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TO: Elias A. Zerhouni, M.D.
Director
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FROM: Daniel R. Levinson *Daniel R. Levinson*
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SUBJECT: Emergency Response to Hurricanes Katrina and Rita: Audit of National Institute of Environmental Health Sciences's Award Process for a Contract With MDB, Inc. (A-04-06-01036)

This report provides the results of our audit of the National Institute of Environmental Health Sciences's (NIEHS) award process for a contract with MDB, Inc., of the District of Columbia. The audit is one of several reviews of procurements by NIEHS and other components of the Department of Health and Human Services (HHS) in response to Hurricanes Katrina and Rita in 2005.

BACKGROUND

Hurricane Relief Efforts

Following Hurricanes Katrina and Rita, Congress provided more than \$63 billion to the Department of Homeland Security for disaster relief. Under its National Response Plan, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) coordinated relief efforts by assigning tasks, known as missions, to other Federal agencies. FEMA agreed to reimburse the other agencies for their costs.

FEMA assigned HHS the responsibility for relief operations in the areas of public health and medical services. As part of the HHS relief operations, NIEHS executed three modifications to an existing labor-hours contract with MDB, Inc. The existing contract, effective September 16, 2005, through September 15, 2006, with four additional 1-year option periods, obligated MDB, Inc., to provide services related to NIEHS's Worker Education and Training Program. These services included maintaining Internet and computer-based communications and information services, distributing technical information, and managing technical workshops on worker safety and health training issues.

The contract modifications, effective September 28, 2005, October 31, 2005, and February 15, 2006, at a total cost of \$361,900, amended the existing statement of work to add a number of tasks specifically pertaining to hurricane relief operations. The tasks included, for example:

- providing technical assistance to NIEHS, its awardees, and other organizations in the Hurricane Katrina recovery zone;
- arranging meetings and workshops for training hazardous waste workers and emergency responders; and
- establishing a field office to provide information to NIEHS, its awardees, and other organizations in the Hurricane Katrina recovery zone.

NIEHS's Office of Acquisition was responsible for negotiating, awarding, and administering the contract and its modifications.

Federal Acquisition Regulations

The Federal Acquisition Regulation (FAR) defines a contract as a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate a Government expenditure of appropriated funds, including awards, job orders, letter contracts, orders, and bilateral contract modifications (FAR 2.101).

The FAR establishes the basic requirements for acquisitions by Federal agencies. The Health and Human Services Acquisition Regulation (HHSAR) implements and supplements the FAR and provides requirements that specifically govern the HHS contract process.

The FAR and the HHSAR provide, among other things, that HHS agencies award each contract to a responsible party (FAR 9.103(a)) and document compliance with requirements for full and open competition and the determination that the price was fair and reasonable (FAR 6.101(b) and 15.402(a)). With respect to full and open competition, FAR 6.001(c) specifies: "Contract modifications, that are within the scope of the contract . . ." are exempt from the requirements. Agencies also must develop a statement or description of the goods or services being requested (FAR 16.504(a)(4)(iii)).

Letter contracts may be used only for urgent needs. Unpriced orders, which must contain price ceilings, may be used only when it is impractical to obtain pricing. In addition, agencies must consider the appropriate contract type pursuant to guidance in FAR part 16. In certain situations, consideration must be given to small and minority businesses and local firms.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to determine whether NIEHS complied with FAR and HHSAR requirements during the award process involving MDB, Inc.

Scope

We limited our audit to the award process for NIEHS's September 16, 2005, contract 27305C0017 with MDB, Inc., and its September 28, 2005, October 31, 2005, and February 15, 2006, modifications 1 through 3 to that contract. We did not assess NIEHS's overall internal control environment.

We performed fieldwork at NIEHS's Office of Acquisition in Durham, North Carolina, from April through June 2006.

Methodology

To accomplish our objective, we:

- reviewed FAR and HHSAR requirements,
- met with NIEHS officials to ensure an adequate understanding of NIEHS's actions during the award process and the basis for those actions,
- examined the records of negotiation and other documentation related to the award of the contract to determine whether NIEHS followed FAR and HHSAR requirements, and
- reviewed progress reports and payment history data to determine whether controls were in place to ensure contract performance and payment.

We performed our audit in accordance with generally accepted government auditing standards.

RESULTS OF AUDIT

NIEHS complied with FAR and HHSAR requirements during the award process for modifications 1 through 3 to contract 27305C0017 with MDB, Inc. The existing contract was awarded under the General Services Administration's (GSA) Multiple Award Schedule, a list of contracts with commercial firms to provide supplies and services at stated prices for given periods of time. GSA had already determined that prices for goods and services on the schedule were fair and reasonable. Pursuant to FAR 6.001(c), the contract modifications were exempt from requirements for full and open competition. Nevertheless, the modifications were based on Multiple Award Schedule prices, which, in accordance with FAR 8.404(d), GSA determined to be fair and reasonable.

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This audit was conducted in conjunction with the President's Council on Integrity and Efficiency (PCIE) as part of its examination of relief efforts provided by the Federal Government in the aftermath of Hurricanes Katrina and Rita. As such, a copy of the report has been forwarded to the PCIE Homeland Security Working Group, which is coordinating Inspectors General reviews of this important subject.

If you have any questions about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov. Please refer to report number A-04-06-01036.