



November 1, 2010

TO: Francis S. Collins, M.D., Ph.D.
Director
National Institutes of Health

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: Appropriations Funding for National Heart, Lung, and Blood Institute Contract
HHSN268-2008-00012C With Information Management Services, Inc.
(A-03-10-03121)

The attached final report provides the results of our review of appropriations funding for National Heart, Lung, and Blood Institute contract HHSN268-2008-00012C with Information Management Services, Inc.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through email at Lori.Pilcher@oig.hhs.gov. We look forward to receiving your final management decision within 6 months. Please refer to report number A-03-10-03121 in all correspondence.

Attachment

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**APPROPRIATIONS FUNDING FOR
NATIONAL HEART, LUNG,
AND BLOOD INSTITUTE
CONTRACT HHSN268-2008-00012C
WITH INFORMATION MANAGEMENT
SERVICES, INC.**



Daniel R. Levinson
Inspector General

November 2010
A-03-10-03121

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health & Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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THIS REPORT IS AVAILABLE TO THE PUBLIC
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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

The National Heart, Lung, and Blood Institute (NHLBI) is 1 of 27 institutes and centers of the National Institutes of Health (NIH), an agency of the U.S. Department of Health & Human Services (HHS). The NIH Office of the Director sets policy and plans, manages, and coordinates NIH-wide programs and activities. Like all Federal agencies, NHLBI is required to comply with appropriations statutes when acquiring supplies and services with appropriated funds.

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time limits for which the appropriation is available, and (3) the obligation and expenditure are within the amounts provided by Congress.

Federal statutes limit the purpose for which an agency may use appropriations to “the objects for which the appropriations were made except as otherwise provided by law” (31 U.S.C. § 1301(a)). Federal statutes also limit the time during which an appropriation is available. A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502). Congress determines the amount of funding available to an agency for the purchase of goods and services by enacting appropriations. The Antideficiency Act prohibits an agency from obligating or expending those funds in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)).

On September 1, 2008, NHLBI awarded contract HHSN268-2008-00012C (the Contract), totaling \$3.4 million, to Information Management Services, Inc., located in Rockville, Maryland. The Contract requires Information Management Services to develop an information-coordinating center to facilitate the scientific community’s access to NHLBI’s repository and limited-access dataset programs. We determined that the Contract is a nonseverable service contract because it represents a single undertaking and provides for a single outcome (to develop an information-coordinating center) at the conclusion of the 5-year Contract.

From November 2008 through February 2009, an HHS internal review group called the “Tiger Team” assessed 176 HHS contracts, including 21 NIH contracts. The Contract was 1 of the 21 NIH contracts assessed. For 17 of the 21 contracts, the Tiger Team identified instances in which contract funding was not consistent with the current HHS Acquisition Regulation or appropriations law. The Tiger Team report did not identify its concerns or quantify funding errors by contract.

OBJECTIVE

Our objective was to determine whether NHLBI funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes.

SUMMARY OF FINDINGS

NHLBI funded the Contract in compliance with the purpose requirements of appropriations statutes. However, NHLBI did not comply with the time requirements and may not have complied with the amount requirements specified in the statutes. NHLBI funded only \$0.7 million of the \$3.4 million Contract obligation with fiscal year 2008 appropriations. NHLBI obligated \$0.7 million of fiscal year 2009 appropriated funds in violation of the bona fide needs rule and planned to obligate funds appropriated for future years as well. Because the Contract was for nonseverable services, NHLBI was required to record the full amount of the Contract using fiscal year 2008 appropriated funds. By not recording the full obligation using fiscal year 2008 appropriations, NHLBI potentially violated the Antideficiency Act.

To remedy the bona fide needs rule violation, NHLBI will need to deobligate the fiscal year 2009 appropriations and any future-year appropriations obligated after our review. To remedy the potential Antideficiency Act violation, NHLBI will need to record an obligation of \$2.7 million (\$3.4 million less \$0.7 million) using fiscal year 2008 appropriations. If NHLBI does not have \$2.7 million of fiscal year 2008 appropriations available, it will violate the Antideficiency Act.

