Value)

VISN	Location	Fair and reasonable method used	Contract value[59]	No. of contracts
		Subtotal	**$14,309,060**	**14**
	Great Lakes Health Care System	Compared to two or more	$3,836,433	4
		Not documented	$3,639,949	6
		Compared to Medicare rates	$2,184,603	2
		VHA's review of the proposal	$634,521	1
		Compared to current or prior contract	$621,796	1
12		**Subtotal**	**$10,917,302**	**14**
	VA Healthcare System	Not documented	$6,837,232	2
		Compared to two or more	$2,174,569	2
		VHA's review of the proposal	$1,573,296	1
10		**Subtotal**	**$10,585,097**	**5**
	VA Healthcare	Not documented	$7,096,720	7
		Compared to two or more	$2,632,752	1
4		**Subtotal**	**$9,729,472**	**8**
	New England Healthcare System	Not documented	$4,833,666	8
		Compared to two or more	$1,755,326	3
		Compared to salary survey(s)	$691,683	1
		Compared to market research	$664,800	1
		VHA's review of the proposal	$592,969	1
1		**Subtotal**	**$8,538,444**	**14**
	South Central Health Care Network	Not documented	$4,397,636	4
		Compared to current or prior contract	$1,739,967	2
		Compared to two or more	$1,351,927	2
		Compare to market research	$530,255	1
16		**Subtotal**	**$8,019,785**	**9**
	Sierra Pacific Healthcare Network	Not documented	$6,119,145	8
		Compare to Medicare rates	$913,616	1
		Compare to current or prior contract	$650,517	1
21		**Subtotal**	**$7,683,278**	**10**
15	Heartland Network	VHA's review of the proposal	**$3,280,871**	**2**

Table G.1. VISNs' Fair and Reasonable Methods (by Highest to Lowest Contract Value)

VISN	Location	Fair and reasonable method used	Contract value[59]	No. of contracts
	Totals		**$278,481,169**	**227**

Source: VA OIG Analysis of Sole-Source Contracts September 9, 2019

Appendix H: Monetary Benefits in Accordance with Inspector General Act Amendments

Finding	Explanation of Benefits	Better Use of Funds	Questioned Costs
1	Improved stewardship of taxpayer funding.	$4,101,555	
	Total	**$4,101,555**	

Appendix I: Management Comments

Department of Veterans Affairs

Memorandum

Date: July 14, 2020

From: Executive Director, Procurement/VHA Procurement and Logistics Office (10NA2)

Subj: Draft Report, VA's Noncompliance with Preaward Review Requirements for Sole-Source Proposals for Healthcare Services

To: Director, Healthcare Resources Division, Office of Contract Review, Office of Inspector General (55)

The enclosed OIG Draft Report dated June 17, 2020, states the objective is to determine whether VHA contracting officers requested a pre-award review when required and the potential impact of noncompliance. Subsequently, the Office of Contract Review team examined documents in the electronic Contract Management System (eCMS) files with award dates between May 1, 2013 and April 30, 2018, verifying whether the authority of 38 USC 8153 was used, the value of award was at $500,000 or more, and an OIG pre-award review was not conducted. OIG made the following recommendations and findings:

Recommendations 1-3

1. Ensure contracting officers (CO) are requesting pre-award reviews for all sole-source healthcare resource (HCR) contracts with an annual value at or above $400,000 in keeping with the May 2018 revisions to VA Directive 1663.

2. Require an OIG pre-award review for all interim contracts that exceed the $400,000 annual threshold.

3. Mandate an immediate post-award review for any sole-source contract awarded on an interim basis as an emergency contract.

Findings 1-2

1. VHA contracting officers avoided an OIG pre-award review for more than half of the proposals above the threshold by repeatedly using multiple short-term contracts.

