

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Department of Veterans Affairs

*Audit of
Interior Design
and Furnishing Contract
Mismanagement by the
Network Contracting Office 21*

March 6, 2018
16-00409-64

ACRONYMS

COG	Contract Office Group
eCMS	Electronic Contract Management System
FAR	Federal Acquisition Regulation
FY	Fiscal Year
GAO	Government Accountability Office
NCHCS	Northern California Health Care System
NCO	Network Contracting Office
OIG	Office of Inspector General
VA	Department of Veterans Affairs
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

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EXECUTIVE SUMMARY

Why the OIG Did This Audit

The OIG evaluated the merits of an allegation received in September 2015 regarding the Network Contracting Office (NCO) 21's award of a \$3.3 million contract to the Contract Office Group, Inc. (COG) in September 2009 to provide interior design services and furnishings to renovate floors 1, 2, and 3 of Building 650 on the Sacramento VA Medical Center campus in Mather, California.¹ The complainant alleged that NCO 21 did not adequately compete the contract before it was awarded and that the contract violated the *bona fide needs* rule. The *bona fide needs* rule is a rule of appropriations law which mandates that a fiscal year's appropriations only be obligated to meet a legitimate—or *bona fide*—need arising in (or sometimes before) the fiscal year for which the appropriation was made.² Furthermore, the complainant alleged that the contract exceeded authority limitations because performance continued for more than five years after the contract's award.

The complainant also cited concerns that Veterans Integrated Service Network (VISN) 21 facilities made direct contract awards to COG without any competition. The OIG expanded the scope of the audit to include a review of 19 additional contracts that VISN 21 facilities awarded to Haworth and COG, an authorized distributor for Haworth, from FYs 2009 through 2015 to assess the validity of these concerns. The audit team assessed whether any of the additional 19 contracts violated the *bona fide needs* rule, were awarded without adequate competition, or exceeded authority limitations. The OIG did not identify any systemic issues or violations of the *bona fide needs* rule or authority limitations during its review of these 19 contracts.

NCO 21 is responsible for purchasing goods and services exceeding the federal micro-purchase limit of \$3,500 for VISN 21 facilities. NCO 21 is staffed with warranted contracting officers who have the authority to enter into, administer, or terminate contracts and make related determinations and findings. VISN 21 includes the Sacramento VA Medical Center, which is part of the Northern California Health Care System (NCHCS).

What the OIG Found

First, the OIG substantiated the allegation that a former NCO 21 contracting officer did not ensure adequate competition as required by the Federal Acquisition Regulation (FAR) prior to awarding the \$3.3 million contract to COG. FAR Subpart 5.1 required the former contracting officer to advertise or synopsise the contract action in a manner that was electronically accessible by the public, such as on *FedBizOpps.gov*, in order to increase competition and broaden industry participation. Instead, the former contracting officer emailed the request for quotes to three vendors, thereby preventing the public's access to the contract action and limiting competition to

¹Contract number VA612C94225.

²31 U.S. Code § 1502.

the maximum extent possible. The audit team found that further limiting competition, only two of the three vendors the former contracting officer emailed had the capability to provide the needed interior design services and furnishings. The OIG recognizes that the former contracting officer's failure to comply with the requirements of the FAR led to awarding the contract without adequate competition; however, the former NCO 21 Director failed to implement a pre-award contract oversight process to ensure contracts awarded complied with Federal and VA acquisition regulations. Because of these failures, the OIG determined the \$3.3 million the Veterans Health Administration awarded to COG to be questioned cost and an improper payment.

Second, the OIG substantiated the allegation that the contract with COG violated the *bona fide needs* rule. The *bona fide needs* rule was violated when the former NCO 21 contracting officer awarded the contract to COG despite having information that the NCHCS intended to use FY 2009 funds to purchase goods and services for renovations to Building 650 on the Sacramento VA Medical Center campus in FY 2011 and possibly later. According to the Interior Design Master Plan in the contract file, the NCHCS engineers expected second-floor renovations to be complete by May 2010. Third-floor renovations, according to the Interior Design Master Plan, were expected to be completed in FY 2011, while no timeline was provided for first-floor renovations. Renovations to the first and third floor of the building made up about \$2.5 million of the \$3.3 million contract. The OIG determined that obligating only funds for the interior design services and furnishings for Building 650's second-floor of about \$800,000 was reasonable, because it would have allowed enough lead time for the design, manufacture, delivery, and installation of furnishings upon the anticipated completion of second-floor renovations by May 2010.

The former NCO 21 contracting officer should have questioned the need to obligate the entire \$3.3 million for this effort—particularly the estimated \$2.5 million associated with interior design services and furnishings for floors one and three because there was no need for the design services and furnishings for these floors until future fiscal years. The OIG found no evidence in the contract file that the former NCO 21 contracting officer took steps to revise the performance work statement to exclude goods and services for floors one and three or to make the NCHCS officials aware of the *bona fide needs* rule violation. Instead, the former contracting officer awarded the entire \$3.3 million to COG. The contracting officer's violation of the *bona fide needs* rule went undetected because the former NCO 21 Director failed to implement a pre-award contract oversight process to ensure contracts awarded complied with the *Principles of Federal Appropriations Law*. As a result, the NCHCS missed opportunities to reallocate the estimated \$2.5 million for other priorities before the funds expired at the end of FY 2009.

