



Issue Date:
August 29, 2006

Audit Report Number:
2006-AT-0001

TO: Joseph Neurauter, Chief Procurement Officer, AC

James D. McKay

FROM: James D. McKay
Regional Inspector General for Audit, 4AGA

SUBJECT: The Procurement Office Did Not Maintain Complete Contract Files

HIGHLIGHTS

What We Audited and Why

We reviewed the Office of the Chief Procurement Officer's (Procurement Office) emergency response contract award process as part of the Office of Inspector General's (OIG) annual audit plan, along with our efforts to monitor Hurricanes Katrina and Rita disaster relief efforts.

Our primary objective was to evaluate the economy, efficiency, and effectiveness in the award of the contract funds for hurricane relief and recovery efforts. We wanted to determine whether the U.S. Department of Housing and Urban Development's (HUD) Procurement Office (1) had adequate controls over awarding emergency response contracts and (2) awarded emergency response contracts in accordance with the Federal Acquisition Regulation and HUD Handbook 2210.3.

What We Found

The Procurement Office did not maintain complete files for contract actions that were awarded in response to disaster-related relief efforts. The contract actions awarded include task orders, modifications, and two new contract awards. We reviewed 13 contract files and found that information was either missing from 11 files or not prepared in accordance with applicable regulations, policies, and procedures. These deficiencies occurred because the Procurement Office did not

Table of Contents

have adequate controls to ensure that contract files were complete when contracts needed to be awarded promptly. As a result, HUD cannot be assured that contract files related to emergency contract actions were complete and in compliance with applicable regulations, policies, and procedures.

What We Recommend

We recommend that the chief procurement officer develop and implement internal controls to ensure that the contract files are complete and in accordance with applicable regulations, policies, and procedures for contracts awarded in response to disaster-related events.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We discussed our review results with Procurement Office officials during the audit. We provided a copy of the draft report to the Procurement Office officials on July 12, 2006, for their comments and discussed the report with the officials at the exit conference on August 22, 2006. The Procurement Office provided written comments on August 9, 2006, and generally concurred with the finding.

The complete text of the response, along with our evaluation of the response, can be found in appendix B of this report.

TABLE OF CONTENTS

Background and Objectives	4
Results of Audit	
Finding 1: The Procurement Office Did Not Maintain Complete Contract Files	6
Scope and Methodology	9
Internal Controls	10
Appendixes	
A. Applicable Procurement Criteria for Contract File Deficiencies	11
B. Auditee Comments and OIG's Evaluation	13

BACKGROUND AND OBJECTIVES

The Office of the Chief Procurement Officer (Procurement Office) was established in March 1998 as a part of the U.S. Department of Housing and Urban Development's (HUD) reform initiative to streamline and improve HUD's procurement operations. The Procurement Office is responsible for awarding and administering contracts and purchase orders for HUD's program offices to achieve HUD's mission, goals, and objectives. Its primary function is to obtain high-quality and time-sensitive services and products required by HUD to meet its operational and program missions. The Procurement Office also develops and maintains HUD's current procurement regulation and procurement-related handbooks and procedures. The key regulations that govern HUD procurement are the Federal Acquisition Regulation, the HUD Acquisition Regulation, and HUD Handbook 2210.3. In addition to those are numerous procurement-related laws, federal and HUD standards of conduct, and executive orders.

The Procurement Office has four divisions:

- The Administrative Support Division in headquarters is responsible for the award and administration of contracts and purchase orders for the Offices of Administration, General Counsel, and Public and Indian Housing and the Real Estate Assessment Center.
- The Program Support Division in headquarters is responsible for the award and administration of contracts and purchase orders for the Offices of Community Planning and Development, Housing, and Policy Development and Research.
- The Field Operations Division has offices located in Atlanta, Denver, and Philadelphia. These three offices award and administer contracts and purchase orders for a variety of program and administrative needs.
- The Policy and Systems Division is responsible for the review and improvement of procurement practices, policies, procedures, and systems throughout HUD.