2. Contracting officers did not consistently document the price awarded was fair and reasonable.

VHA Management Response – Recommendation 1: Ensure contracting officers (CO) are requesting pre-award reviews for all sole-source healthcare resource (HCR) contracts with an annual value at or above $400,000 in keeping with May 2018 revisions to VA Directive 1663.

Concur

The Medical Sharing Affiliate Office (MSO) has already taken several steps to address the issues identified in the Draft Report as follows:

a. On May 14, 2018, MSO issued a MSO News Bulletin #28 notifying all stakeholders (Executive Directors, Regional Procurement Offices (RPO) Central, East and West; Directors of Contracting (DOC); Branch Chiefs of HCR Teams and VISN leadership) of release of VA Directive 1663 identifying all sole source HCR contracts valued at $400,000 or greater annually processed to MSO for legal, clinical and technical review must be submitted to OIG for pricing verification.

b. MSO updated the Review Document Checklist immediately after VA Directive 1663 was published updating the MSO SharePoint site indicating the dollar threshold for HCR contracts processed to MSO for legal, clinical, and technical review (from $500,000 total contract value to $400,000 annual value) must be submitted to OIG for pricing verification.

c. An MSO publication titled, "Affiliate Guide to Health-Care Resource Contracting" was published after VA Directive 1663 in September 2018 replacing the third edition published in January 2020. The electronic publication is posted on the Office of Academic Affiliation (OAA) internet and intranet site available to external stakeholders. This publication identifies process change and states, "contracting officers must submit contracts valued at $400,000 annually or greater to the OIG per VA Directive 1663."

d. The MSO provides HCR training offering virtual and face-to-face (F2F) training forecasting training opportunities each fiscal year. P&LO leadership approved hiring two additional training officers in 2018 recognizing the need to provide HCR training to contracting and clinical professionals nationwide due to the complexity of procuring SSACs. However, COVID-19 impacted all F2F training opportunities this fiscal year and has been suspended. Subsequently, virtual instructor webinars have increased and as part of the HCR training initiatives, the MSO SharePoint site and checklists are provided to participants identifying HCR requirements processed through MSO for legal, clinical,

and technical review (from $500,000 to $400,000) must be submitted to OIG for pricing verification.

Therefore, as ongoing HCR virtual instructor webinars and publications are scheduled, and as the MSO continues reaching out to internal and external stakeholders, MSO is reinforcing HCR contracts with an annual value at or above $400,000 require preaward OIG reviews in keeping with the May 2018 revision to VA Directive 1663. An implementation plan is not required, and a target date is not required as training and publications are ongoing.

VHA Management Response – Recommendation 2: Require an OIG preaward review for all interim contracts that exceed the $400,000 annual threshold.

Non concur

Requesting OIG review interim contracts exceeding $400,000 threshold does not conform with Department policy regarding Interim Contract Authority (ICA) requests as follows:

a. ICA was implemented with VA Directive 1663 published in 2006 and recertified in 2018 to remind stakeholders ICAs are only allowable when buying HCR either with educational institutions or other health care entities affiliated with VA as an interim measure to complete the contracting cycle for long-term needs.

b. ICA approval applies to contracts with educational institutions or other health care entities affiliated with VA, to include contracted CBOCs (updated in 2018 publication to identify CBOCs). ICAs only permit the CO to contract for a limited time period without normal central office reviews processed through MSO. All other acquisition regulations (Federal Acquisition Regulation (FAR) and VA Acquisition Regulation (VAAR)) apply to the proposed interim contract, including contract performance monitoring and conflict of interest (COI) provisions.

c. VA Directive 1663 does not require MSO review the ICA contract; however, MSO does review the documents for granting an ICA (ICA Approval Request Memo, independent government contract estimate (IGCE), long term Acquisition Plan (AP), and Milestones). All requests for ICA contracts must either have the long-term cycle within the MSO review process or the HCR requirement must be a bonafide emergency that does not have a current contract vehicle in place. Mandating supporting documents for the long-term cycle validates the initial contracting stage is in place prior to the approval of the interim contract, reducing risk to the Government and the need to execute a short-term contract.