Third, the OIG substantiated the allegation that performance under the contract exceeded authority limitations. FAR Subpart 17.204 allows that contract performance can continue for up to five years after award with appropriate modification. The OIG found performance under the contract continued well past the contract's original performance end date of December 31, 2009 without modification to extend the contract's overall period of performance. The former NCO 21 contracting officer should have communicated with the NCHCS and COG to determine when they expected the contract's performance to be completed. The former contracting officer should have issued a bilateral contract modification—a signed agreement between the contracting officer and COG—to extend the period of performance as required by FAR Subpart 43.103 when

it was determined that the contract's performance was not expected to end by December 31, 2009. The OIG found no evidence that the former NCO 21 contracting officer issued a bilateral modification. Instead, the former contracting officer allowed performance to continue and amended the delivery dates of the purchase orders issued under the contract. The OIG does not consider amending the purchase order delivery dates to be acceptable, because these amendments do not constitute a signed agreement between the contracting officer and the vendor.

Regardless of whether the former contracting officer issued bilateral contract modifications to extend the original performance period, the COG contract's overall performance period should not have exceeded the five-year limitation imposed by FAR Subpart 17.204. However, the OIG found performance under the COG continued through September 2015—more than six years after contract award. The former NCO 21 contracting officer should have taken action such as stopping performance, de-obligating the estimated \$1.1 million in remaining funds, and closing the contract to prevent performance from extending beyond the five-year limitation. The OIG found no evidence the former NCO 21 contracting officer took such steps. Instead, COG continued performance and the NCHCS spent about \$300,000 of the remaining \$1.1 million on interior design services and furnishings for floors one and three, from September 2014 through October 2015. NCO 21 did not take steps to deobligate the remaining unspent funds of \$800,000 and did not close the contract until May 2016.

While the contracting officer is responsible for ensuring that the contract did not exceed the five-year limitation as required by the FAR, NCO 21 management was responsible for exercising oversight to ensure compliance with applicable laws and regulations and relevant government guidance. The OIG determined the former NCO 21 Director did not implement a process to monitor the status of open contracts to ensure the former contracting officer took action to prevent extended performance. The lack of effective monitoring processes exposed VA to the risk of making payments for services and goods using funds that could have been deobligated and used for other purposes. As a result, the NCHCS may have missed opportunities to reallocate \$1.1 million of unspent funds as of September 2014.

What the OIG Recommended

The OIG made three recommendations—two recommendations to the Service Area Office West Executive Director and one recommendation to the VISN 21 Director. The OIG recommended the Service Area Office West Executive Director ensure the NCO 21 Director implements the required integrated oversight process to ensure contracting officers' compliance with federal and VA acquisition regulations prior to contract award. The OIG also recommended the Service Area Office West Executive Director ensure the NCO 21 Director develops and implements processes to effectively monitor the status of contracts and ensure contracting officers appropriately modify the contracts or close them out in accordance with contract terms and the FAR. Finally, the OIG recommended the VISN 21 Director consult with appropriate VA financial and legal officials to determine steps the NCHCS Director should take in order to remedy the violation of the *bona fide needs* rule.

Management Comments

The Service Area Office West Executive Director concurred with the OIG's report and recommendations. The Executive Director established an acceptable action plan for Recommendation 1 to ensure contracting officers' compliance with the required pre-contract award integrated oversight process. The OIG considers Recommendation 1 closed. The Executive Director also provided an acceptable action plan for Recommendation 3 related to developing and implementing processes to effectively monitor the status of contracts and ensure contracting officers appropriately modify the contracts or close them out in accordance with contract terms and the FAR. The OIG will close Recommendation 3 when sufficient evidence is provided that demonstrates progress in addressing the issue.

The VISN 21 Director concurred with the OIG's report and Recommendation 2 related to determining steps the NCHCS Director should take to remedy the violation of the *bona fide needs* rule and took corrective action to address this recommendation. The OIG considers Recommendation 2 closed.



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INTRODUCTION

Objective

In September 2015, the OIG received an allegation regarding a contract awarded to the Contract Office Group, Inc. (COG) for interior design services and furnishings by the Network Contracting Office (NCO) 21. The OIG conducted this audit to assess the following allegations:

- NCO 21 awarded a \$3.3 million contract (VA612C94225) to COG without adequate competition.
- The contract with COG violated the *bona fide needs* rule at the time of award.
- The COG contract exceeded authority limitations because performance continued beyond five years after award.³

The OIG expanded the scope of this audit to include all furniture contracts awarded from FYs 2009 through 2015 to Haworth and COG—Haworth’s authorized distributor—because of concerns cited in the allegation that facilities in the Veterans Integrated Service Network (VISN) 21 were awarding contracts to this vendor without competition. The OIG added 19 contracts to the scope of its work and assessed whether there were systemic issues that resulted in these contracts being awarded without adequate competition. The OIG also assessed whether any of the 19 additional contracts violated the *bona fide needs* rule or exceeded authority limitations. The OIG did not identify any systemic issues in its review of these additional contracts.

Bona Fide Needs Rule

The *bona fide needs* rule is a rule of appropriations law. It mandates that a fiscal year's appropriations only be obligated to meet a legitimate—or *bona fide need*—arising in (or sometimes before) the fiscal year for which the appropriation was made.⁴ The rule applies to federal contracts as well as grants and cooperative agreements.

\$3.3 Million Contract with COG

NCO 21 awarded a \$3.3 million firm-fixed price contract to COG to provide commercially available interior design services and furnishings for renovations made to several floors in Building 650 on the Sacramento VA Medical Center campus in Mather, California. The contract’s original period of performance was from September through December 2009. The Sacramento VA Medical Center is part of the Northern California Health Care System (NCHCS), which includes eight other medical facilities. The NCHCS is part of VISN 21.

³FAR Subpart 17.204(e) states that the total basic and option periods of a contract cannot exceed five years.

⁴31 U.S. Code § 1502.

NCO 21

NCO 21, located in McClellan, California, oversees procurements for VISN 21. NCO 21 contracting officers are also responsible for the development, execution, award, and administration of contracts, purchase orders, and other agreements exceeding the federal micro-purchase limit of \$3,500 for facilities in VISN 21.⁵ Facilities, however, initiate, approve, and fund requests for goods and services contracted through NCO 21.