RECOMMENDATIONS

We recommend that NHLBI:

- record the remaining \$2.7 million of the \$3.4 million Contract obligation against fiscal year 2008 funds and deobligate funds appropriated for years other than fiscal year 2008 and
- report an Antideficiency Act violation if fiscal year 2008 funds are not available.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In written comments on our draft report, NIH concurred with our findings and recommendations. NIH stated that NLHBI deobligated \$737,718 of fiscal year 2009 funds and obligated \$2,723,161 (\$737,718 plus \$1,985,443) of fiscal year 2008 funds. NIH's comments are included in their entirety as the Appendix.

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INTRODUCTION

BACKGROUND

The National Heart, Lung, and Blood Institute (NHLBI) is 1 of 27 institutes and centers of the National Institutes of Health (NIH), an agency of the U.S. Department of Health & Human Services (HHS). The NIH Office of the Director sets policy and plans, manages, and coordinates NIH-wide programs and activities. Like all Federal agencies, NHLBI is required to comply with appropriations statutes when acquiring supplies and services with appropriated funds.

Federal Appropriations Statutes

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time limits for which the appropriation is available, and (3) the obligation and expenditure are within the amounts provided by Congress.

Federal statutes limit the purpose for which an agency may use appropriations to “the objects for which the appropriations were made except as otherwise provided by law” (31 U.S.C. § 1301(a)). A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502(a)). Unless otherwise specified in the appropriation, the period of availability for most funds is the fiscal year for which the appropriation was made.

Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved: “The general rule is that the fiscal year appropriation current at the time the contract is made is chargeable with payments under the contract, although performance thereunder may extend into the ensuing fiscal year” (23 Comp. Gen. 370, 371 (1943)).¹ Multiyear contracting authority provided by statute is an exception to the bona fide needs rule.

The Comptroller General has held that “the question of whether to charge the appropriation current on the date the contract is made, or to charge funds current at the time the services are rendered, depends on whether the services are ‘severable’ or ‘entire’ [nonseverable].”² When services are continuing and recurring, they are severable, and the agency may fund the contract with separate subsequent fiscal year appropriations. A contract for a single outcome or effort is chargeable to the fiscal year in which it was awarded, even though its performance may extend into subsequent fiscal years. The Comptroller General has explicitly held that incremental funding (i.e., other than full funding) of nonseverable service contracts violates the bona fide needs rule (71 Comp. Gen. 428 (1992)).

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for

¹ As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-24.

² As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-23.

which the funds are made available. The Antideficiency Act prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)). The Antideficiency Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351). Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission and Execution of the Budget*, pt. 4, § 145, prescribes the methodology for this reporting.

National Heart, Lung, and Blood Institute Contract Award

On September 1, 2008, NHLBI awarded contract HHSN268-2008-00012C (the Contract), totaling \$3.4 million, to Information Management Services, Inc., located in Rockville, Maryland. The Contract requires Information Management Services to develop an information-coordinating center to facilitate the scientific community's access to NHLBI's repository and limited-access dataset programs. We determined that the Contract is a nonseverable service contract because it represents a single undertaking and provides for a single outcome (to develop an information-coordinating center) at the conclusion of the 5-year Contract.

Departmental Review of National Institutes of Health Contracts

In 2008, HHS management formed an internal review group of program, contract, and financial personnel called the "Tiger Team." From November 2008 through February 2009, the Tiger Team assessed 176 HHS contracts, including 21 NIH contracts. The Contract was 1 of the 21 NIH contracts assessed. For 17 of the 21 contracts, the Tiger Team identified instances in which contract funding was not consistent with the current HHS Acquisition Regulation (HHSAR) or appropriations law.³ The Tiger Team report did not identify its concerns or quantify funding errors by contract.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether NHLBI funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes.

