

**STATEMENT OF
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U.S. DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON HEALTH
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
"VHA CONTRACTING AND PROCUREMENT PRACTICES AT THE
U.S. DEPARTMENT OF VETERANS AFFAIRS"**

SEPTEMBER 23, 2010

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to testify on the findings of the Office of Inspector General (OIG) on the Veterans Health Administration's (VHA) contracting and procurement practices and possible solutions to VHA procurement problems. I am accompanied today by Maureen Regan, Counselor to the Inspector General.

Background

In December 2009, the OIG testified on acquisition deficiencies in VA.¹ At that time, numerous OIG audits, investigations, reviews, and inspections had identified systemic issues such as poor acquisition planning, problematic contract award processes, poorly written contracts, and inadequate contract monitoring that impacted VA's efforts to effectively and economically deliver goods and services to VA facilities. Our testimony also addressed concerns that procurement problems led to inadequate competition for contracts, the misuse of funds, and a general lack of assurance that VA procurements achieved fair and reasonable prices or were in the best interest of the Government. We attributed many of these systemic procurement problems to VA's decentralized organizational structure for procurement activities, inadequate oversight and accountability, and inaccurate and incomplete procurement data.

Update

Our work since we testified in December continues to identify systemic weaknesses in procurement practices that negatively impact VA's ability to obtain quality goods and services in a timely manner at fair and reasonable prices. We also continue to identify compliance issues with Federal Acquisition Regulations (FAR) and VA Acquisition Regulations (VAAR) and find that data in the VA and VHA acquisition support information systems is incomplete and unreliable. The impact of these weaknesses is significant for VHA because of the high dollar cost of health care-related goods and

¹ Statement of Maureen T. Regan, Counselor to the Inspector General, Office of Inspector General, Department of Veterans Affairs, Before the Subcommittee on Oversight and Investigations, Committee on Veterans Affairs, United States House of Representatives, December 16, 2009

services—\$9.05 billion spent in fiscal year (FY) 2009—and because they negatively impact VHA's oversight and ability to make good decisions.

I will now discuss the results of recent work which continues to highlight weaknesses in VHA's acquisition processes.

Audit of Oversight of Patient Transportation Contracts

Our May report on patient transportation services contracts, *Audit of Oversight of Patient Transportation Contracts*, (Report Number 09-01958-155, May 17, 2010), found that VHA missed opportunities to provide full and open competition in their efforts to solicit offers from potential contractors and make contract awards. Contracting officers (COs) did not properly plan and prioritize for the time needed to open new solicitations needed for ambulance services, medical car patient transportation, and other patient transportation requirements.

We identified 9 of 36 patient transportation contracts, with an estimated value of about \$12.3 million, that were inappropriately awarded as sole-source and then were extended for up to 6 months after the contract expired. According to COs that we interviewed, this was due to acquisition staff shortages that increased their workload and resulted in insufficient time to solicit new contracts. For seven of nine contracts, the required information, including the number of trips and the type of equipment needed, was not provided by the requesting service in order to develop an accurate solicitation proposal. In 14 of the 36 contracts (39 percent) we reviewed, basic contract documentation required by the FAR such as price negotiation memoranda, determinations of price reasonableness, best value analyses, notices of awards, insurance certificates, and Contracting Officer Technical Representatives (COTRs) designation letters were missing. We also found that COs did not adequately monitor the contractor performance which we estimated could result in VHA overpaying contractors as much as \$91.8 million over the next 5 years if COTRs did not consistently review contractor invoices and verify the appropriateness of charged mileage rates and additional mileage charges.

This national audit highlights serious weaknesses in acquisition award and administration processes that fail to adequately protect VHA's contractual interests. VHA needs to provide more oversight to ensure it has adequate statements of work that can guide its staff to know what VHA is buying and measure contractor performance effectively.

VHA Recovery Act Audits

We have issued two audit reports dealing with VHA Recovery Act contract awards for non-recurring maintenance (NRM) projects, *American Recovery and Reinvestment Act Oversight Advisory Report - VHA Non-Recurring Maintenance Contract Award Oversight Needs Strengthening* (Report Number 09-01814-97, March 15, 2010) and *American Recovery and Reinvestment Act Oversight Advisory Report: Veterans Health Administration's Efforts to Meet Competition Requirements and Monitor Recovery Awards* (Report Number 09-00969-248, September 17, 2010).

Our March review found that COs failed to maximize competition because they did not consistently and properly publicize solicitations in FedBizOpps, as required. The more recent September review, which was conducted after the Office of Acquisition, Logistics, and Construction (OAL&C) issued policy guidance and VHA increased its oversight of these awards, found that VHA achieved a competition rate of over 98 percent. These contracts, where VHA oversight processes generally ensured COs used competition and properly assessed bids, demonstrate how strengthened national and field-level acquisition oversight and governance structures can improve competition and reduce unnecessary sole-source contracting.