⁵ FAR Subpart 2.1, (13 January 2017) – Definitions, defines the dollar limit for the micro-purchase threshold.

RESULTS AND RECOMMENDATIONS

Finding 1 NCO 21 Awarded COG Contract without Adequate Competition

**What
We Found**

The OIG substantiated the allegation that a former NCO 21 contracting officer awarded a \$3.3 million contract (VA612C94225) to COG for interior design services and furnishings without adequate competition.⁶ Federal Acquisition Regulation (FAR) Subpart 5.1 requires that contracting officers advertise or synopsise requests for quotes to increase competition and broaden industry participation for contracts expected to exceed \$25,000 in a manner that is electronically accessible by the public such as on *FedBizOpps.gov*. The former NCO 21 contracting officer emailed the request for quotes to three vendors instead of publicizing the action on *FedBizOpps.gov*, thereby preventing the public's access to the contract action and promoting competition to the maximum extent possible. The former contracting officer also did not promote competition to the maximum extent practicable by soliciting quotes from an adequate number of vendors.⁷ Only two of the three vendors the contracting officer emailed actually offered the interior design services and furnishings that the NCHCS required for the building renovations. While FAR Subpart 13.104 only requires contracting officers to consider solicitation of at least three sources, these vendors must be able to provide the required services and goods. COG was the only vendor that responded to the contracting officer's request for quotes. Based on this, the former NCO 21 contracting officer failed to meet the requirement of FAR Subpart 13.104. While the OIG finds that the former contracting officer's failure to comply with the requirements of the FAR led to the award of a contract without adequate competition, the OIG also recognizes that the former NCO 21 Director had a responsibility to monitor the pre-award contracting process to ensure compliance with federal and VA acquisition regulations.⁸ Because of these failures, the OIG determined the \$3.3 million awarded to COG to be a questioned cost.⁹

⁶The OIG was not able to interview the contracting officer who awarded the COG contract. NCO 21 reported that this individual retired shortly after awarding the contract. The OIG has no indications that this individual retired because of conduct or performance issues.

⁷FAR Subpart 13.104.

⁸The OIG interviewed the director who headed NCO 21 at the time of its site visit in January 2016. This individual became the director of NCO 21 in July 2014. The Service Area Office West Executive Director reported that this director retired from VA in September 2017. The OIG did not interview the NCO 21 Director who headed the office prior to July 2014.

⁹The Inspector General Act of 1978 defines questioned costs as a cost questioned because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds.

**No Evidence
In Contract
File to Justify
Why the
Contracting
Officer Failed
to Ensure
Adequate
Competition**

The contracting officer responsible for this contract is no longer employed by VA; consequently, this individual was not available to speak with the audit team about why they did not ensure that the contract was adequately competed before it was awarded to COG in September 2009. The OIG team examined the COG contract file and found no evidence that would justify why the former contracting officer did not comply with the requirements of FAR Subpart 5.1 and Part 8 to ensure the contract was adequately competed. Furthermore, the audit team found no evidence in the contract file that would justify why the former contracting officer did not solicit proposals from additional vendors that were able to provide the required services and goods, as required by FAR Subpart 13.104.

**\$3.3 Million
in Improper
Payments**

According to the Office of Management and Budget Circular A-123, Appendix C, *Requirements for Effective Measurement and Remediation of Improper Payments*:

An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. A payment must also be considered improper when an agency is unable to discern whether a payment was proper because of insufficient or lack of documentation.

On August 25, 2017, VA issued a memo to provide clarification on the reporting of improper payments.¹⁰ This memo distinguishes between improper payments resulting in a monetary loss and improper payments that are technically improper, even though VA has not lost money and the payment does not represent a loss to the government. This memo also provides clarification that a payment is considered improper when an audit determines the program did not follow all required processes.

The former NCO 21 contracting officer did not properly advertise the contract in accordance with FAR Subpart 5.1 or promote competition to the extent practicable, as required by FAR Subpart 13.104. The OIG considers the contract award amount of \$3.3 million to be an improper payment because the contracting officer failed to follow all required regulations and processes.

**Former
NCO 21
Director Failed
to Implement
Oversight
Process**

The former NCO 21 contracting officer's lack of compliance with the FAR in competing the contract went undetected because the former NCO 21 Director failed to effectively monitor the pre-award contracting process. An NCO 21 contract specialist told the OIG that at the time the COG

¹⁰VAIQ #7821110, *Improper Payments: Monetary Loss to the Government versus Technically Improper Guidance*, August 25, 2017.

contract was awarded, pre-award contract reviews were not performed and that contracting officers typically prepared and signed their own documents.

The Office of Acquisition and Logistics' *Integrated Oversight Process* required a contract review team to examine all contracts with a value between \$1 million and \$5 million before being awarded.¹¹ In addition, contracts valued between \$500,000 and \$5 million were required to be viewed by legal counsel. Evidence of these reviews must be in the contract file. The OIG found no evidence in the contract file that a contract review team or legal counsel examined the extent to which the former NCO 21 contracting officer sought competition before the \$3.3 million contract was awarded to COG. The audit team also did not find any evidence in the contract file that justified why this requirement was not followed.

According to the Government Accountability Office's (GAO) *Standards for Internal Control for the Federal Government*, management should exercise oversight to ensure compliance with applicable laws and regulations and relevant government guidance. Implementation of VA's integrated contract oversight process would have established a pre-award contract review mechanism that would have allowed the former NCO 21 Director to ensure contracting officers' compliance with Federal and VA acquisition regulations. The Service Area Office West Executive Director should ensure that the NCO 21 Director implements the integrated oversight process. The process will help ensure VA receives a fair and reasonable price for the required services and goods.