Scope

We reviewed all obligations and payments made under the Contract during fiscal years 2008 and 2009. We did not review NHLBI's internal controls because our objective did not require such a review.

We performed our fieldwork at NHLBI in Bethesda, Maryland, during September 2009.

³ *Funding Multiple Year Contracts; Tiger Team Summary Report*, July 29, 2009.

Methodology

To accomplish our objective, we:

- reviewed appropriations and acquisition laws and regulations and Contract requirements;
- reviewed the Tiger Team report;
- reviewed Contract file documentation, including the statement of work, to determine the nature of the products or services to be provided; and
- analyzed funding documents and payment invoices to determine what appropriations were obligated, recorded, and expended.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

NHLBI funded the Contract in compliance with the purpose requirements of appropriations statutes. However, NHLBI did not comply with the time requirements and may not have complied with the amount requirements specified in the statutes. NHLBI funded only \$0.7 million of the \$3.4 million Contract obligation with fiscal year 2008 appropriations. NHLBI obligated \$0.7 million of fiscal year 2009 appropriated funds in violation of the bona fide needs rule and planned to obligate funds appropriated for future years as well. Because the Contract was for nonseverable services, NHLBI was required to record the full amount of the Contract using fiscal year 2008 appropriated funds. By not recording the full obligation using fiscal year 2008 appropriations, NHLBI potentially violated the Antideficiency Act.

To remedy the bona fide needs rule violation, NHLBI will need to deobligate the fiscal year 2009 appropriations and any future-year appropriations obligated after our review. To remedy the potential Antideficiency Act violation, NHLBI will need to record an obligation of \$2.7 million (\$3.4 million less \$0.7 million) using fiscal year 2008 appropriations. If NHLBI does not have \$2.7 million of fiscal year 2008 appropriations available, it will violate the Antideficiency Act.

FUNDING VIOLATIONS

Bona Fide Needs Rule Violation

Federal statutes limit the time for which an appropriation may be used. A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation's period of availability

(31 U.S.C. § 1502(a)). Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved. A contract for nonseverable services must reflect a bona fide need identified in the fiscal year in which the agency awards the contract, although the contract's performance may extend into subsequent fiscal years. Agencies must fully fund nonseverable service contracts by obligating funds representing the entire amount of the contract from appropriations available during the fiscal year in which the agency awards the contract.

In fiscal year 2008, NHLBI awarded the 5-year nonseverable service Contract and incurred an obligation totaling \$3.4 million based on an existing bona fide need. However, NHLBI recorded only \$0.7 million of the obligation with fiscal year 2008 appropriations. Subsequently, NHLBI improperly recorded an obligation of \$0.7 million using fiscal year 2009 funds. However, NHLBI did not have a bona fide need in fiscal year 2009. To remedy the violation, NHLBI will need to deobligate the \$0.7 million fiscal year 2009 appropriation and any future-year appropriations obligated after our review.

Potential Antideficiency Act Violation

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. The Antideficiency Act prohibits the agency from obligating or expending any amount in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)). The Antideficiency Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351). OMB Circular A-11, *Preparation, Submission and Execution of the Budget*, part 4, § 145, prescribes the methodology for this reporting.

NHLBI should have recorded the full fiscal year 2008 obligation for \$3.4 million at the time of the Contract award. Instead, NHLBI recorded only \$0.7 million of the obligation with fiscal year 2008 appropriations. To remedy the potential Antideficiency Act violation, NHLBI will need to record an obligation of \$2.7 million (\$3.4 million less \$0.7 million) using fiscal year 2008 appropriations. If NHLBI does not have \$2.7 million of fiscal year 2008 appropriations available, it will violate the Antideficiency Act.

CAUSES OF FUNDING VIOLATIONS

Generally, the Tiger Team report attributed funding violations to:

- widespread misunderstanding of appropriations laws because of conflicting HHSAR guidance over the past 25 years;
- the use of incremental funding in ways that were not consistent with the current HHSAR and appropriations law; and
- the need for additional training and a broader understanding of appropriations law among acquisition, budget, and program staff.