The Contract Management Review Board (Review Board) was established to ensure the efficiency, effectiveness, and integrity of HUD procurement and contracting plans, operations, and results. The Review Board review is to ensure that the acquisition strategy is based on competition and that small businesses are treated fairly and have an opportunity to compete. It is a separate board that reports directly to the deputy secretary of housing and urban development and follows rules and procedures that are set forth and issued by the deputy secretary. The Review Board is responsible for reviewing all contract actions in excess of \$500,000. There are seven voting members and one nonvoting member on the Review Board. The voting members include HUD officials from various offices, such as the director of the Office of Departmental Operations and Coordination, the chief financial officer, the chief procurement officer, the deputy general counsel, the chief information officer, the chief of staff, and the assistant secretary for administration. The nonvoting member is the director of the Office of Small and Disadvantaged Business Utilization.

In response to Hurricanes Katrina and Rita, the Procurement Office executed 21 contract actions. These contract actions, including task orders and contract modifications, were for various goods and services, such as technical assistance, HUD-owned and -insured property damage assessments, damage assessments of public housing agencies, call centers for public housing residents, budget support services for disbursement of funds, and data collection. Nineteen of the 21 contract actions awarded were purchase orders, task orders, or contract modifications. Only two new contracts were awarded for \$4.3 million.

Our primary objective was to evaluate the economy, efficiency, and effectiveness in the award of the contract funds for hurricane relief and recovery efforts. We wanted to determine whether HUD's Procurement Office (1) had adequate controls over awarding emergency response contracts and (2) awarded emergency response contracts in accordance with the Federal Acquisition Regulation and HUD Handbook 2210.3.

RESULTS OF AUDIT

Finding 1: The Procurement Office Did Not Maintain Complete Contract Files

The Procurement Office did not maintain complete files for contract actions that were awarded in response to disaster-related relief efforts. The contract actions awarded include task orders, modifications, and two new contract awards that had to be awarded promptly. We reviewed 13 contract files and found that information required by HUD Handbook 2210.3 and the Federal Acquisition Regulation was missing from 11 of the files. In addition, some information contained in the files was not prepared in accordance with applicable regulations, policies, and procedures. These deficiencies occurred because the Procurement Office did not have adequate controls to ensure that contract files were complete when contracts needed to be awarded promptly. As a result, HUD cannot be assured that contract files related to emergency contract actions were complete and in compliance with applicable regulations, policies, and procedures.

Contract Files Were Incomplete

We reviewed 13 of 21 contract actions. In 11 of the 13 contract files awarded in response to Hurricanes Katrina and Rita disaster relief efforts, the following types of information were either missing from the contract files or not prepared in accordance with applicable regulations, policies, and procedures:

Summary of contract file deficiencies

Deficiencies	C-OPC-22394	C-OPC-22401	C-OPC-22551	C-OPC-22657	C-OPC-22933*	C-OPC-22954*	C-DEN-01800	C-DEN-01801	C-DEN-02014	C-FTW-00366	C-FTW-00369
Missing Review Board approval documentation	X	X			X			X	X	X	X
Missing government cost estimate	X			X	X		X	X			
Missing technical evaluation panel certification(s)	X			X				X			
Missing request for contract services package(s)							X	X		X	X
Improperly labeled source selection information			X			X		X	X		
Missing 8(a) contractor assessment					X						
Missing contractor cost proposal			X								
Missing Office of General Counsel review of statement(s) of work								X			
Unsigned nondisclosure agreements		X									
* These are the only new contracts awarded in response to Hurricanes Katrina and Rita. The remaining contract actions were task orders or modifications to existing contracts.											

For example, contract C-OPC-22933 was a new noncompetitive 8(a) cost plus fixed fee contract for \$1.3 million that was awarded to provide damage assessment and technical assistance to public housing agencies that were damaged by Hurricane Katrina. The contract had to be awarded promptly to provide much-needed assistance to disaster victims. The contract file did not contain the required 8(a) contractor assessment, which justifies the selection of a contractor without competition. In addition, the Procurement Office could not provide documentation concerning Review Board approval, which is required for all contract actions in excess of \$500,000. Lastly, the contract file did not contain the required government cost estimate. These three items were essential to ensuring that the contract was awarded in compliance with applicable regulations, policies, and procedures and that the procurement was handled properly for obtaining qualified contractors and reasonable contract costs.