Conclusion

The OIG substantiated the allegation that the former NCO 21 contracting officer awarded a \$3.3 million contract to COG without adequate competition. Without adequate competition, VA has little assurance that NCO 21 contracting officers obtain a fair and reasonable price for required services and goods. Furthermore, because of the former NCO 21 contracting officer's noncompliance with federal and VA acquisition regulations, the OIG questioned the costs associated with the \$3.3 million contract award. The OIG considers the \$3.3 million awarded to COG to be an improper payment in accordance with the Office of Management and Budget Circular A-123, Appendix C.

Recommendation

1. The OIG recommended Service Area Office West Executive Director ensure the Network Contracting Office 21 Director implements the required integrated oversight process to perform the required pre-award

¹¹Information Letter 001-AL-09-02 (June 2009). The Office of Acquisition and Logistics revised this guidance on October 6, 2016; see VA Procurement Policy Memorandum (2017-01), *Integrated Oversight Process/Technical Reviews* (VAIQ # 7710387).

contract reviews to ensure contracting officers' compliance with Federal and VA acquisition regulations prior to contract award.

**Management
Comments**

The Service Area Office West Executive Director concurred with this recommendation and provided an acceptable action plan. To address Recommendation 1, the Executive Director reported implementing technical review requirements for Service Area Office West contracting activities as set forth in the Service Area Office West Contract Review Requirements memo dated June 1, 2017. This memo provides processes and procedures for the performance of pre-award contract reviews based on thresholds established in the Service Area Office West Review Process Matrix dated June 1, 2017. This memo also requires that all review documentation be retained in VA's Electronic Contract Management System (eCMS) contract briefcase.

The Service Area Office West Executive Director also reported implementing postaward reviews of contract actions as detailed in the Service Area Office West Post Award Audit Operating Procedures dated July 7, 2015. These reviews are completed cooperatively between Service Area Office West procurement analysts and Network Contracting Office procurement analysts and provide NCO leadership with detailed feedback regarding warranted contracting officers' compliance with federal and VA acquisition regulations.

In addition, the Executive Director reported that training was provided to NCOs based on the results of postaward contract reviews conducted from May 2016 through February 2017. Training was conducted for all NCOs in the Service Area Office West region from May through August 2017 and focused on historically high noncompliance areas across the region.

**OIG
Response**

The Service Area Office West Executive Director's corrective actions to address Recommendation 1 are responsive and the OIG considers this recommendation closed. Appendix D contains the full text of the Executive Director's comments.

Finding 2 Awarding of the COG Furniture Contract Violated the Bona Fide Needs Rule

What We Found

The OIG substantiated the allegation that the contract with COG violated the *bona fide needs* rule at the time of award. According to the *Principles of Federal Appropriations Law*, an agency may not obligate funds when it is apparent at the time of contract award that there is no requirement—or *bona fide need*—for the goods or services until the following fiscal year. The OIG found the quote provided by COG to the former NCO 21 contracting officer disclosed that not all of the goods and services associated with the \$3.3 million contract were required when the obligation was made in FY 2009. Despite having this information, the former contracting officer proceeded to award the entire \$3.3 million to COG, thereby violating the *bona fide needs* rule. An estimated \$2.5 million of the \$3.3 million obligated at the time of contract award was not justified because the goods and services associated with the \$2.5 million were not needed until future fiscal years.

The former NCO 21 contracting officer's violation of the *bona fide needs* rule went undetected because the former NCO 21 Director did not implement the required pre-award contract oversight process to ensure the contract fully complied with the requirements of the law. As a result, the NCHCS missed opportunities to reallocate an estimated \$2.5 million for other priorities before the funds expired at the end of FY 2009.

Contracting Officer Failed to Uphold FAR Requirements

Contracting officers must ensure that all requirements of the law, executive orders, regulations, and all other applicable procedures are satisfied before awarding a contract.¹² The former NCO 21 contracting officer failed to uphold this FAR requirement when he awarded the contract to COG with an expected completion date of December 31, 2009, despite having information that the NCHCS intended to use FY 2009 funds to purchase goods and services in 2011 and possibly later—a clear violation of the *bona fide needs* rule. According to the Interior Design Master Plan in the contract file, the NCHCS engineers expected second-floor renovations to be complete by May 2010. Again, according to the Interior Design Master Plan, third-floor renovations were expected to be completed in 2011, while no timeline was provided for first-floor renovations.

¹²FAR Subpart 1.6.

Table 1 details the renovations schedules for Building 650 at the Sacramento VA medical center.

**Table 1: Renovations Timeline
Building 650, Sacramento VA Medical Center**

Floors	Scheduled Renovation Timeline	Scheduled Furniture Installation Timeline
First	TBD to N/A	N/A to N/A
Second	1/4/10 to 4/30/10	5/3/10 to 5/21/10
Third	6/1/10 to 1/31/11	2/1/11to 2/18/11

Source: OIG analysis of timelines detailed in the Interior Design Master Plan rough schedule that was included with a COG quote dated August 27, 2009

Using FY 2009 funds to support interior design services and furnishings related to floor two was reasonable, because it would allow enough lead time for the design, manufacture, delivery, and installation of furnishings upon completion of second-floor renovations. The OIG estimates that \$800,000 of the \$3.3 million awarded to COG were related to interior design services and furnishings for floor two. However, obligating the remaining \$2.5 million of FY 2009 funds for interior design services and furnishings for floors one and three violated the *bona fide needs* rule because there was no need for these goods and services until future fiscal years. As a result, the OIG estimated that \$2.5 million in FY 2009 funds were inappropriately obligated to this contract.