Although oversight improved compliance with FAR competition requirements, we found that COs were not performing adequate contractor responsibility determinations to mitigate possible risks to Recovery Act funds and to ensure VHA received the best value. Sixty of the 65 contracts (92 percent) we reviewed, valued at \$83.1 million, lacked adequate contractor responsibility determinations. This occurred because guidance from OAL&C failed to include all elements required to make contract award responsibility determinations. Additionally, some COs did not address all the elements because they relied heavily on their prior experiences with prospective contractors, instead of checking the General Service Administration's Excluded Parties List System or obtaining reports to assess the contractor's current financial resources as required.

Federal Supply Schedule Contracts for Professional and Allied Services

Our June report, *Audit of VISN Procurement Practices for FSS Professional and Allied Healthcare Staffing Services* (Report Number 08-00270-162, June 7, 2010) found that health care services orders were not being adequately reviewed and had ordering and competition issues. Task orders issued by VA entities against these schedules totaled \$339 million in FY 2009.

Review of these health care services orders supported that:

- Contracting officers had not adequately assessed Federal Supply Schedule (FSS) health care staffing services vendors' price quotes to ensure the reasonableness of prices.
- Contracting officers did not ensure labor rates for FSS health care services orders remained at or below FSS not to exceed (NTE) rates.
- Contracting officers did not effectively evaluate all-inclusive FSS health care staffing services orders to prevent improper payments. We found that improper payments occurred when order prices exceeded FSS NTE rates and FSS vendors received unsupported travel reimbursements.

Weaknesses related to ordering and competition issues included:

- Contracting officers did not ensure adequate competition when they failed to issue requests for quotations to a minimum of three FSS health care staffing vendors.
- Contracting officers did not adequately plan when they used local contracts to order health care staffing services even though the same vendors offered the same services for less on the FSS.
- Controls were not adequate to prevent Medical staff from bypassing contracting officers and making unauthorized commitments when they inappropriately placed orders directly with FSS vendors.

As a result we concluded that Veterans Integrated Service Network (VISN) procurement practices and ordering procedures are not consistently ensuring the proper, cost effective use of FSS health care staffing services contracts, the integrity of the FSS procurement process, and compliance with the FAR. We reported that strengthened FSS health care staffing services procurement practices could reduce VHA expenses and improper payments by at least \$7.7 million annually or \$38.5 million over the next 5 years.

A companion report also found similar systemic weaknesses in acquisition processes, *Review of Federal Supply Schedule 621 I – Professional and Allied Healthcare Staffing Services* (Report Number 08-02969-165, June 7, 2010). This report details how VHA paid more than fair and reasonable prices due in part to a failure by contracting officers at VA's National Acquisition Center to comply with FSS contract requirements and award contracts with fair and reasonable pricing.

Other Reports

Our inspection of the Brachytherapy program at the VA Medical Center in Philadelphia, *Healthcare Inspection Review of Brachytherapy Treatment of Prostate Cancer, Philadelphia, Pennsylvania and Other VA Medical Centers* (Report Number 09-02815-143, May 3, 2010), revealed that between 1999 and April 2005, the Medical Center inappropriately purchased services from the University of Pennsylvania without a contract in place. Since April 2005, the Medical Center was purchasing services under an interim contract that was issued and extended in violation of VA policy. The interim contract was inappropriately extended despite the fact that VA had received a proposal from the University for a long-term contract. Further, a pre-award review provided to the contracting officer showed that the prices being paid under the interim contract were significantly higher than what was determined to be fair and reasonable. In addition, we found that the COTR was approving payments without verifying that the services were provided and approving payments for engineering services that were outside the scope of the interim contract.

Our continuing health care inspections of the administration of Community Based Outpatient Clinic (CBOC) contracts have identified deficiencies in contract administration that have resulted in overpayments that may be uncollectible. The

reviews found that COTRs were not complying with their responsibilities under the contract to notify vendors of patients who were disenrolled because they had not been seen within a 12-month period, had changed to another clinic, or who had died. Because payment under these contracts is set at a capitated rate, VA overpaid for veterans who should have been taken off the rolls. The inspections also found that COTRs were not consistently holding contractors accountable for meeting performance standards set forth in CBOC contracts. For example, at one clinic a COTR was required to assess the contractor's compliance with access to care and entry of medical data benchmarks on a quarterly basis and assess penalties for noncompliance. However, the COTR had completed only one assessment during the calendar year reviewed.² In a similar case involving a different CBOC, OIG inspectors found that the former and current COTRs on a CBOC contract did not assess whether the contractor met performance criteria and whether financial penalties applied.³ Good administration of CBOC contracts is critical because VHA had more than 200 contracted CBOCs nationwide as of July 2009.