The Tiger Team did not identify the specific reasons for funding violations for each contract reviewed. HHS management corrected the conflicting guidance in HHSAR 332.702(a) and reissued the HHSAR on December 20, 2006, approximately 20 months before NHLBI awarded the Contract.

RECOMMENDATIONS

We recommend that NHLBI:

- record the remaining \$2.7 million of the \$3.4 million Contract obligation against fiscal year 2008 funds and deobligate funds appropriated for years other than fiscal year 2008 and
- report an Antideficiency Act violation if fiscal year 2008 funds are not available.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In written comments on our draft report, NIH concurred with our findings and recommendations. NIH stated that NLHBI deobligated \$737,718 of fiscal year 2009 funds and obligated \$2,723,161 (\$737,718 plus \$1,985,443) of fiscal year 2008 funds. NIH's comments are included in their entirety as the Appendix.

APPENDIX

APPENDIX: NATIONAL INSTITUTES OF HEALTH COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

JUL 26 2010

TO: George M. Reeb
Acting Deputy Inspector General for Audit Services

FROM: Director, NIH

SUBJECT: Response to OIG Draft Report, *Appropriations Funding for National Heart, Lung, and Blood Institute Contract HHSN268-2008-00012C With Information Management Services, Inc.* (A-03-10-03121)

Attached are the National Institutes of Health's comments on the Office of Inspector General's draft report entitled, *Appropriations Funding for National Heart, Lung, and Blood Institute Contract HHSN268-2008-00012C With Information Management Services, Inc.* (A-03-10-03121).

We appreciate the opportunity to review and comment on this important topic. We have provided general comments that address each of the findings and recommendations in the draft report. Should you have questions or concerns regarding our comments, please contact Meredith Stein in the Office of Management Assessment at 301-402-8482.

A handwritten signature in black ink, appearing to read "Francis S. Collins".

Francis S. Collins, M.D., Ph.D.

Attachment

NIH GENERAL COMMENTS ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED, APPROPRIATIONS FUNDING FOR NATIONAL HEART, LUNG, AND BLOOD INSTITUTE CONTRACT HHSN268-2008-00012C WITH INFORMATION MANAGEMENT SERVICES, INC. (A-03-10-03121)

The National Institutes of Health (NIH) appreciates the review conducted by OIG and the opportunity to provide clarifications on this draft report. We respectfully submit the following general comments; we are not submitting any technical comments to the draft report.

OIG Findings:

- NHLBI did not comply with the time requirements and may not have complied with the amount requirements specified in the statutes. NHLBI funded only \$0.7 million of the \$3.4 million contract obligation with fiscal year 2008 appropriations. NHLBI obligated \$0.7 million of fiscal year 2009 appropriated funds in violation of the bona fide needs rule and planned to obligate funds appropriated for future years as well.
- Because the contract was for nonseverable services, NHLBI was required to record the full amount of the contract using fiscal year 2008 appropriated funds.

OIG Recommendations:

- NHLBI should record the remaining \$2.7 million of the \$3.4 million contract obligation against fiscal year 2008 funds and deobligate funds appropriated for years other than fiscal year 2008.
- NHLBI must report an Antideficiency Act violation if fiscal year 2008 funds are not available.

NIH Response:

The NIH concurs with OIG's findings and corresponding recommendations regarding the characterization of NHLBI Contract HHSN268-2008-00012C as a nonseverable services contract and that under Federal appropriations law the contract should have been funded from the fiscal year current at the time the contract was awarded.

On April 28, 2010, NHLBI issued Modification 3 to effect the following corrective actions:

- 1) deobligate \$737,718 of FY 2009 funds previously allotted by Modification 2 and charge that allotment to FY 2008 funds, and
- 2) fund the remainder of the contract in the amount of \$1,985,443 from FY 2008 funds.

As a result of these actions, NHLBI Contract HHSN268-2008-00012C is now fully funded from FY 2008 funds and is in compliance with all applicable fiscal laws.