The former NCO 21 contracting officer should not have awarded the contract to include interior design services and furnishing for floors one and three. The contracting officer should have revised the performance work statement to include only interior design services and furnishings for floor two with an estimated value of \$800,000. The audit team found no evidence in the contract file that the former NCO 21 contracting officer took steps to revise the performance work statement or make the NCHCS officials aware of the *bona fide needs* rule violation. As a result, the NCHCS missed opportunities to reallocate an estimated \$2.5 million for other priorities before the funds expired at the end of FY 2009. The VISN 21 Director should consult with appropriate VA financial and legal officials to determine how the NCHCS Director should remedy the violation of the *bona fide needs* rule.

**Former NCO
21 Director
Failed to
Implement
Oversight
Process to
Detect Rules
Violations**

The former contracting officer's failure to ensure the COG contract complied with the requirements of the *bona fide needs* rule went undetected because the former NCO 21 Director failed to implement the required pre-award contract oversight process. The process required that a contract review team and legal counsel review the contract before award.¹³ Contracting officers should include evidence of these reviews in the contract file. The OIG found no evidence that a contract review team or legal counsel conducted a pre-award review of the COG contract.

According to GAO's *Standards for Internal Control for the Federal Government*, management should exercise oversight to ensure that responsibilities set forth by applicable laws and regulations and relevant government guidance are followed. The Service Area Office West Executive Director should ensure that the NCO 21 Director implements the required integrated oversight process to ensure contracting officers comply with the pre-award contract requirements of Federal Appropriations Law.

Recommendation 1 of this report addresses the deficiencies the OIG identified in NCO 21's integrated oversight process over the COG contract prior to award.

Conclusion

The OIG substantiated the allegation that the contract with COG violated the *bona fide needs* rule. By not taking action to revise the performance work statement, the former NCO 21 contracting officer enabled the NCHCS to inappropriately obligate \$2.5 million for interior design services and furnishings for which there was no immediate need. As a result, the NCHCS was able to hold on to these funds throughout the performance of the contract, instead of returning these funds for repurposing to the appropriate fund control point at the end of FY 2009.

Recommendation

2. The OIG recommended the Veterans Integrated Service Network 21 Director consult with the appropriate VA financial and legal officials to determine steps the Northern California Health Care System Director should take to remedy the violation of the *bona fide needs* rule.

¹³The Office of Acquisitions and Logistics revised this guidance in October 6, 2016; see VA Procurement Policy Memorandum (2017-01), *Integrated Oversight Process/ Technical Reviews* (VAIQ # 7710387).

**Management
Comments**

The VISN 21 Director concurred with this recommendation and provided an acceptable action plan. To address Recommendation 2, the VISN 21 Director reported consulting with the VA Office of General Counsel and Veterans Health Administration (VHA) financial officials on November 13, 2017. The VISN 21 Director reported understanding from consultations with these officials that because FY 2009 accounts are closed, no accounting corrections can be made and no further action can be taken.

**OIG
Response**

The VISN 21 Director's action to address Recommendation 2 is responsive and the OIG considers it closed. Appendix E contains the full text of the VISN 21 Director's comments.

Finding 3 COG Contract Exceeded Authority Limitations

What We Found

The OIG substantiated the allegation that the \$3.3 million contract with COG exceeded contract authority limitations. With appropriate modification, performance under a contract could continue for up to five years under FAR Subpart 17.204. Performance under the COG contract continued well past the contract’s original performance end date of December 31, 2009 without the required modifications to extend the contract’s overall period of performance. The OIG also found that performance under the COG contract continued through September 2015—more than six years after contract award—without proper authorization. This allowed the NCHCS to continue to expend funds against the contract. While the contracting officer typically is responsible for ensuring that the contract did not exceed the five-year limitation, the former NCO 21 Director was responsible for monitoring the COG contract to ensure the contracting officer appropriately modified or closed the contract in accordance with its terms or the FAR. Because the former NCO 21 Director did not provide oversight to ensure compliance with the terms of the contract or the FAR, performance under the contract continued and the NCHCS spent about \$300,000 of the funds that remained on the contract, of about \$1.1 million—five years after award—without proper authorization.

Contracting Officer Failed to Appropriately Modify the Contract’s Period of Performance

The former contracting officer should have communicated with the NCHCS and COG to determine whether performance under the contract was expected to be completed by December 31, 2009, as the contract was approaching its initial completion date. If the NCHCS or COG did not expect performance to be complete by the end of December 2009, then the contracting officer should have issued a bilateral contract modification to extend the contract’s period of performance.^{14,15} The OIG found no evidence in the contract file that the former contracting officer issued a bilateral modification to allow performance to continue beyond December 31, 2009.

The former contracting officer allowed performance to continue, by amending the delivery dates included in the purchase orders issued under the contract several times throughout the performance of the contract and beginning on March 29, 2010. The OIG does not consider the amendments to the purchase order delivery dates to be acceptable for extending the performance period under the contract, because purchase order amendments do not constitute a signed agreement between the contracting officer and COG, as required by FAR Subpart 43.103. The work performed under the

¹⁴FAR Subpart 52.243-1 requires the contracting officer to modify a contract for any changes that cause the increase or decrease of the time required for performance under a contract.

¹⁵FAR Subpart 43.103 requires the contracting officer to issue a bilateral modification—signed by the contracting officer and contractor—when modifying the terms of a contract.

contract after December 31, 2009 was not properly authorized because the former contracting officer did not issue any bilateral modifications to extend the performance period beyond December 31, 2009.

***Contracting
Officer Failed
to Take Action
to Prevent
Performance
Beyond the
Five-Year
Limitation***

Even if the former contracting officer had issued a bilateral contract modification to extend the original period of performance beyond December 31, 2009, the COG contract's overall performance period should not have exceeded the five-year limitation imposed by FAR Subpart 17.204. If performance was not expected to be complete by September 9, 2014—five years after contract award—the former contracting officer should have assessed the situation to determine what administrative contract actions could be taken by the government to prevent extended performance in violation of FAR Subpart 17.204.