OIG Contract Review Work

Our Office of Contract Review (OCR) conducts pre-award, post-award, drug pricing, and special reviews of vendor proposals and contracts through a reimbursable agreement with VA's OAL&C. The majority of reviews are related to FSS contracts awarded by the VA National Acquisition Center for pharmaceutical, medical and surgical supplies, and equipment; and contracts for health care resources awarded by VA medical facilities. In FY 2010 to date, OCR completed 65 pre-award and 26 post-award reviews. The pre-award reviews identified more than \$370 million in cost savings that could be achieved during contract negotiations and post-award reviews recovered more than \$20 million for VA's Supply Fund.

Pre-award reviews are required for both FSS and health care resources proposals where the estimated contract costs exceed predetermined dollar thresholds. The pre-award reviews provide valuable information to assist contracting officers in negotiating fair and reasonable contract prices. Of the 65 pre-award reviews, 32 were for health care resource proposals. The potential cost savings for these proposals was more than \$39 million.

OCR continues to identify information submitted by vendors that is not accurate, complete, and current that would result in VA paying inflated contract prices. Also, OCR continues to identify the lack of communication between procurement and program officials and inadequate planning as a management challenge for health care resources contracts. The lack of communication and poor planning results in higher and unnecessary contract costs because requirements have not been properly identified, the statements of work are inadequate, and the estimated quantities are overstated.

² *Community Based Outpatient Clinic Reviews-Smithville, MS and Memphis, TN; Knoxville, TN; and Norton, VA; Chattanooga and Nashville, TN* (Report Number 10-00627-174, June 16, 2010)

³ *Community Based Outpatient Clinic Reviews-Macon and Albany, GA; Beaver Dam, WI and Rockford, IL; Sioux City, IA and Aberdeen, SD; and Waterloo, IA and Galesburg, IL* (Report Number 09-01446-37, December 2, 2009)

We also routinely find that VHA's health care resources contracts lack adequate oversight provisions to ensure VHA receives the services it pays for.

Post-award reviews are conducted to determine if a contractor submitted accurate, complete, and current pricing data to the contracting officer during negotiations as required by the terms of the contract. These reviews also determine whether the vendor adhered to other terms and conditions of the contract such as the Price Reductions Clause. Post-award reviews include OCR's efforts to ensure pharmaceutical vendors are in compliance with statutory drug pricing provisions contained in Section 603 of P.L. 102-585, *The Veterans Health Care Act of 1992*, which sets statutory price limits of covered drugs for VA, the Department of Defense, the United States Public Health Service, and the Coast Guard. OCR's post-award program is a significant factor in the success of VA's voluntary disclosure program where a vendor can disclose non-compliance with contract terms and conditions that resulted in the Government overpaying for goods or services and reimbursement agreements are established. These voluntary disclosures are typically resolved administratively but are referred to the Department of Justice if warranted.

Recent VA Actions

VA has made progress in the development of its acquisition workforce. VA established its Acquisition Academy in September 2008 to address growing acquisition workforce challenges. VA's acquisition workforce, consisting of COs, COTRS, and program/project managers, has lost institutional knowledge through downsizing and retirements and is trying to keep pace with the increasingly numerous and complex contracts needed to support VA's mission.

VA's recent implementation of an automated acquisition information system, eCMS, to monitor contracts and orders demonstrates the potential eCMS has to increase transparency and VA acquisition oversight capabilities at the local and national levels. However, we are continuing to find VHA and VA need to ensure that staff properly and consistently use the system across the country for all procurements at or above \$25,000. Before VA can consistently rely on this acquisition information system to leverage its significant buying power, it must have assurance that the system provides adequate visibility and transparency over complete and accurate information.

Conclusion

VHA needs to ensure that its program offices and acquisition personnel are engaging in disciplined acquisition practices that consistently protect the Government's interests. VHA cannot realize its full buying potential unless it better ensures compliance with regulations and establishes visibility and transparency over purchases.

We understand that VA recognizes deficiencies in its acquisition processes and infrastructure and has taken steps to strengthen contracting practices. However, many of VA's reforms are still in the early process of planning and implementation. Our oversight will continue to provide valuable information to VA and Congress as VA pursues its acquisition initiatives. Future OIG work will focus on the effectiveness of

VA's efforts to improve the skills and competencies of its acquisition workforce, program managers, and program staff serving as COTRs because the performance of these key personnel is critical to the improvements VA needs to make in its acquisition processes.

Mr. Chairman, this concludes my statement and we would be pleased to answer any questions that you or other Members of the Subcommittee may have on these issues.