d. MSO provides training that includes instructions and information to all stakeholders found in the VHA Procurement Manual (VHAPM) Part 873 Attachment 8.2 and is also provided on the MSO SharePoint intranet site.

e. Regarding an implementation plan for Recommendation 2, MSO has already put in place monitoring and tracking of ICAs through the MSO SharePoint site. The number of ICA requests is listed below as follows:

- FY2013 (starting in May) 8
- FY 2014 23
- FY2015 25
- FY2016 31
- FY2017 19
- FY2018 (through April) 14

120

The Draft Report states 200 of the contract awards were interim contracts. MSO records indicate 120 ICAs were processed. The discrepancy likely relates to the terminology issue of ICAs vs. Short Term contracts. MSO will continue monitoring ICAs in accordance with VA Directive 1663; therefore, an implementation plan is not required, and no target date is necessary as it is an ongoing effort.

VHA Management Response – Recommendation 3: Mandate an immediate postaward review for any sole-source contract awarded on an interim basis as an emergency contract.

Non concur

a. This recommendation is already in place and required by policy; however, OIG's scope of terminology and Interim Contract Authority (ICA) language is not the same as generally understood by MSO or the local contracting officer. For example, OIG is using the ICA language and corresponding authority for any and all short-term contracts awarded that fall under the requisite parameters of data extracted from eCMS. As noted in the previous comments (see Recommendation 2) MSO only reviews and processes HCR requirements based on national clinical program criteria, VHAPM Part 801.602-70, VA Procurement Policy Memorandum 2017-01 dated June 19, 2009, VAAR 801.602-70, VAAR 801.602-73 respectively. The policies referenced already indicate which processes OIG is part of; however, ICAs are not considered part of OIG or MSO review process for the proposed ICA contract.

b. There must be a clear understanding that there are emergency HCR short term contracts not utilizing ICA authority. For example, the CO may execute a short-term contract that may be processed through MSO on the dollar thresholds identified from policy requirements mandated by national clinical program offices; however, these requirements

may not qualify for an ICA. What's not clear is the actual number of reviews that should have been sent to OIG based on differences of criteria and terminology used by OIG and MSO.

Therefore, an implementation plan is not required as MSO continues informing contracting officers about the thresholds and requirements for OIG reviews through SharePoint checklists and reports generated from the MSO Dashboard. The MSO Dashboard was created in FY2015; however, in FY2018 the MSO Dashboard was updated creating a centralized portal page increasing data values from eCMS HCR-related actions in order to automate reporting that was previously performed manually. To ensure accountability, P&LO implemented a review and analysis (R&A) meeting in April 2019 wherein RPO Directors are responsible for reporting all data results to leadership. Accountability was identified as the driver to increase awareness to the RPO Directors responsible for overseeing the Network Contracting Offices (NCO). Due to recent demands, the MSO Dashboard reports are published twice monthly (first and third Thursday of each month) and forwarded to the RPO Directors, Directors of Contracting, and HCR Branch Chiefs for assessing SSACs not ICA contracts.

VHA Management Response - Finding 1: VHA contracting officers avoided an OIG preaward review for more than half of the proposals above the threshold by repeatedly using multiple short-term contracts.