One course of action could have been to coordinate with the NCHCS and COG to stop performance, deobligate any remaining funds, and close the contract before September 9, 2014, in accordance with FAR Subpart 4.804.¹⁶ The audit team found no evidence in the COG contract file that demonstrated that the former NCO 21 contracting officer took steps to coordinate with the NCHCS and COG to close out the contract in September 2014 and deobligate the \$1.1 million that remained on the contract.

The audit team was able to speak with the former contracting specialist who prepared the purchase order modifications to extend the delivery dates. The specialist told the OIG that they had an overwhelming workload and were unaware that when they extended the delivery dates on the contract purchase orders, they were exceeding the contract's authority limitations. The OIG also interviewed the former NCO 21 contracting officer who approved the extensions prepared by this specialist, and they reported that they could not recall the specifics of this contract. VA no longer employs either of these individuals.

As a result, performance continued and the NCHCS spent about \$300,000 on interior design services and furnishings for floors one and three, from September 2014 through October 2015. NCO 21 did not take action to deobligate the remaining unspent funds of \$800,000 in order to return these funds to the appropriate fund control point until the contract was closed in May 2016.

¹⁶According to FAR Subpart 4.804-5, contracting officers should close out contracts, conduct reviews of contract funds, and deobligate any unspent funds.

**Former
NCO 21
Director
Failed
to Implement
Effective
Controls**

According to GAO's *Standards for Internal Control for the Federal Government*, management has a responsibility to exercise oversight to ensure compliance with applicable laws and regulations and relevant government guidance. The former NCO 21 Director did not have a process in place to monitor the status of open contracts or ensure that the former contracting officer took steps to appropriately modify or close the COG contract in accordance with the contract's terms or the FAR.

VA's eCMS captures information on a contract's period of performance, including a contract's award and completion date. eCMS has the capability to generate reports on a contract's period of performance that can be used to ensure that contracts are closed out timely. Information regarding the COG contract's award and performance end dates was included in eCMS; however, the former NCO 21 Director did not use available data from eCMS to monitor the status of the COG contract throughout its performance period.

The former director also did not ensure that the former contracting officer modified the contract completion date to allow work to continue under the contract with the appropriate authorization. As a result, performance under the contract continued beyond the five-year limitation, which prevented \$1.1 million of unspent funds from being deobligated and possibly reallocated for other uses. The Service Area Office West Executive Director should take steps to ensure the NCO 21 Director develops and implements processes to effectively monitor the status of contracts and ensure contracting officers appropriately modify or close contracts in accordance with contract terms and the FAR.

Conclusion

The OIG substantiated the allegation that the \$3.3 million contract with COG improperly extended beyond the five-year limitation established by FAR Subpart 17.204. VA's interests were not protected because the former NCO 21 Director failed to implement effective internal controls to ensure the contracting officer took action to prevent extended performance. Authorizing payment for interior design services and furnishings in excess of FAR limitations exposed VA to the risk of making payments for services and goods using funds that could have been deobligated and used for other purposes. Furthermore, the NCHCS may have missed opportunities to reallocate the unspent \$1.1 million in order to fund other pending priorities.

Recommendation

3. The OIG recommended the Service Area Office West Executive Director take steps to ensure the Network Contracting Office 21 Director develop and implement processes to effectively monitor the status of contracts and ensure contracting officers appropriately modify the contracts or close them out in accordance with contract terms and the Federal Acquisition Regulation.

**Management
Comments**

The Service Area Office West Executive Director concurred with this recommendation and provided an action plan. To address Recommendation 3, the Executive Director reported that the Service Area Office West would update the biweekly metrics review to include reviews of contracts that are scheduled to close out from 30 to 60 days in the future. The Executive Director also reported that orders and modifications executed on contracts near, at, or beyond the performance period would be reviewed to ensure contract terms, delivery dates, and conditions are correctly applied and that all federal acquisition regulations are satisfied. The Executive Director expected to implement the planned action in February 2018.

**OIG
Response**

The Service Area Office West Executive Director's corrective action to address Recommendation 3 is responsive and the OIG considers the corrective action acceptable. The OIG will monitor the status of Recommendation 3 and will close the recommendation when sufficient evidence is provided that demonstrates progress in addressing the issue. Appendix D contains the full text of the Executive Director's comments.

Appendix A Background

Service Area Office West

In 2011, VA reorganized all VHA acquisition personnel under VA's Procurement and Logistics Office. The Procurement and Logistics Office created three Service Area Offices based on geographic location—Pittsburgh, Pennsylvania; Minneapolis, Minnesota; and Sacramento, California. Sacramento-based Service Area Office West oversees procurements for NCOs 17, 18, 19, 20, 21, and 22.

Electronic Contract Management System

eCMS is a web-based system that represents VA's official contract of record in paperless form. VA Office of Acquisition and Material Management Information Letter, IL 049-07-06, dated June 15, 2007, required new procurement actions valued at \$25,000 or more be completed in eCMS. On June 15, 2012, the Deputy Assistant Secretary for Acquisition and Logistics issued Procurement Policy Memorandum – *Mandatory Usage of VA's Electronic Contract Management System* (VAIQ 7108531). This policy memo rescinds IL 049-07-06 and mandates the use of eCMS for all acquisitions above the micro-purchase threshold. This policy memo also states that all contracting officers must ensure the contract file contains all documents necessary to support the contracting officer's decisions at every stage of the acquisition cycle.