Contract C-DEN-01801 was a small business set-aside contract that was competed among small businesses and awarded for \$6 million. The contract was awarded to provide a full range of comprehensive first and second mortgage loan servicing tasks. A total of 16 modifications were issued against the original contract. Modifications 13, 14, and 16 were awarded to provide services to include sending letters to lenders instructing them to place any foreclosure activity on hold until further notice. These modifications added \$851,800 in obligated funds to the total contract value. We reviewed the award of the base contract, along with modifications 13, 14, and 16. The following information was missing from the contract file:

- Review Board approval documentation.
- Government cost estimate.
- Technical evaluation panel certification.
- Request for contract services (HUD form 720) package did not contain the required miscellaneous certification attachments.
- Documentation regarding the office of general counsel review of the statement of work, which is required for all contracts in excess of \$5 million.
- Source selection information was not labeled as required by Federal Acquisition Regulation 3.104-4.

These deficiencies do not provide a complete history of the procurement to ensure the award was handled properly.

According to Federal Acquisition Regulation, section 4.801, the documentation in the contract files shall be sufficient to constitute a complete history of the transaction for the purpose of (1) providing a complete background as a basis for the informed decision at each step in the acquisition process, (2) supporting actions taken, (3) providing information for reviews and investigations, and (4) furnishing essential facts in the event of litigation.

These deficiencies occurred because the Procurement Office did not have adequate controls to ensure that contract files were complete when contracts needed to be awarded promptly. Most of the contract actions had to be awarded promptly to adequately respond to Hurricanes Katrina and Rita and to provide much-needed disaster relief. In some instances, the contracts, including task orders and modifications, were issued before the Procurement Office was able to ensure that the required documentation was in the file. Although we recognize that HUD has to respond quickly to provide disaster relief, the Procurement Office needs to implement internal controls to ensure that contract files are complete and in accordance with applicable regulations, policies, and procedures.

Recommendations

We recommend that the chief procurement officer

- 1A. Develop and implement internal controls to ensure that contract files are complete and in accordance with applicable regulations, policies, and procedures for contracts awarded in response to disaster-related events.

SCOPE AND METHODOLOGY

To achieve our audit objectives, we reviewed

- Applicable laws, regulations, and other HUD program requirements relating to procurement;
- HUD’s policies and procedures for awarding emergency contract actions;
- Procurement Office contract files and other documents provided by procurement staff and officials;
- Information available on the Internet and HUD’s intranet; and
- Management control systems pertaining to procurement.

We obtained and reviewed a listing of contract actions that were awarded in response to Hurricanes Katrina and Rita. A total of 21 contract actions, including contracts, task orders, and modifications related to hurricane disaster relief efforts, were awarded from August 2005 through March 31, 2006. The contract actions awarded totaled \$17.95 million. Of the 21 contract actions awarded as a result of the hurricanes, 10 were awarded from the HUD headquarters Procurement Office, eight were awarded from the Denver field contracting office, and three were awarded from the Atlanta field contracting office.

We selected a sample of 13 emergency response contract actions awarded, approximately 62 percent of the 21 contract actions awarded. The 13 contract actions reviewed totaled \$17 million in obligated contract funds, approximately 95 percent of the estimated total procurement obligation for disaster relief as shown below.

Contracting office	Number of contracts reviewed	Contract amount
Headquarters Procurement Office	6	\$ 9,875,753
Denver field contracting office	5	\$ 7,025,408
Atlanta field contracting office	<u>2</u>	<u>\$ 148,436</u>
Total	13	\$ 17,049,597

We selected contracts that were awarded to small businesses, as well as contracts that had modifications and/or task orders issued against them to provide the services required to respond to Hurricanes Katrina and Rita.

When appropriate, we interviewed HUD officials and staff and used the Internet as well as HUD’s intranet. We performed our site work between January and April 2006 at the HUD headquarters Procurement Office, the Denver field contracting office, and the Atlanta field contracting office. The audit covered the period August 1, 2005, through March 31, 2006. We expanded our audit period as needed to accomplish our objectives.

We conducted the audit in accordance with generally accepted government auditing standards.

Table of Contents

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following item is a significant weakness:

- The Procurement Office did not have adequate controls to ensure that contract files were complete when contracts needed to be awarded promptly (finding 1).