Concur

a. The draft report states more than half of the contracts OIG reviewed were repeatedly using multiple short-term contracts. The criteria used to review these HCR contracts concentrated on dates and amounts and criteria used for publishing data from the MSO Dashboard and may not be the same criteria used by OIG. Not all the short-term contracts were issued to avoid reviews.

b. There are always circumstances when emergency short term contracts are needed to continue service. For example, the contracting officer may require a short-term contract while onboarding a new VA employee or pending credentialing and privileging creating delays that result in legitimate short-term contracts.

c. The Draft Report states contracting officers in interviews openly state that the threshold

for MSO review of SSACs was avoided to include OIG preaward reviews. This is not acceptable from a leadership perspective. R&A meetings have been initiated with RPO Directors that are required to brief me on all SSACs validating data extracted from the MSO Dashboards. This data compilation is retrieved from eCMS through milestone reports for planning purposes and open acquisition plan lead time reports. This data identifies SSACs over 365 days and active contracts that will expire within 18 months without a renewal package reported into the system.

d. Monthly meetings are held by many of the HCR Branch Chiefs to include MSO participation and weekly meetings with several NCOs nationwide ensuring processes are understood and a reminder what requirements are processed for OIG review.

Therefore, no implementation plan is required as we continue to hold R&A meetings with RPO Directors, meeting with the HCR Branch Chiefs, and working together to ensure timely SSACs are executed. As part of the continued R&A meetings, I will also require the RPO Directors provide a list of SSAC contracts awarded under the review threshold and confirm whether a pre-award or post-award OIG review was conducted. The meetings currently held will also include a friendly reminder of specific criteria on HCR requirements for OIG review as required by policy. No target date is required as these meetings and events are ongoing.

VHA Management Response - Finding 2: Contracting officers did not consistently document the price awarded was fair and reasonable.

Concur

a. The Draft Report indicates documents were not consistently identified in the eCMS files and states several were relying on price analysis in lieu of cost analysis, while sampling 14 of the contracts to determine if they contained documentation of a fair and reasonable price determination.

b. Based on what was outlined in the Draft Report, determination of fair and reasonable pricing is required for all contracts, not just SSACs. It is acknowledged that this is an area of weakness for many of our file documentation efforts. However, continued

training is provided by MSO along with negotiation teams working directly with contracting officers to support determination of fair and reasonable pricing in SSACs.

c. Each RPO Director has ongoing quality assurance teams that perform post award audits on local contracts for each product line to include HCR product lines. Emphasis to audits for SSACs will ensure documentation is included in the contracting officer's briefcase for preaward and post award assessments of SSACs. Therefore, an implementation plan and a target date is not required.

In summary, the Draft Report is quite extensive and appreciate the hours expended in compiling this report. Overall, there seems to be a difference in terminology and understanding of what requirements are processed through MSO and must be clarified. The overall criteria used from the Draft Report is not the same criteria that is used by MSO, creating a difference in the numbers of actions reported and data fields used in creating the draft report. MSO relies on Microstrategy reporting to identify Sole Source w/Affiliate procurements. Through this reporting, when eCMS data value issues are identified, MSO coordinates data cleansing efforts to correct current problems as well as provides additional education for contracting and support staff to avoid further discrepancies. Manual processes to obtain valid data in the past was shown to be ineffective, and time consuming. The delay in time between data extraction and providing data to the field is the main deterrent. Manual processes also open the door to typographical errors which pose the risk of calling an entire report's validity into question.

MSO currently pulls open SSA procurement data by filtering for: Planning Actions; Not Canceled; Not connected to an ***awarded*** award action; eCMS *Special Category* data value = Affiliate SS; *Action Requested* = New requirement; Milestone Plan = (any of the Affiliate-SS milestone plans); No Ratifications.

In addition to the above, MSO audits potential SSA procurements by running a parallel report with the same filters excluding the Milestone Plan and work directly with field contracting staff to correct inconsistencies prior to the MSO Dashboard being updated.

Given the fact that there are ongoing R&A meetings with the RPO Directors, MSO training, and monthly published data extracted from the MSO Dashboard there is no need for a separate implementation plan and action timeline based on your findings and recommendations. However, as identified previously, an additional action item will be added to the R&A report for RPO Directors providing a list of awarded SSAC that are under the review threshold verifying the rationale for the potential reduced dollar value and reduced period of performance.

Ricky L. Lemmon,

Executive Director VHA Procurement

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

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