Contracting Officers

Contracting officers have the authority to enter into, administer, or terminate contracts and make related determinations and findings. According to FAR Subpart 1.6, contracting officers must ensure that contracts meet all requirements of the law, executive orders, regulations, and all other applicable procedures, including clearances and approvals. Contracting officers are also responsible for ensuring performance of all necessary actions for effective contracting, including ensuring compliance with the terms of the contract and safeguarding the interests of the United States in its contractual relationships.

COG and Haworth Relationship

COG is an authorized dealer of Haworth that uses Haworth's Federal Supply Schedule contract when bidding on furniture projects. Haworth is a furniture manufacturer that maintains a Federal Supply Schedule contract to provide furniture to federal agencies, including VA. Depending on the circumstances of a particular award, the contracting officer may write the contract to Haworth, COG, or Haworth in care of COG.

Appendix B Scope and Methodology

Scope

The OIG conducted its audit work from January 2016 through December 2017. The audit scope included the \$3.3 million contract with COG for interior design services and furnishings (VA612C94225). The OIG also reviewed 19 additional contracts awarded by NCO 21 to COG and Haworth from FYs 2009 through 2015. The OIG assessed the extent to which there were any systemic issues related to whether these contracts were awarded with adequate competition, if they violated the *bona fide needs* rule, and whether they exceeded authority limitations.

Methodology

The OIG conducted site visits at NCO 21, located in Sacramento, California, and the NCHCS, located in Mather, California, in January 2016. During these site visits, the audit team interviewed contracting officials and the NCHCS management and staff involved with the request, solicitation, and award of furniture contracts to COG and Haworth. The OIG reviewed applicable federal and VA acquisition regulations and policies, as well as related contract documents. The OIG obtained and reviewed documentation used to support contracts awarded to COG and Haworth.

Fraud Assessment

The OIG assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this audit. The audit team exercised due diligence in staying alert to any fraud indicators by taking actions, such as coordinating with the OIG's Office of Investigations to determine if there were any ongoing or previous cases involving contracts awarded to COG and Haworth by NCO 21. The OIG's review of the contracts NCO 21 awarded to Haworth and its authorized distributor COG from FYs 2009 through 2015 did not disclose any instances of fraud or systemic contracting irregularities.

Data Reliability

The OIG used computer-processed data obtained from the NCHCS officials to determine the amount spent on interior design services and furnishings to support the renovations to Building 650 on the Sacramento VA medical center campus through the contract with COG (VA612C94225). To assess the reliability of the data obtained, the OIG compared the data provided to invoices received by the NCHCS and contract documentation included in the contract file to ensure cost information was accurate. The OIG concluded the obtained data were sufficiently reliable for the purposes of this audit.

Government Standards

The OIG's assessment of internal controls focused on those controls relating to the audit objectives. This audit was conducted in accordance with generally accepted government auditing standards. These standards require that the OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the audit's findings and conclusions based on the audit objective. The evidence obtained provides a reasonable basis for the OIG's findings and conclusions based on the audit objective.

Appendix C Potential Monetary Benefits in Accordance With Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1	Implement required pre-award contract review oversight process to ensure VA obtains the most fair and reasonable price.	\$0	\$3.3 million ¹⁷
Total		\$0	\$3.3 million

¹⁷This amount represents the total value of the contract awarded to COG that met the Office of Management and Budget Circular A-123, Appendix C's definition of improper payments and the definition of questioned costs outlined in the Inspector General Act of 1978, as amended.

Appendix D Management Comments – Service Area Office West

Department of Veterans Affairs Memorandum

Date: January 22, 2018

From: Executive Director, Service Area Office (SAO) West (10NA2)

Subj: Draft Report: Audit of Interior Design and Furnishing Contract Mismanagement by NCO21
Project Number 2016-00409-R1-0021

To: Assistant Inspector General for Audits and Evaluations (52)

1. This is in response to the Office of Inspector General (OIG) Draft Report: Audit of Interior Design and Furnishing Contract Mismanagement by NCO21 Project Number 2016-00409-R1-002. The SAO West Office concurs with the report and provides the ongoing corrective actions outlined below.

RECOMMENDATION 1: The OIG recommended Service Area Office West Director ensure the

Network Contracting Office 21 Director implements the required integrated oversight process to perform the required pre-award contract reviews to ensure contracting officers' compliance with Federal and VA acquisition regulations prior to contract award.

CONCUR: Finding – CO did not ensure adequate competition as required by the FAR. SAO West concurs with this finding.

Implementation Plan –

- Peer reviews: any action over the micro-purchase threshold requires, at a minimum, a review by at least one person other than the CO at the pre-solicitation and pre-award stages. This policy was first introduced in November 2012 (*IL 001AL-09-02, attached*) and is still effective as put forth in the most recent "SAO West Contract Review Requirements" Procurement Policy Memorandum (*PPM 2017-01, attached*) dated June 1, 2017.
- Pre-award review: in addition to the peer review requirement mentioned above, additional reviews are required for actions over the SAT. The SAO West Review Process (*MATRIX dated June 1, 2017, attached*) is the most recent version.
- Post-award assessments: Post award reviews of contract actions were implemented in the first quarter of FY14. These assessments have been ongoing since that time, providing NCO leadership with detailed feedback for every warranted CO – findings, trends, observations, quality, and compliance. These assessments are completed cooperatively between SAO West Procurement Analysts and NCO Procurement Analysts. The assessments are completed on small purchases (<SAT), large purchases (>SAT), and modifications (any dollar value) and cover many topics pre- and post-award. *The SAO West Post Award Audit Operating Procedures dated July 7, 2015 are attached.*
- NCO specific training: Because of the post award assessments conducted during the time frame of May 2016 – February 2017 (Round 2), NCO specific training was conducted for all 6 NCOs in the SAO West regions cooperatively between SAO West Procurement Analysts and NCO Procurement Analysts. This training focused on the high trend areas for each NCO and the "critical elements" (regardless of frequency). Critical elements are those areas that have been historically high noncompliance areas across the region, and those areas that are of importance to external audits (OIG, A-123, etc.). *NCO 17 training slides provided as an attachment.* This training was completed during the time frame of May 2017 through August 2017. In addition to this training, NCOs do provide regularly recurring training as they deem necessary.
- SAO West-wide training: Numerous training offerings have been provided by the SAO West Training Officer and the Procurement Analyst staff. Some of the topics covered include: price reasonableness determinations (training conducted June 30th 2015 and July 7th 2015), COR Requirements (October 27th, 2015 and November 2, 2015), Modifications (March 1st, 2016 and March 3rd, 2016), Effective Market Research (July 26, 2016 and July 28, 2016), FPDS Data Values