APPENDIXES

Appendix A

APPLICABLE PROCUMENT CRITERIA FOR CONTRACT FILE DEFICIENCIES

Review Board Approval

HUD Handbook 2210.3, chapter 4-1(A)(3), states that the Review Board must approve all plans and those actions that meet the thresholds set forth in the Review Board rules. In addition, the Review Board rules and procedures state that contract actions that are exempted by the secretary of housing and urban development from Review Board approval must be in writing. Further, the Review Board rules state that individual unplanned actions are also required to be reviewed if they exceed \$500,000.

Government Cost Estimates

Federal Acquisition Regulation, section 4.803(a)(7), requires government estimates of contract price to be included in the contract files. Further, HUD Handbook 2210.3, chapter 4-2(A)(r), states that an independent estimate of the cost of the contract action must be included with the request for contract services. Cost estimates must also be prepared for actions other than new awards that will change the contract price.

Request for Contract Services

HUD Handbook 2210.3, chapter 4-2, states that the program office shall prepare and submit to the contracting office a request for contract services for each contract action including task orders and contract modifications. Chapter 4-2 also states which items must be included in the request for contract services package that is submitted to the contracting office. HUD Handbook 2210.3, chapter 4-3(A), (B), and (C), states that the contracting officer is responsible for ensuring that the request for contract services package is complete and that any missing documentation is provided by the program office.

Technical Evaluation Panel Member Disclosure Requirements

HUD Handbook 2210.3, chapter 5-6(B), requires all technical evaluation panel members to fill out certifications of nondisclosure and financial conflict of interest in addition to their financial disclosure certifications.

Noncompetitive 8(a) Contractor Assessment

HUD Handbook 2210.3, chapter 4-2(B)(3), requires an assessment of the contractor's ability to perform the proposed effort when the program office selects an 8(a) contractor.

Table of Contents

Source Selection Information

Federal Acquisition Regulation, section 3.104-4, states that source selection information must be protected from unauthorized disclosure and shall be marked as such information in the contract file.

Cost Proposals

Federal Acquisition Regulation, section 4.803(a)(10)(iii), states that the cost or price proposal shall be maintained in the government contract files. In addition, Federal Acquisition Regulation, section 15.304(c)(1), states that price or cost to the government shall be evaluated in every source selection (10 U.S.C. [*United States Code*] 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)).

Office of General Counsel Review

HUD Handbook 2210.3, chapter 4-4D, states that the Office of General Counsel's legal advisor assigned to the contract action must review the statement of work for services with an estimated value of \$5 million or more.

Nondisclosure Agreements


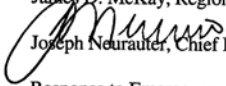
HUD Acquisition Instruction No. 05-02 states that whenever contractor employees need to have or are expected to have access to any type of protected information, the contracting officer must obtain a signed copy of the nondisclosure agreement. The disclosure must be obtained before the contractor employee commences work under the contract.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

	<p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, D.C. 20410-3000</p>
<p>OFFICE OF THE CHIEF PROCUREMENT OFFICER</p>	
<p>August 9, 2006</p>	
<p>MEMORANDUM FOR:</p>	<p>James D. McKay, Regional Inspector, General for Audit, 4AGA</p>
<p>FROM:</p>	<p> Joseph Neurauder, Chief Procurement Officer, N</p>
<p>SUBJECT:</p>	<p>Response to Emergency Awards Draft Findings</p>
<p>Thank you for the opportunity to review and provide comments to your July 12, 2006 memorandum subject: Draft Audit Report – The Procurement Office Did Not Maintain Complete Contract Files. The primary objective of the audit was “...to evaluate the economy, efficiency, and effectiveness in the award of contract funds for hurricane relief and recovery efforts.”</p>	
<p>The Office of the Chief Procurement Officer (OCPO) management team thoroughly analyzed the draft audit report and, in general, we concur with the audit findings that some of the file documentation was lacking. One of the reasons for the recent, post-Hurricane Katrina reorganization of OCPO is to create a single virtual contracting workforce. It is expected that this unified workforce will achieve greater consistency in approach and understanding of contracting rules and policies.</p>	
<p>In response to the audit recommendation that the OCPO “develop and implement internal controls to ensure that contract files are complete and in accordance with the Federal Acquisition Regulation for contracts awarded in response to disaster-related events,” OCPO is establishing a peer review group that will review all emergency-related acquisitions, and new awards and modifications exceeding \$1 million, before award. This group will be led by a “procurement ombudsman,” who will be a senior procurement policy analyst. OCPO intends to establish this peer review group and have it operational by December 31, 2006.</p>	
<p>I am concerned about the statement in the draft report that the audit demonstrates “HUD cannot be assured that contract files related to emergency contract actions were complete and in compliance with the Federal Acquisition Regulation.” I believe this statement is misleading. Most of the file deficiencies are attributable to internal Departmental policies and procedures, and not to requirements in the Federal Acquisition Regulation (FAR). In my opinion even those few file deficiencies attributable to FAR requirements do not affect the legality or enforceability of the contract actions. For example, paragraph (c) of FAR 3.104-4, which addresses the marking of source selection information, states, “all <i>reasonable</i> efforts must be made to mark such material” (emphasis added).</p>	