(January 23, 2017), Modification Data Values (April 4, 2017 and April 6, 2017). **SAO West**
“Standardized NCO Training Plan Format” policy letter dated September 15, 2014 attached.

Target date – All the areas identified have been approached, completed for each NCO, and are ongoing action items. SAO West will continue to provide pre-and post-award reviews, provide training opportunities for the entire region, and enforce the SAO West and VHA policies for pre-solicitation and pre-award reviews.

RECOMMENDATION 2: The OIG recommended the Veterans Integrated Service Network 21

Director consult with the appropriate VA financial and legal officials to determine steps the Northern California Health Care System Director should take to remedy the violation of the bona fide needs rule.

CONCUR: Finding – The contract violated the bona fide needs rule at the time of award. SAO West concurs with this finding and recommends VISN 21 Director provide the additional response. 2) SAO West Director ensure the NCO 21 Director implements the required integrated oversight process to perform the required pre-award contract reviews. SAO West concurs with this recommendation.

Implementation Plan – 1) 2) Same plan as outlined for issue #1 in regards to contract oversight and monitoring from pre-and post-award reviews, and NCO/SAO West training efforts.

Target Date – 1) 2) Contract oversight, monitoring, and training has been implemented and will be an ongoing process.

RECOMMENDATION 3: The OIG recommended the Service Area Office West Director take steps to ensure the Network Contracting Office 21 Director develop and implement processes to effectively monitor the status of contracts and ensure contracting officers appropriately modify the contracts or close them out in accordance with contract terms and Federal Acquisition Regulations.

CONCUR: Finding – The contract was improperly executed beyond the five-year limitation established by FAR Subpart 17.204. SAO West concurs with this finding.

Implementation Plan – 1) SAOW will update the biweekly Metrics review with a review of Undelivered Orders (UDOs) and eCMS closeouts to include reviews of contracts with closeout dates 30 to 60 days in the future. This will require SAOW analysts to review actions awarded against these contracts and the estimated completion dates. Applicable orders and modifications being executed to contracts near, at, or beyond the performance period will be reviewed to determine if the correct contract terms, delivery dates and conditions are being correctly applied, and that all federal acquisition regulations are satisfied. These proactive reviews will give SAOW increased oversight and awareness to improper contract actions. 2) Target Date for implementation is February 14, 2018 and will continue bi-weekly thereafter.

2. Based on the processes that have been implemented, I recommend this review be closed.

3. If you have any questions or concerns, please contact Thomas Gerlitzki, Senior Procurement Analyst, SAO West, of my staff at (916) 692-7327.

(Original signed by)

DELIA A. ADAMS

List of attachments (*Note: Attachments provided; however, due to the length of these attachments they were not included in this report*):

1. IL 001AL-09-02 dated November 2012
2. SAO West PPM 2017-01 dated June 1, 2017
3. SAO West Review Process MATRIX dated June 1, 2017
4. SAO West Post Award Audit Operating Procedures dated July 7, 2015
5. NCO 17 Training Slides dated July 12, 2017 and July 13, 2017 (2 separate slide presentations)
6. SAO West Standardized NCO Training Plan Format policy letter dated September 15, 2014

Appendix E Management Comments – Veterans Integrated Service Network 21

Department of Veterans Affairs Memorandum

Date: January 17, 2018

From: Director, VA Sierra Pacific Network (10N21)

Subj: Draft Report: Audit of Interior Design and Furnishing Contract Mismanagement by NCO21
Project Number 2016-00409-R1-0021

To: Assistant Inspector General for Audits and Evaluations (52)

1. This is in response to the Office of Inspector General (OIG) Draft Report: Audit of Interior Design and Furnishing Contract Mismanagement by NCO21 Project Number 2016-00409-R1-002. VISN21 concurs with the report and provides the corrective actions outlined below.

RECOMMENDATION: The OIG recommended the Veterans Integrated Service Network (VISN) 21 Director consult with the appropriate VA financial and legal officials to determine steps the VA Northern California Health Care System Director should take to remedy the violation of the *bona fide needs* rule.

CONCUR: Finding – The contract violated the bona fide needs rule at the time of award.

Implementation Plan: VISN 21 consulted with the Office of General Counsel and VHA financial officials on November 13, 2017. They indicated that FY 2009 accounts have been closed, so they are not available to make accounting corrections. No further action is needed.

2. Based on the processes that have been implemented, I recommend this review be closed.

3. If you have any questions or concerns, please contact Rebecca Dominy, VISN 21 Health Systems Specialist, at (707) 562-8361.

(Original signed by)

SHEILA M. CULLEN

For accessibility, the format of the original documents in these appendixes has been modified to fit in this document, to comply with Section 508 of the Americans with Disabilities Act.

Appendix F **OIG Contact and Staff Acknowledgments**

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Irene J. Barnett, Director John Cintolo Ronald Comtois Zachery Jensen Jennifer Leonard Richard Pesce
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Appendix G Report Distribution

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