Comment 1

Table of Contents

Comment 1

Also, FAR 4.803, which addresses the contents of contract files, states, “the following are examples of the records *normally* contained, if applicable, in contract files” (emphasis added). Therefore, I request that such references to the FAR be revised to read “in compliance with applicable regulations, policies, and procedures.”

Comment 2

In addition, I request that the following findings be removed from the final report:

Comment 3

- Contract C-OPC-22551 was cited for missing the contractor cost proposal. Modification #8 was issued based on an oral quotation from the contractor. A written cost proposal was provided for modification #9 and is in the contract file.

Comment 4

- Contract C-OPC-22657, Task Order OPC-T0005 was cited for missing the Government Cost Estimate (GCE). Though the file did not include a document specifically identified as a GCE, the Request for Contract Services (RCS) package included a total estimated amount for all the projects covered under this task. This constituted an independent estimate by the Government.

Comment 5

- Contract C-DEN-01800 was cited for missing the RCS package. The RCS was made electronically through the HUD Procurement System (HPS) instead of using a HUD Form 720.

- Also, Contract C-DEN-01800 was cited for missing the GCE. The contracting officer did not feel a GCE was necessary to negotiate the new pricing tiers because there was sufficient information in the contractor’s proposal to make a determination of fair and reasonable pricing.

I am pleased to see that the Office of Inspector General (OIG) review confirms my opinion that OCPO and HUD Program Offices performed extremely well under difficult circumstances not previously encountered by the Department. OCPO took on the challenge of quickly reacting to appropriate procurement actions in support of the Katrina recovery efforts, and received best value for our procurement dollars. The findings presented in this report continue to be helpful in ensuring that management controls are adequate so that OCPO personnel conduct procurements in accordance with all applicable regulations, policies, and procedures.

In the event that you have any questions, please contact me at 202-708-0600, or by email at Joseph.A.Neurauter@HUD.GOV. I look forward to meeting with you to discuss the draft report and OCPO’s comments.

OIG Evaluation of Auditee Comments

- Comment 1** We identified file deficiencies related to both the Federal Acquisition Regulations and HUD Handbook 2210.3. Therefore, we revised references made to the Federal Acquisition Regulations in the draft report and replaced the references with “applicable regulations, policies, and procedures.”
- Comment 2** There was no documentation in the file for Contract C-OPC-22551 to support that modification 8 was issued based on an oral quotation from the contractor. The cost proposal submitted with modification 9 on October 6, 2005, did not address the specific tasks associated with modification 8, which was executed on September 26, 2005. There was no cost proposal in the file for modification 8, nor was there any indication that one was submitted.
- Comment 3** The government cost estimate for contract C-OPC-22657, task order 5, was missing. The request for contract services did contain a total estimated amount; however, there was no support or details of how the amount was derived. The total estimated amount of the task order did not constitute a government cost estimate.
- Comment 4** Although the request for contract services may have been made electronically through the HUD Procurement System for Contract C-DEN-01800, the request for contract services package also requires miscellaneous attachments. We did not locate any of the required attachments per HUD Handbook 2210.3, Chapter 4-2(A).
- Comment 5** Although the contracting officer did not believe a government cost estimate was necessary, it is required by HUD Handbook 2210.3. Further, there was no cost proposal contained in the file for Contract C-DEN-01800 at the time of our review. There were indications in the file that a cost proposal was requested from the contractor; however, there was no cost proposal documented.